

106TH CONGRESS  
2D SESSION

# S. 2697

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 8, 2000

Mr. LUGAR (for himself, Mr. GRAMM, and Mr. FITZGERALD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
- Sec. 5. Legal certainty for excluded derivative transactions.
- Sec. 6. Electronic trading facilities.
- Sec. 7. Hybrid instruments.
- Sec. 8. Futures on securities.
- Sec. 9. Finding and purposes.
- Sec. 10. Prohibited transactions.
- Sec. 11. Designation of boards of trade as contract markets.
- Sec. 12. Derivatives transaction execution facilities.
- Sec. 13. Derivatives clearing organizations.
- Sec. 14. Common provisions applicable to registered entities.
- Sec. 15. Exempt boards of trade.
- Sec. 16. Suspension or revocation of designation as contract market.
- Sec. 17. Authorization of appropriations.
- Sec. 18. Preemption.
- Sec. 19. Predispute resolution agreements for institutional customers.
- Sec. 20. Consideration of costs and benefits and antitrust laws.
- Sec. 21. Contract enforcement between eligible counterparties.
- Sec. 22. Legal certainty for swap agreements.
- Sec. 23. Technical and conforming amendments.
- Sec. 24. Effective date.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to reauthorize the Commodity Exchange Act  
 4 (7 U.S.C. 1 et seq.);

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

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

12 (4) to provide a legislative and regulatory  
 13 framework for allowing the trading of futures on se-  
 14 curities;

1           (5) to clarify the jurisdiction of the Commission  
2           over certain retail foreign exchange transactions and  
3           bucket shops that are not otherwise regulated;

4           (6) to promote innovation for futures and de-  
5           rivatives and to reduce systemic risk by enhancing  
6           legal certainty in the markets for certain futures and  
7           derivatives;

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

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

16 **SEC. 3. DEFINITIONS.**

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

19               (1) by redesignating paragraphs (8) through  
20               (12), (13) through (15), and (16) as paragraphs  
21               (17) through (21), (23) through (25), and (29), re-  
22               spectively;

23               (2) by inserting after paragraph (7) the fol-  
24               lowing:

25               “(8) DERIVATIVES CLEARING ORGANIZATION.—

1           “(A) IN GENERAL.—The term ‘derivatives  
2 clearing organization’ means a clearinghouse,  
3 clearing association, clearing corporation, or  
4 similar entity, facility, system, or organization  
5 that, with respect to a derivative agreement,  
6 contract, or transaction (other than a secu-  
7 rity)—

8           “(i) enables each party to the deriva-  
9 tive agreement, contract, or transaction to  
10 substitute, through novation or otherwise,  
11 the credit of the derivatives clearing orga-  
12 nization for the credit of the parties;

13           “(ii) arranges or provides, on a multi-  
14 lateral basis, for the settlement or netting  
15 of obligations resulting from such agree-  
16 ments, contracts, or transactions executed  
17 by participants in the derivatives clearing  
18 organization; or

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

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

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

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

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

16           “(9) DESIGNATED FUTURE ON A SECURITY.—  
17 The term ‘designated future on a security’ means a  
18 contract of sale (or option on such a contract) for  
19 future delivery of—

20           “(A) a single nonexempted security;

21           “(B) an index based on fewer than 5 non-  
22 exempted securities; or

23           “(C) an index in which a single non-  
24 exempted security accounts for 30 percent or  
25 more of the value of the index.

1           “(10) ELECTRONIC TRADING FACILITY.—The  
2 term ‘electronic trading facility’ means a trading fa-  
3 cility that—

4           “(A) operates by means of an electronic  
5 network; and

6           “(B) maintains a real-time audit trail of  
7 bids, offers, and the matching of orders or the  
8 execution of transactions.

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

11           “(A) acting for its own account—

12           “(i) a financial institution;

13           “(ii) an insurance company (as de-  
14 fined in section 2 of the Bank Holding  
15 Company Act of 1956 (12 U.S.C. 1841));

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

25           “(iv) a commodity pool that—

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

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

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

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

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

25               “(III) that—

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

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

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

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

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

23                                 “(aa) an investment adviser  
24                                 subject to regulation under the  
25                                 Investment Advisers Act of 1940



1 (15 U.S.C. 80b–1 et seq.) or a  
2 commodity trading advisor sub-  
3 ject to regulation under this Act;

4 “(bb) a foreign person per-  
5 forming a role or function similar  
6 to that of such an investment ad-  
7 viser or commodity trading advi-  
8 sor subject to foreign regulation  
9 in the performance of that role or  
10 function;

11 “(cc) a financial institution;  
12 or

13 “(dd) an insurance company  
14 (as defined in section 2 of the  
15 Bank Holding Company Act of  
16 1956 (12 U.S.C. 1841));

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

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

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

1           “(viii) a broker or dealer subject to  
2 regulation under the Securities Exchange  
3 Act of 1934 (15 U.S.C. 78a et seq.) or a  
4 foreign person performing a similar role or  
5 function subject as such to foreign regula-  
6 tion, except that, if the broker or dealer or  
7 foreign person is a natural person or pro-  
8 prietorship, the broker or dealer or foreign  
9 person shall not be considered to be an eli-  
10 gible contract participant unless the broker  
11 or dealer or foreign person also meets the  
12 requirements of clause (v) or (xi);

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

1           “(x) a floor broker or floor trader sub-  
2           ject to regulation under this Act, to the ex-  
3           tent that the floor broker or floor trader  
4           trades on or through the facilities of a reg-  
5           istered entity or exempt board of trade or  
6           any affiliate of a registered entity or ex-  
7           empt board of trade; or

8           “(xi) a natural person with total as-  
9           sets exceeding \$10,000,000;

10          “(B)(i) a person described in any of  
11          clauses (i) through (x) of subparagraph (A) or  
12          in subparagraph (C), acting as broker or per-  
13          forming an equivalent agency function on behalf  
14          of another person described in subparagraph  
15          (A) or (C); or

16          “(ii)(I) an investment adviser subject to  
17          regulation under the Investment Advisers Act of  
18          1940 (15 U.S.C. 80b–1 et seq.);

19          “(II) a commodity trading advisor subject  
20          to regulation under this Act;

21          “(III) a foreign person performing a role  
22          or function similar to that of such an invest-  
23          ment adviser or commodity trading advisor sub-  
24          ject to foreign regulation in the performance of  
25          that role or function; or

1           “(IV) a person described in any of clauses  
 2           (i) through (x) of subparagraph (A) or in sub-  
 3           paragraph (C), that is acting as an investment  
 4           manager or fiduciary (but excluding a person  
 5           acting as a broker or performing an equivalent  
 6           agency function) for another person described  
 7           in subparagraph (A) or (C) and that is author-  
 8           ized by the other person to commit the other  
 9           person to the transaction; or

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

13           “(12) ENERGY COMMODITY.—The term ‘energy  
 14           commodity’ includes crude oil, condensates, natural  
 15           gas, natural gas liquids, electricity, and coal.

16           “(13) EXCLUSION-ELIGIBLE COMMODITY.—

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

19                   “(i) a financial commodity;

20                   “(ii) an energy commodity; and

21                   “(iii) a commodity that has no cash  
 22           market.

23           “(B) EXCLUSION.—The term ‘exclusion-el-  
 24           igible commodity’ does not include any com-

1           modity described in paragraph (3) that is an  
2           agricultural commodity.

3           “(14) EXEMPTED SECURITY.—

4                   “(A) IN GENERAL.—The term ‘exempted  
5           security’ means a security that is an exempted  
6           security under section 3(a) of the Securities Act  
7           of 1933 (15 U.S.C. 77c(a)) or section 3(a) of  
8           the Securities Exchange Act of 1934 (15  
9           U.S.C. 78c(a)).

10                   “(B) EXCLUSION.—The term ‘exempted  
11           security’ does not include a municipal security  
12           (as defined in section 3(a) of the Securities Ex-  
13           change Act of 1934 (15 U.S.C. 78c(a))).

14           “(15) FINANCIAL COMMODITY.—The term ‘fi-  
15           nancial commodity’ means—

16                   “(A) an interest rate, exchange rate, cur-  
17           rency, security, security index, credit risk, debt  
18           or equity instrument, or index or measure of in-  
19           flation; or

20                   “(B) any other rate, differential, index, or  
21           measure of economic risk, return, or value (ex-  
22           cluding any rate, differential, index, or measure  
23           based on a commodity not described in subpara-  
24           graph (A) that has a finite supply).

1           “(16) FINANCIAL INSTITUTION.—The term ‘fi-  
2           nancial institution’ means—

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

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

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

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

16                  “(E) a depository institution (as defined in  
17                  section 3 of the Federal Deposit Insurance Act  
18                  (12 U.S.C. 1813));

19                  “(F) a foreign bank or a branch or agency  
20                  of a foreign bank (each as defined in section  
21                  1(b) of the International Banking Act of 1978  
22                  (12 U.S.C. 3101(b)));

23                  “(G) a trust company; or

1           “(H) a regulated subsidiary or affiliate of  
2           an entity described in any of subparagraphs (A)  
3           through (G).”;

4           (3) by inserting after paragraph (21) (as redese-  
5           gnated by paragraph (1)) the following:

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

12          (4) by inserting after paragraph (25) (as redese-  
13          gnated by paragraph (1)) the following:

14          “(26) NATIONAL SECURITIES EXCHANGE.—The  
15          term ‘national securities exchange’ means—

16               “(A) an exchange that is registered as a  
17               national securities exchange under section 6 of  
18               the Securities Exchange Act of 1934 (15  
19               U.S.C. 78f); or

20               “(B) an association that is registered as a  
21               national securities association under section  
22               15A of the Securities Exchange Act of 1934  
23               (15 U.S.C. 78o–3).

24          “(27) OPTION.—The term ‘option’ means an  
25          agreement, contract, or transaction that is of the

1 character of, or is commonly known to the trade as,  
 2 an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’,  
 3 ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guar-  
 4 anty’.

5 “(28) ORGANIZED EXCHANGE.—The term ‘or-  
 6 ganized exchange’ means a trading facility that—

7 “(A) permits—

8 “(i) trading by or on behalf of a per-  
 9 son that is not an eligible contract partici-  
 10 pant; or

11 “(ii) trading by persons other than on  
 12 a bona fide principal-to-principal basis; or

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

15 “(i) govern the conduct of partici-  
 16 pants, other than rules that govern the  
 17 submission of orders or execution of trans-  
 18 actions on the trading system; or

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

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

23 “(30) REGISTERED ENTITY.—The term ‘reg-  
 24 istered entity’ means—



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

3           “(B) a derivatives transaction execution fa-  
4           cility registered under section 5a; or

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

7           “(31) SECURITY.—The term ‘security’ has the  
8           meaning given the term in section 3(a) of the Secu-  
9           rities Exchange Act of 1934 (15 U.S.C. 78c(a)).

10          “(32) TRADING FACILITY.—

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

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

22           “(i) a person or group of persons sole-  
23           ly because the person or group of  
24           persons—

1           “(I) constitutes, maintains, or  
2           provides an electronic facility or sys-  
3           tem that enables participants to nego-  
4           tiate the terms of and enter into bilat-  
5           eral transactions with other partici-  
6           pants as a result of the communica-  
7           tions exchanged between the partici-  
8           pants and not from interaction of  
9           multiple orders within a centralized,  
10          predetermined, nondiscretionary, auto-  
11          mated trade matching algorithm; or

12           “(II)(aa) is a derivatives clearing  
13          organization; or

14           “(bb) permits participants to  
15          submit agreements, contracts, or  
16          transactions to a derivatives clearing  
17          organization;

18           “(ii) a government securities dealer or  
19          government securities broker, to the extent  
20          that the dealer or broker executes or  
21          trades agreements, contracts, or trans-  
22          actions in government securities, or assists  
23          persons in communicating about, negoti-  
24          ating, entering into, executing, or trading  
25          an agreement, contract, or transaction in

1 government securities (as the terms ‘gov-  
 2 ernment securities dealer’, ‘government se-  
 3 curities broker’, and ‘government securi-  
 4 ties’ are defined in section 3(a) of the Se-  
 5 curities Exchange Act of 1934 (15 U.S.C.  
 6 78c(a))); or

7 “(iii) a facility on which bids and of-  
 8 fers and acceptances of bids and offers ef-  
 9 fected on the facility are not binding.”.

10 **SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN**  
 11 **FOREIGN CURRENCY, GOVERNMENT SECURI-**  
 12 **TIES, AND CERTAIN OTHER COMMODITIES.**

13 Section 2 of the Commodity Exchange Act (7 U.S.C.  
 14 2, 2a, 3, 4, 4a) is amended by adding at the end the fol-  
 15 lowing:

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

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

23 “(A) foreign currency;

24 “(B) government securities;

25 “(C) security warrants;

1 “(D) security rights;

2 “(E) resales of installment loan contracts;

3 “(F) repurchase transactions in a financial  
4 commodity; or

5 “(G) mortgages or mortgage purchase  
6 commitments.

7 “(2) COMMISSION JURISDICTION.—

8 “(A) AGREEMENTS, CONTRACTS, AND  
9 TRANSACTIONS THAT ARE FUTURES TRADED  
10 ON AN ORGANIZED EXCHANGE.—This Act ap-  
11 plies to, and the Commission shall have juris-  
12 diction over, an agreement, contract, or trans-  
13 action described in paragraph (1) that—

14 “(i)(I) is a contract of sale of a com-  
15 modity for future delivery (or an option on  
16 such a contract); and

17 “(II) is executed or traded on an or-  
18 ganized exchange;

19 “(ii)(I) is an option on a commodity  
20 other than foreign currency or a security;  
21 and

22 “(II) is executed or traded on an orga-  
23 nized exchange; or

24 “(iii)(I) is an option on foreign cur-  
25 rency; and

1           “(II) is executed or traded on an or-  
2           ganized exchange that is not a national se-  
3           curities exchange.

4           “(B) AGREEMENTS, CONTRACTS, AND  
5           TRANSACTIONS IN RETAIL FOREIGN CUR-  
6           RENCY.—This Act applies to, and the Commis-  
7           sion shall have jurisdiction over, an agreement,  
8           contract, or transaction in foreign currency  
9           that—

10           “(i) is—

11           “(I) a contract of sale for future  
12           delivery; or

13           “(II) an option; and

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

19           “(I) a financial institution;

20           “(II) a broker or dealer reg-  
21           istered under section 15(b) or 15C of  
22           the Securities Exchange Act of 1934  
23           (15 U.S.C. 78o(b), 78o-5);

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

1                   tion 15(b) or 15C of the Securities  
2                   Exchange Act of 1934 (15 U.S.C.  
3                   780(b), 780-5) concerning the finan-  
4                   cial or securities activities of which  
5                   the registered person makes and  
6                   keeps records under section 15C(b) or  
7                   17(h) of the Securities Exchange Act  
8                   of 1934 (15 U.S.C. 780-5(b), 78q(h));

9                   “(IV) an insurance company (as  
10                  defined in section 2 of the Bank Hold-  
11                  ing Company Act of 1956 (12 U.S.C.  
12                  1841));

13                  “(V) a financial holding company  
14                  (as defined in section 2 of the Bank  
15                  Holding Company Act of 1956 (12  
16                  U.S.C. 1841)); or

17                  “(VI) an investment bank hold-  
18                  ing company (as defined in section  
19                  17(i) of the Securities Exchange Act  
20                  of 1934 (15 U.S.C. 78q(i))).”.

21 **SEC. 5. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**  
22 **TRANSACTIONS.**

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

1 “(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

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

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

11 “(B) the agreement, contract, or trans-  
12 action is not executed or traded on a trading fa-  
13 cility.

14 “(2) ELECTRONIC TRADING FACILITY EXCLU-  
15 SION.—Nothing in this Act (other than section 5b or  
16 12(e)(2)(B)) governs or applies to an agreement,  
17 contract, or transaction in an exclusion-eligible com-  
18 modity if—

19 “(A) the agreement, contract, or trans-  
20 action is entered into on a bona fide principal-  
21 to-principal basis between parties trading for  
22 their own accounts or as described in section  
23 1a(11)(B)(ii);

24 “(B) the agreement, contract, or trans-  
25 action is entered into only between persons that

1 are eligible contract participants (as defined in  
2 subparagraph (A), (B)(ii), or (C) of section  
3 1a(11)) at the time at which the persons enter  
4 into the agreement, contract, or transaction;  
5 and

6 “(C) the agreement, contract, or trans-  
7 action is executed or traded on an electronic  
8 trading facility.

9 “(3) EXCEPTION TO PREVENT MANIPULA-  
10 TION.—Notwithstanding paragraphs (1) and (2),  
11 any agreement, contract, or transaction in an exclu-  
12 sion-eligible commodity (other than a financial com-  
13 modity) that is an energy commodity or is suscep-  
14 tible to a material risk of manipulation shall be sub-  
15 ject to sections 6(c) and 9(a)(2).”.

16 **SEC. 6. ELECTRONIC TRADING FACILITIES.**

17 Section 2 of the Commodity Exchange Act (7 U.S.C.  
18 2, 2a, 3, 4, 4a) (as amended by section 5) is amended  
19 by adding at the end the following:

20 “(e) ELECTRONIC TRADING FACILITIES.—

21 “(1) IN GENERAL.—Nothing in this Act (other  
22 than section 12(e)(2)(B)) governs or is applicable to  
23 an electronic trading facility that limits transactions  
24 authorized to be conducted on the facility to trans-



1 actions that satisfy the requirements of subsection  
2 (d)(2).

3 “(2) EFFECT ON AUTHORITY TO ESTABLISH  
4 AND OPERATE.—Nothing in this Act shall prohibit a  
5 board of trade designated by the Commission as a  
6 contract market or derivatives transaction execution  
7 facility, or an exempt board of trade, from estab-  
8 lishing and operating an electronic trading facility  
9 excluded under this Act by paragraph (1).”.

10 **SEC. 7. HYBRID INSTRUMENTS.**

11 Section 2 of the Commodity Exchange Act (7 U.S.C.  
12 2, 2a, 3, 4, 4a) (as amended by section 6) is amended  
13 by adding at the end the following:

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

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

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

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

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

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

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

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

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

1 **SEC. 8. FUTURES ON SECURITIES.**

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

5 “(g) **FUTURES ON SECURITIES.**—

6 “(1) **EXCLUSIONS.**—

7 “(A) **EXCLUSION OF OVER-THE-COUNTER**  
8 **EQUITY INSTRUMENTS.**—Nothing in this sub-  
9 section governs or applies to—

10 “(i) an agreement, contract, or trans-  
11 action in a commodity that is excluded  
12 under subsection (c) or (d);

13 “(ii) an electronic trading facility that  
14 is excluded under subsection (e); or

15 “(iii) a hybrid instrument that is cov-  
16 ered by an exclusion under subsection (f)  
17 or an exemption granted by the Commis-  
18 sion under section 4(c) (whether or not the  
19 hybrid instrument is otherwise subject to  
20 this Act).

21 “(B) **EXCLUSION OF SECURITY OPTIONS.**—

22 This Act does not apply to, and the Commission  
23 shall have no jurisdiction to designate a board  
24 of trade as a contract market or register a de-  
25 rivatives transaction execution facility for, any  
26 transaction under which a party to the trans-

1           action acquires an option on 1 or more securi-  
2           ties, group or index of securities, or interest in,  
3           or interest that is based on the value of, a secu-  
4           rity.

5           “(2) INCLUSION OF TRADING OF NONDES-  
6           IGNATED FUTURES ON SECURITIES ON A CONTRACT  
7           MARKET.—

8                   “(A) IN GENERAL.—This Act applies to,  
9                   and the Commission shall have exclusive juris-  
10                  diction with respect to and may designate a  
11                  board of trade as a contract market in, ac-  
12                  counts, agreements, and transactions involving  
13                  a contract of sale (or option on such a contract)  
14                  for future delivery of a group or index of non-  
15                  exempted securities (or an interest in, or inter-  
16                  est that is based on the value of, such securi-  
17                  ties), none of which is a designated future on  
18                  a security.

19                  “(B) REQUIREMENTS FOR DESIGNA-  
20                  TION.—

21                   “(i) IN GENERAL.—No board of trade  
22                   shall be designated as a contract market  
23                   with respect to any contract of sale (or op-  
24                   tion on such a contract) for future delivery  
25                   under subparagraph (A) unless—

1                   “(I) the board of trade files with  
2                   the Commission an application for  
3                   designation; and

4                   “(II) the board of trade dem-  
5                   onstrates and the Commission ex-  
6                   pressly finds that the specific contract  
7                   (or option on such a contract) with re-  
8                   spect to which the application is made  
9                   meets the minimum requirements of  
10                  clauses (ii) and (iii).

11                  “(ii) MEANS OF EFFECTUATION OF  
12                  SETTLEMENT OR DELIVERY.—Settlement  
13                  of or delivery on a contract (or option on  
14                  such a contract) described in subparagraph  
15                  (A) shall be effected in cash or by means  
16                  other than the transfer or receipt of a se-  
17                  curity other than an exempted security.

18                  “(iii) SUSCEPTIBILITY TO PRICE MA-  
19                  NIPULATION.—Trading in a contract (or  
20                  option on such a contract) described in  
21                  subparagraph (A) shall not be readily sus-  
22                  ceptible to—

23                         “(I) manipulation of the price of  
24                         the contract (or option on such a con-  
25                         tract); or

1                   “(II) causing or being used in  
2                   the manipulation of the price of any  
3                   underlying security, option on a secu-  
4                   rity, or option on a group or index  
5                   that includes a security.

6                   “(3) TRADING OF DESIGNATED FUTURES ON  
7                   SECURITIES ON A CONTRACT MARKET OR NATIONAL  
8                   SECURITIES EXCHANGE.—No person shall offer to  
9                   enter into, enter into, or confirm the execution of a  
10                  designated future on a security, or an interest in or  
11                  interest that is based on the value of a designated  
12                  future on a security, unless—

13                   “(A) the contract—

14                   “(i) is transacted on or subject to the  
15                   rules of a board of trade that has been  
16                   designated by the Commission as a con-  
17                   tract market for the commodity that is the  
18                   subject of the contract; and

19                   “(ii) meets the requirements of para-  
20                   graph (4); or

21                   “(B) the contract is transacted on or sub-  
22                   ject to the rules of a securities exchange that is  
23                   registered with the Securities and Exchange  
24                   Commission as a national securities exchange.

1           “(4) MINIMUM REQUIREMENTS FOR DES-  
2           IGNATED FUTURES ON SECURITIES TRADED ON A  
3           CONTRACT MARKET.—

4           “(A) IN GENERAL.—Subject to paragraph  
5           (5), this Act applies to, and the Commission  
6           shall have jurisdiction with respect to and may  
7           designate a board of trade as a contract market  
8           in, accounts, agreements, and transactions in-  
9           volving a designated future on a security.

10           “(B) REQUIREMENTS FOR DESIGNA-  
11           TION.—

12           “(i) IN GENERAL.—No board of trade  
13           shall be designated as a contract market  
14           with respect to any contract of sale (or op-  
15           tion on such a contract) under subpara-  
16           graph (A) unless—

17                   “(I) the board of trade files with  
18                   the Commission an application for  
19                   designation; and

20                   “(II) the board of trade dem-  
21                   onstrates and the Commission ex-  
22                   pressly finds that the specific contract  
23                   (or option on such a contract) with re-  
24                   spect to which the application is made

1                   meets the minimum requirements of  
2                   clauses (ii) through (viii).

3                   “(ii) MEANS OF EFFECTUATION OF  
4                   SETTLEMENT OR DELIVERY.—Settlement  
5                   of or delivery on a contract (or option on  
6                   such a contract) described in subparagraph  
7                   (A) shall be effected in cash or by means  
8                   other than the transfer or receipt of a se-  
9                   curity other than an exempted security.

10                  “(iii) REAL-TIME AUDIT TRAIL.—  
11                  Trading in a contract (or option on such a  
12                  contract) described in subparagraph (A)  
13                  shall occur on a contract market that exe-  
14                  cutes trades by means of a system that  
15                  provides a real-time audit trail.

16                  “(iv) SUSCEPTIBILITY TO PRICE MA-  
17                  NIPULATION.—Trading in a contract (or  
18                  option on such a contract) described in  
19                  subparagraph (A) shall not be readily sus-  
20                  ceptible to—

21                                 “(I) manipulation of the price of  
22                                 the contract (or option on such a con-  
23                                 tract); or

24                                 “(II) causing or being used in  
25                                 the manipulation of the price of any



1           underlying security, option on a secu-  
2           rity, or option on a group or index  
3           that includes a security.

4           “(v) UNDERLYING SECURITY AP-  
5           PROVED FOR LISTING ON NATIONAL SECU-  
6           RITIES EXCHANGE.—Each security that  
7           underlies a designated future on a security  
8           shall—

9                   “(I) meet all requirements for  
10                  the listing of an option on that secu-  
11                  rity on a national securities exchange;  
12                  or

13                   “(II) be the subject of options  
14                  trading on a national securities ex-  
15                  change.

16           “(vi) MARGINS FOR FUTURES CON-  
17           TRACTS.—The contract described in sub-  
18           paragraph (A) shall be traded on a board  
19           of trade that establishes and maintains  
20           margin levels for designated futures on se-  
21           curities that are consistent with the mar-  
22           gin levels established and maintained on an  
23           option contract on the same underlying se-  
24           curity that is listed on any national securi-  
25           ties exchange.

1           “(vii) CONFLICTS OF INTEREST.—The  
2           contract described in subparagraph (A)  
3           shall be traded on a board of trade that es-  
4           tablishes and enforces rules that protect  
5           the customer from conflicts of interest and  
6           related trading abuses on the part of bro-  
7           kers or any other person performing simi-  
8           lar roles or functions.

9           “(viii) PROVISION OF INFORMATION  
10          NECESSARY FOR ENFORCEMENT.—The  
11          contract described in subparagraph (A)  
12          shall be traded on a board of trade that,  
13          in accordance with regulations promul-  
14          gated by the Commission, collects, main-  
15          tains, and promptly provides to the Securi-  
16          ties and Exchange Commission on request  
17          such information as the Commission and  
18          the Securities and Exchange Commission  
19          jointly determine to be appropriate for the  
20          performance of the enforcement respon-  
21          sibilities described in paragraph (5).

22          “(5) SEC ENFORCEMENT AUTHORITY FOR DES-  
23          IGNATED FUTURES ON SECURITIES CONTRACTS  
24          LISTED ON A CONTRACT MARKET.—

1           “(A) IN GENERAL.—With the concurrence  
2 of the Commission, the Securities and Ex-  
3 change Commission may enforce the provisions  
4 of the securities laws specified in subparagraph  
5 (B) against any person that purchases or sells  
6 a designated future on a security to the same  
7 extent as if the person had purchased or sold  
8 an option on a security.

9           “(B) PROVISIONS OF THE SECURITIES  
10 LAWS.—The provisions of the securities laws re-  
11 ferred to in subparagraph (A) are—

12                   “(i) section 16 of the Securities Ex-  
13 change Act of 1934 (15 U.S.C. 78p); and

14                   “(ii) section 10(b) of the Securities  
15 Exchange Act of 1934 (15 U.S.C. 78j(b)).

16           “(C) AUTHORITY OF SEC.—Nothing in this  
17 paragraph expands the authority of the Securi-  
18 ties and Exchange Commission with respect to  
19 registered entities or contracts of sale of a com-  
20 modity for future delivery (or options on such  
21 contracts) except as specifically provided in this  
22 paragraph.

23           “(D) REPORT.—Not earlier than the date  
24 that is 3 years after the date of enactment of  
25 this subsection, the Commission and the Securi-

1           ties and Exchange Commission shall begin to  
2           compile, and not later than the date that is 4  
3           years after the date of enactment of this sub-  
4           section, the Commission and the Securities and  
5           Exchange Commission shall submit to Con-  
6           gress, a report on the implementation of this  
7           subsection.

8           “(6) CFTC ENFORCEMENT AUTHORITY FOR  
9           DESIGNATED FUTURES ON SECURITIES LISTED ON A  
10          NATIONAL SECURITIES EXCHANGE.—

11           “(A) IN GENERAL.—Except as provided in  
12           subparagraph (B), the Securities and Exchange  
13           Commission shall have jurisdiction over a des-  
14           ignated future on a security to the extent that  
15           the designated future on a security is traded on  
16           a national securities exchange.

17           “(B) LARGE TRADER REPORTING, ANTI-  
18           FRAUD, AND ANTIMANIPULATION AUTHORITY.—  
19           With the concurrence of the Securities and Ex-  
20           change Commission, the Commission shall en-  
21           force sections 4b, 4i, 4o, 6(c), and 9(a)(2)  
22           against any person that purchases or sells a  
23           designated future on a security on a national  
24           securities exchange.

1           “(C) PROVISION OF INFORMATION NEC-  
2           CESSARY FOR ENFORCEMENT.—A designated fu-  
3           ture on a security shall be traded on a national  
4           securities exchange that, in accordance with  
5           regulations promulgated by the Securities and  
6           Exchange Commission, collects, maintains, and  
7           promptly provides to the Commission on re-  
8           quest such information as the Securities and  
9           Exchange Commission and the Commission  
10          jointly determine to be appropriate for the per-  
11          formance of the enforcement responsibilities de-  
12          scribed in subparagraph (B).

13          “(7) PROCESS FOR LISTING FUTURES ON A SE-  
14          CURITY.—

15                 “(A) CONTRACT MARKET PROCESS.—

16                         “(i) IN GENERAL.—The Commission  
17                         shall transmit to the Securities and Ex-  
18                         change Commission a copy of any applica-  
19                         tion that is submitted by a board of trade  
20                         for designation as a contract market with  
21                         respect to a contract of sale (or option on  
22                         such a contract) for future delivery of a  
23                         nonexempted security or a group or index  
24                         of nonexempted securities.

25                         “(ii) HEARING.—

1           “(I) OBJECTION BY SEC.—If, not  
2 later than 15 days following trans-  
3 mittal of an application under clause  
4 (i), the Securities and Exchange Com-  
5 mission submits to the Commission an  
6 objection to designation of the board  
7 of trade as a contract market in the  
8 contract (or option on such a con-  
9 tract) based on evidence (including an  
10 economic analysis of relevant factors  
11 including benefits and costs) that any  
12 minimum requirement under para-  
13 graph (2)(B) or (4)(B) is not met, the  
14 Commission shall afford the Securities  
15 and Exchange Commission an oppor-  
16 tunity for a hearing on the record be-  
17 fore the Commission.

18           “(II) TIMING.—A hearing under  
19 subclause (I) shall be held before the  
20 Commission takes action on the appli-  
21 cation, and not less than 30 nor more  
22 than 45 days after the Securities and  
23 Exchange Commission submits the ob-  
24 jection.

1           “(B) NATIONAL SECURITIES EXCHANGE  
2           PROCESS.—

3           “(i) IN GENERAL.—The Securities  
4           and Exchange Commission shall transmit  
5           to the Commission a copy of any applica-  
6           tion that is submitted by a person for list-  
7           ing of a designated future on a security on  
8           a national securities exchange.

9           “(ii) OBJECTION BY THE COMMIS-  
10          SION.—If, not later than 15 days following  
11          transmittal of an application under clause  
12          (i), the Commission submits to the Securi-  
13          ties and Exchange Commission an objec-  
14          tion to listing of a designated future on a  
15          security on a national securities exchange  
16          based on evidence (including an economic  
17          analysis of relevant factors including bene-  
18          fits and costs) that any minimum require-  
19          ment under paragraph (4)(B) is not met,  
20          the Securities and Exchange Commission  
21          shall afford the Commission an oppor-  
22          tunity for a hearing on the record before  
23          the Securities and Exchange Commission.

24          “(8) MARGIN.—

1           “(A) IN GENERAL.—Notwithstanding any  
2 other provision of this Act, any designated con-  
3 tract market in a contract for sale of future de-  
4 livery of a nonexempted security or non-  
5 exempted securities index (or option on such a  
6 contract) shall file with the Board of Governors  
7 of the Federal Reserve System any rule estab-  
8 lishing or changing the level of initial margin or  
9 maintenance margin for the nonexempted secu-  
10 rity or nonexempted securities index futures  
11 contract (or option on such a contract).

12           “(B) REQUEST TO SET MARGIN.—

13           “(i) IN GENERAL.—The Board may at  
14 any time request a contract market to set  
15 the margin for a nonexempted security or  
16 nonexempted securities index futures con-  
17 tract (or option on a nonexempted security  
18 or nonexempted securities index futures  
19 contract) at a level that the Board deter-  
20 mines is appropriate to—

21           “(I) preserve the financial integ-  
22 rity of the contract market or of the  
23 clearing system of the contract mar-  
24 ket; or

25           “(II) prevent systemic risk.



1           “(ii) FAILURE TO SET MARGIN.—If  
2           the contract market fails to comply with a  
3           request under clause (i) within the time  
4           specified by the Board in the request, the  
5           Board may direct the contract market to  
6           alter or supplement the rules of the con-  
7           tract market as specified in the request.

8           “(C) DELEGATION OF AUTHORITY TO THE  
9           COMMISSION.—Subject to such conditions as  
10          the Board may determine, the Board may dele-  
11          gate any or all of its authority with respect to  
12          margin levels—

13                 “(i) in the case of a designated future  
14                 on a security or other stock index futures  
15                 contract or related option, to the Commis-  
16                 sion, if the contract or option is traded on  
17                 a designated contract market or derivatives  
18                 transaction execution facility; or

19                 “(ii) in the case of a designated future  
20                 on a security—

21                         “(I) to the Securities and Ex-  
22                         change Commission, if the designated  
23                         future on a security is listed on a na-  
24                         tional securities exchange; or

1                   “(II) to the intermarket margin  
2                   board established under subparagraph  
3                   (D).

4                   “(D) INTERMARKET MARGIN BOARD.—

5                   “(i) ESTABLISHMENT.—With the con-  
6                   currence of the Securities and Exchange  
7                   Commission and the Commission, the  
8                   Board may establish an intermarket mar-  
9                   gin board consisting of representatives of  
10                  each of those 3 entities.

11                  “(ii) DUTIES.—The intermarket mar-  
12                  gin board established under clause (i) may  
13                  set and maintain margin levels and rules  
14                  pertaining to margin for a designated fu-  
15                  ture on a security listed on a contract mar-  
16                  ket or on a national securities exchange.

17                  “(E) RELATIONSHIP TO OTHER AUTHOR-  
18                  ITY.—Nothing in this section supersedes or lim-  
19                  its the authority of the Commission under sec-  
20                  tion 8a(9).

21                  “(F) JUDICIAL REVIEW.—

22                  “(i) IN GENERAL.—Any action taken  
23                  by the Board (or by the Commission acting  
24                  under the delegation of authority under  
25                  subparagraph (C) or by the intermarket

1 margin board established under subpara-  
2 graph (D)) under this paragraph directing  
3 a contract market to alter or supplement  
4 a contract market rule shall be subject to  
5 review only in the United States Court of  
6 Appeals for the judicial circuit in which the  
7 party seeking review resides or has its  
8 principal place of business, or in the  
9 United States Court of Appeals for the  
10 District of Columbia Circuit.

11 “(ii) BASIS FOR REVIEW.—Review  
12 under clause (i) shall be based on the ex-  
13 amination of all information before the  
14 Board (or the Commission, Securities and  
15 Exchange Commission, or intermarket  
16 margin board) at the time at which the ac-  
17 tion was taken.

18 “(iii) STANDARD OF REVIEW.—The  
19 court reviewing an action of the Board (or  
20 the Commission, Securities and Exchange  
21 Commission, or intermarket margin board)  
22 shall not enter a stay or order of man-  
23 damus unless the court determines, after  
24 notice and hearing, that the action was ar-

1                   bitrary, capricious, an abuse of discretion,  
2                   or otherwise not in accordance with law.”.

3 **SEC. 9. FINDING AND PURPOSES.**

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

6 **“SEC. 3. FINDING AND PURPOSES.**

7           “(a) FINDING.—Congress finds that the futures con-  
8 tracts and options contracts that are subject to this Act  
9 are entered into regularly in interstate and international  
10 commerce and are affected with a national public interest,  
11 in that such futures contracts and options contracts pro-  
12 vide a means for managing and assuming price risks, dis-  
13 covering prices, and disseminating pricing information  
14 through trading in liquid, fair, and financially secure trad-  
15 ing facilities.

16           “(b) PURPOSES.—The purposes of this Act are—

17                   “(1) to serve the public interest described in  
18 subsection (a) through a system of effective self-reg-  
19 ulation of trading facilities, clearing systems, market  
20 participants, and market professionals under the  
21 oversight of the Commission; and

22                   “(2) to authorize the Commission—

23                           “(A) to deter and prevent price manipula-  
24 tion or any other disruptions to market integ-  
25 rity;

1           “(B) to ensure the financial integrity of all  
2           transactions subject to this Act and the avoid-  
3           ance of systemic risk;

4           “(C) to protect all market participants  
5           from fraudulent or other abusive sales practices  
6           and misuse of customer assets; and

7           “(D) to promote responsible innovation  
8           and fair competition among boards of trade,  
9           other markets, and market participants.”.

10 **SEC. 10. PROHIBITED TRANSACTIONS.**

11           Section 4c of the Commodity Exchange Act (7 U.S.C.  
12 6c) is amended by striking “SEC. 4c.” and all that follows  
13 through subsection (a) and inserting the following:

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

15           “(a) IN GENERAL.—

16           “(1) PROHIBITION.—It shall be unlawful for  
17           any person to offer to enter into, enter into, or con-  
18           firm the execution of a transaction described in  
19           paragraph (2) involving any commodity if the trans-  
20           action is used or may be used to—

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

1           “(B) determine the price basis of any such  
2 transaction in interstate commerce in the com-  
3 modity; or

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

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

9           “(A)(i) is, is of the character of, or is com-  
10 monly known to the trade as, a ‘wash sale’,  
11 ‘cross trade’, or ‘accommodation trade’; or

12           “(ii) is a fictitious sale; or

13           “(B) is used to cause any price to be re-  
14 ported, registered, or recorded that is not a  
15 true and bona fide price.

16           “(3) EFFECT OF SUBSECTION.—Nothing in this  
17 subsection—

18           “(A) makes unlawful an exchange of—

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

21           “(ii) futures for cash commodities;

22           “(iii) transfer trades or office trades;

23           or

24           “(iv) futures for swaps;

1 if the exchange is made in accordance with  
2 rules of the contract market or derivatives  
3 transaction execution facility that apply to such  
4 transactions, and those rules have been ap-  
5 proved by the Commission; or

6 “(B) makes it unlawful for a futures com-  
7 mission merchant, acting as principal or agent,  
8 to enter into, execute, or confirm the execution  
9 of a contract for the purchase or sale of a com-  
10 modity for future delivery if the contract is en-  
11 tered into, executed, reported, recorded, or  
12 cleared in accordance with the rules of a con-  
13 tract market or derivatives transaction execu-  
14 tion facility.”.

15 **SEC. 11. DESIGNATION OF BOARDS OF TRADE AS CON-**  
16 **TRACT MARKETS.**

17 The Commodity Exchange Act is amended—

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

20 (2) by striking sections 5 and 5a (7 U.S.C. 7,  
21 7a) and inserting the following:

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

24 “(a) APPLICATIONS.—A board of trade applying to  
25 the Commission for designation as a contract market shall

1 submit an application to the Commission that includes any  
2 relevant materials and records the Commission may re-  
3 quire consistent with this Act.

4 “(b) CRITERIA FOR DESIGNATION.—

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

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

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

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

24 “(A) establish and enforce rules defining,  
25 or specifications detailing, the manner of oper-



1           ation of the trade execution facility maintained  
2           by the board of trade, including rules or speci-  
3           fications describing the operation of any elec-  
4           tronic matching platform; and

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

8                   “(5) FINANCIAL INTEGRITY OF TRANS-  
9           ACTIONS.—The board of trade shall establish and  
10          enforce rules and procedures for ensuring the finan-  
11          cial integrity of transactions entered into by or  
12          through the facilities of the contract market.

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

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

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

8           “(c) EXISTING CONTRACT MARKETS.—A designated  
9 contract market on the effective date of the Commodity  
10 Futures Modernization Act of 2000 shall be considered to  
11 be a designated contract market under this section.

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

13           “(1) IN GENERAL.—To maintain the designa-  
14 tion of a board of trade as a contract market, a  
15 board of trade shall comply with the core principles  
16 specified in this subsection.

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

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

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

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

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

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

18                   “(B) suspend or curtail trading in any con-  
19 tract; and

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

22           “(7) AVAILABILITY OF GENERAL INFORMA-  
23 TION.—The board of trade shall make available to  
24 market authorities, market participants, and the  
25 public information concerning—

1           “(A) the terms and conditions of the con-  
2           tracts of the contract market; and

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

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

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

15          “(10) TRADE INFORMATION.—The board of  
16          trade shall maintain rules and procedures to provide  
17          for the recording and safe storage of all identifying  
18          data entry and trade information in a manner that  
19          enables the contract market to use the information  
20          for purposes of assisting in the prevention of cus-  
21          tomer and market abuses and providing evidence of  
22          any violations of the rules of the contract market.

23          “(11) FINANCIAL INTEGRITY OF CONTRACTS.—  
24          The board of trade shall establish and enforce rules  
25          providing for the financial integrity of any contracts

1 traded on the contract market, including rules to en-  
2 sure the financial integrity of any futures commis-  
3 sion merchants and introducing brokers and the pro-  
4 tection of customer funds.

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

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

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

22 “(15) CONFLICTS OF INTEREST.—The board of  
23 trade shall establish and enforce rules to minimize  
24 conflicts of interest in the decisionmaking process of

1 the contract market and establish a process for re-  
2 solving such conflicts of interest.

3 “(16) COMPOSITION OF BOARDS OF MUTUALLY  
4 OWNED CONTRACT MARKETS.—In the case of a mu-  
5 tually owned contract market, the board of trade  
6 shall ensure that the composition of the governing  
7 board reflects market participants.

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

10 “(A) maintain full records of all activities  
11 related to the business of the contract market  
12 in a form and manner acceptable to the Com-  
13 mission for a period of 5 years;

14 “(B) make the records readily available  
15 during at least the first 2-years of the 5-year  
16 period and provide the records to the Commis-  
17 sion during that 2-year period at the expense of  
18 the person required to maintain the records;  
19 and

20 “(C) keep the records open to inspection  
21 by any representative of the Commission or the  
22 Department of Justice.

23 “(18) ANTITRUST CONSIDERATIONS.—Unless  
24 appropriate to achieve the purposes of this Act, the  
25 board of trade shall avoid—

1           “(A) adopting any rule or taking any ac-  
 2           tion that results in any unreasonable restraint  
 3           of trade; or

4           “(B) imposing any material anticompeti-  
 5           tive burden on trading on the contract mar-  
 6           ket.”.

7 **SEC. 12. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
 8           **TIES.**

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

12 **“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
 13           **TIES.**

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

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

20           “(2) registered as a derivatives transaction exe-  
 21           cution facility under subsection (c).

22           “(b) REQUIREMENTS FOR TRADING FUTURES CON-  
 23 TRACTS OR OTHER DERIVATIVES TRANSACTIONS.—

24           “(1) IN GENERAL.—A registered derivatives  
 25           transaction execution facility under subsection (a)

1 may trade any futures contract (or option on such  
2 a contract) that is not a designated future on a se-  
3 curity on or through the facility only by satisfying  
4 the requirements of this section.

5 “(2) REQUIREMENTS FOR UNDERLYING COM-  
6 MODITIES.—A registered derivatives transaction exe-  
7 cution facility may trade any futures contract only  
8 if—

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

11 “(B) the underlying commodity has a de-  
12 liverable supply that is sufficiently large that  
13 the contract is highly unlikely to be susceptible  
14 to manipulation;

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

17 “(D) the Commission determines, based on  
18 the market characteristics, surveillance history,  
19 self-regulatory record, and capacity of the facil-  
20 ity that trading in the futures contract is highly  
21 unlikely to be susceptible to manipulation.

22 “(3) ELIGIBLE TRADERS.—To trade on a reg-  
23 istered derivatives transaction execution facility, a  
24 person shall—



1           “(A) be authorized by the board of trade  
2 to trade on the facility; and

3           “(B)(i) be an eligible contract participant;  
4 or

5           “(ii) be a person trading through a futures  
6 commission merchant that—

7           “(I) is registered with the Commis-  
8 sion;

9           “(II) is a member of a futures self-  
10 regulatory organization;

11           “(III) is a clearing member of a de-  
12 rivatives clearing organization; and

13           “(IV) has adjusted net capital of at  
14 least \$20,000,000.

15           “(4) TRADING BY CONTRACT MARKETS.—A  
16 board of trade that is designated as a contract mar-  
17 ket shall, to the extent that the contract market also  
18 operates a registered derivatives transaction execu-  
19 tion facility—

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

1           “(B) if the board of trade uses the same  
2           electronic trading system for trading on the  
3           contract market and derivatives transaction  
4           execution facility of the board of trade, identify  
5           whether the electronic trading is taking place  
6           on the contract market or the derivatives trans-  
7           action execution facility.

8           “(c) CRITERIA FOR REGISTRATION.—

9           “(1) IN GENERAL.—To be registered as a reg-  
10          istered derivatives transaction execution facility, the  
11          board of trade shall demonstrate to the Commission  
12          that the board of trade meets the criteria specified  
13          in this paragraph.

14          “(2) DETERRENCE OF ABUSES.—The board of  
15          trade shall establish and enforce trading rules that  
16          will deter abuses and has the capacity to detect, in-  
17          vestigate, and enforce those rules, including means  
18          to—

19                  “(A) obtain information necessary to per-  
20                  form the functions required under this section;

21                  or

22                  “(B) use technological means to—

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

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

4                   “(3) TRADING PROCEDURES.—The board of  
5                   trade shall establish and enforce rules or terms and  
6                   conditions defining, or specifications detailing, trad-  
7                   ing procedures to be used in entering and executing  
8                   orders traded on the facilities of the board of trade.

9                   “(4) FINANCIAL INTEGRITY OF TRANS-  
10                  ACTIONS.—The board of trade shall establish and  
11                  enforce rules or terms and conditions providing for  
12                  the financial integrity of transactions entered on or  
13                  through the facilities of the board of trade, including  
14                  rules or terms and conditions to ensure the financial  
15                  integrity of any futures commission merchants and  
16                  introducing brokers and the protection of customer  
17                  funds.

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

20                  “(1) IN GENERAL.—To maintain the registra-  
21                  tion of a board of trade as a derivatives transaction  
22                  execution facility, a board of trade shall comply with  
23                  the core principles specified in this subsection.

24                  “(2) COMPLIANCE WITH RULES.—The board of  
25                  trade shall monitor and enforce the rules of the fa-

1 eility, including any terms and conditions of any  
2 contracts traded on or through the facility and any  
3 limitations on access to the facility.

4 “(3) MONITORING OF TRADING.—The board of  
5 trade shall monitor trading in the contracts of the  
6 facility to ensure orderly trading in the contract and  
7 to maintain an orderly market while providing any  
8 necessary trading information to the Commission to  
9 allow the Commission to discharge the responsibil-  
10 ities of the Commission under the Act.

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

14 “(A) contract terms and conditions;

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

17 “(C) financial integrity protections; and

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

20 “(5) PROVISION OF TRADING INFORMATION.—  
21 The board of trade shall provide to market partici-  
22 pants on a fair, equitable, and timely basis—

23 “(A) information regarding prices, bids,  
24 and offers; and

1           “(B) for actively traded contracts, daily in-  
2           formation on settlement prices, volume, open in-  
3           terest, and opening and closing ranges.

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

10          “(7) CONFLICTS OF INTEREST.—The board of  
11          trade shall establish and enforce rules to minimize  
12          conflicts of interest in the decisionmaking process of  
13          the derivatives transaction execution facility and es-  
14          tablish a process for resolving such conflicts of inter-  
15          est.

16          “(8) RECORDKEEPING.—The board of trade  
17          shall—

18                 “(A) maintain full records of all activities  
19                 related to the business of the derivatives trans-  
20                 action execution facility in a form and manner  
21                 acceptable to the Commission for a period of at  
22                 least 5 years;

23                 “(B) make the records readily available  
24                 during at least the first 2 years of the 5-year  
25                 period and provide the records to the Commis-

1           sion at the expense of the person required to  
2           maintain the records; and

3           “(C) keep the records open to inspection  
4           by any representative of the Commission or the  
5           Department of Justice.

6           “(9) ANTITRUST CONSIDERATIONS.—Unless ap-  
7           propriate to achieve the purposes of this Act, the  
8           board of trade shall avoid—

9           “(A) adopting any rule or taking any ac-  
10          tion that results in any unreasonable restraint  
11          of trade; or

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

15          “(e) USE OF BROKER-DEALERS AND DEPOSITORY  
16          INSTITUTIONS AS INTERMEDIARIES.—

17          “(1) IN GENERAL.—A registered derivatives  
18          transaction execution facility may by rule allow a  
19          broker-dealer or depository institution that meets  
20          the requirements of paragraph (2) to—

21          “(A) act as an intermediary in trans-  
22          actions executed on the facility on behalf of cus-  
23          tomers of the broker-dealer or depository insti-  
24          tution; and

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

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

5                   “(A) a broker-dealer be in good standing  
6                   with the Securities and Exchange Commission  
7                   and a depository institution be in good stand-  
8                   ing, as determined by the appropriate Federal  
9                   banking agency (as defined in section 3 of the  
10                  Federal Deposit Insurance Act (12 U.S.C.  
11                  1813)) (including the Farm Credit Administra-  
12                  tion), as applicable; and

13                   “(B) if a broker-dealer or depository insti-  
14                   tution carries or holds customer accounts or  
15                   funds for transactions on the derivatives trans-  
16                   action execution facility for more than 1 busi-  
17                   ness day, the broker-dealer or depository insti-  
18                   tution is registered as a futures commission  
19                   merchant and is a member of a registered fu-  
20                   tures association.

21           “(3) IMPLEMENTATION.—The Commission shall  
22           cooperate and coordinate with the Securities and Ex-  
23           change Commission and Federal banking regulatory  
24           agencies (including the Farm Credit Administration)  
25           in adopting rules and taking any other appropriate

1       action to facilitate the implementation of this sub-  
2       section.

3       “(f) SEGREGATION OF CUSTOMER FUNDS.—Not  
4 later than 180 days after the effective date of the Com-  
5 modity Futures Modernization Act of 2000, consistent  
6 with regulations adopted by the Commission, a registered  
7 derivatives transaction execution facility may authorize a  
8 futures commission merchant to offer any customer of the  
9 futures commission merchant that is an eligible contract  
10 participant the right to not segregate the customer funds  
11 of the futures commission merchant for purposes of trad-  
12 ing on or through the facilities of the registered derivatives  
13 transaction execution facility.

14       “(g) ELECTION TO TRADE EXCLUDED TRANS-  
15 ACTIONS.—

16             “(1) IN GENERAL.—A board of trade that is a  
17 registered derivatives transaction execution facility  
18 may trade on the facility any agreements, contracts,  
19 or transactions that are excluded from this Act  
20 under subsection (c) or (d) of section 2.

21             “(2) EXCLUSIVE JURISDICTION OF THE COM-  
22 MISSION.—The Commission shall have exclusive ju-  
23 risdiction over agreements, contracts, or transactions  
24 described in paragraph (1) to the extent that the



1       agreements, contracts, or transactions are traded on  
2       a derivatives transaction execution facility.”.

3       **SEC. 13. DERIVATIVES CLEARING ORGANIZATIONS.**

4       The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
5       is amended by inserting after section 5a (as added by sec-  
6       tion 12) the following:

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

8       “(a) **REGISTRATION REQUIREMENT.**—Except as pro-  
9       vided in subsection (b), it shall be unlawful for a deriva-  
10      tives clearing organization, unless registered with the  
11      Commission, directly or indirectly to make use of the mails  
12      or any means or instrumentality of interstate commerce  
13      to perform the functions of a derivatives clearing organiza-  
14      tion described in section 1a(8).

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

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

1           “(B) is subject to the supervisory jurisdiction of  
2           a Federal banking agency (as defined in section 3 of  
3           the Federal Deposit Insurance Act (12 U.S.C.  
4           1813)) or the National Credit Union Administration;  
5           or

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

14          “(2) does not clear a contract of sale for future  
15          delivery, option on a contract of sale for future deliv-  
16          ery, or option on a commodity that is not a security  
17          (unless the contract or option is excluded under sub-  
18          section (c) or (d) of section 2).

19          “(c) VOLUNTARY REGISTRATION.—A derivatives  
20          clearing organization that is exempt from registration  
21          under subsection (b) may register with the Commission  
22          as a derivatives clearing organization.

23          “(d) REGISTRATION OF DERIVATIVES CLEARING OR-  
24          GANIZATIONS.—

1           “(1) APPLICATION.—A person desiring to reg-  
2           ister as a derivatives clearing organization shall sub-  
3           mit to the Commission an application in such form  
4           and containing such information as the Commission  
5           may require for the purpose of making the deter-  
6           minations required for approval under paragraph  
7           (2).

8           “(2) CORE PRINCIPLES.—

9           “(A) IN GENERAL.—To be registered and  
10          to maintain registration as a derivatives clear-  
11          ing organization, an applicant shall demonstrate  
12          to the Commission that the applicant complies  
13          with the core principles specified in this para-  
14          graph.

15          “(B) FINANCIAL RESOURCES.—The appli-  
16          cant shall demonstrate that the applicant has  
17          adequate financial, operational, and managerial  
18          resources to discharge the responsibilities of a  
19          derivatives clearing organization without inter-  
20          ruption in various market conditions.

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

23                 “(i) appropriate admission and con-  
24                 tinuing eligibility standards (including ap-  
25                 propriate minimum financial requirements)

1 for members of and participants in the or-  
2 ganization; and

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

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

11 “(E) SETTLEMENT PROCEDURES.—The  
12 applicant shall have the ability to—

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

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

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

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

1           “(G) DEFAULT RULES AND PROCE-  
2           DURES.—The applicant shall have rules and  
3           procedures designed to allow for efficient, fair,  
4           and safe management of events when members  
5           or participants become insolvent or otherwise  
6           default on their obligations to the derivatives  
7           clearing organization.

8           “(H) RULE ENFORCEMENT.—The appli-  
9           cant shall—

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

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

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

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

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

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

13          “(K) RECORDKEEPING.—The applicant  
14          shall—

15                 “(i) maintain full records of all activi-  
16                 ties related to the business of the applicant  
17                 as a derivatives clearing organization in a  
18                 form and manner acceptable to the Com-  
19                 mission for a period of at least 5 years;

20                 “(ii) make the records readily avail-  
21                 able during at least the first 2 years of the  
22                 5-year period and provide the records to  
23                 the Commission at the expense of the per-  
24                 son required to maintain the records; and

1           “(iii) keep the records open to inspec-  
2           tion by any representative of the Commis-  
3           sion or the Department of Justice.

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

10          “(M) INFORMATION SHARING.—The appli-  
11          cant shall—

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

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

20          “(N) ANTITRUST CONSIDERATIONS.—Un-  
21          less appropriate to achieve the purposes of this  
22          Act, the derivatives clearing organization shall  
23          avoid—

1                   “(i) adopting any rule or taking any  
2                   action that results in any unreasonable re-  
3                   straint of trade; or

4                   “(ii) imposing any material anti-  
5                   competitive burden on trading on the con-  
6                   tract market.

7                   “(3) ORDERS CONCERNING COMPETITION.—A  
8                   derivatives clearing organization may request the  
9                   Commission to issue an order concerning whether a  
10                  rule or practice of the applicant is the least anti-  
11                  competitive means of achieving the objectives, pur-  
12                  poses, and policies of this Act.

13                  “(e) EXISTING DERIVATIVES CLEARING ORGANIZA-  
14                  TIONS.—A derivatives clearing organization shall be  
15                  deemed to be registered under this section to the extent  
16                  that—

17                  “(1) the derivatives clearing organization clears  
18                  agreements, contracts, or transactions for a board of  
19                  trade that has been designated by the Commission  
20                  as a contract market for such agreements, contracts,  
21                  or transactions before the date of enactment of this  
22                  section; and

23                  “(2) the Commission has reviewed and ap-  
24                  proved the rules of the derivatives clearing organiza-  
25                  tion before that date.



1 “(f) APPOINTMENT OF TRUSTEE.—

2 “(1) IN GENERAL.—If a proceeding under sec-  
3 tion 5e results in the suspension or revocation of the  
4 registration of a derivatives clearing organization, or  
5 if a derivatives clearing organization withdraws from  
6 registration, the Commission, on notice to the de-  
7 rivatives clearing organization, may apply to the ap-  
8 propriate United States district court where the de-  
9 rivatives clearing organization is located for the ap-  
10 pointment of a trustee.

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

14 “(A) the court may take exclusive jurisdic-  
15 tion over the derivatives clearing organization  
16 and the records and assets of the derivatives  
17 clearing organization, wherever located; and

18 “(B) if the court takes jurisdiction under  
19 subparagraph (A), the court shall appoint the  
20 Commission, or a person designated by the  
21 Commission, as trustee with power to take pos-  
22 session and continue to operate or terminate  
23 the operations of the derivatives clearing orga-  
24 nization in an orderly manner for the protection

1 of participants, subject to such terms and con-  
2 ditions as the court may prescribe.

3 “(g) LINKING OF REGULATED CLEARING FACILI-  
4 TIES.—

5 “(1) IN GENERAL.—The Commission shall fa-  
6 cilitate the linking or coordination of derivatives  
7 clearing organizations registered under this Act with  
8 other regulated clearance facilities for the coordi-  
9 nated settlement of cleared transactions.

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

14 **SEC. 14. COMMON PROVISIONS APPLICABLE TO REG-**  
15 **ISTERED ENTITIES.**

16 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
17 is amended by inserting after section 5b (as added by sec-  
18 tion 13) the following:

19 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**  
20 **ISTERED ENTITIES.**

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

23 “(1) IN GENERAL.—Consistent with the pur-  
24 poses of this Act, the Commission may issue inter-  
25 pretations, or approve interpretations submitted to

1 the Commission, of the core principles for registered  
2 entities specified in sections 5(d), 5a(d), and  
3 5b(d)(2) to describe what would constitute an ac-  
4 ceptable business practice under the core principles.

5 “(2) TIMING.—If any person submits to the  
6 Commission a request for an interpretation or for  
7 approval of an interpretation under paragraph (1),  
8 the Commission shall issue the interpretation or  
9 shall approve or disapprove the interpretation not  
10 later than 45 days after receiving the request.

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

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

17 “(1) IN GENERAL.—A registered entity may  
18 comply with any applicable core principle through  
19 delegation of any relevant function to a registered  
20 futures association or another registered entity.

21 “(2) RESPONSIBILITY.—A registered entity that  
22 delegates a function under paragraph (1) shall re-  
23 main responsible for carrying out the function.

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

1           “(1) IN GENERAL.—Subject to paragraph (2), a  
2 registered entity may elect to list for trading any  
3 new contract or other instrument, or may elect to  
4 approve and implement any new rule or rule amend-  
5 ment, by providing to the Commission a written cer-  
6 tification that the new contract, new rule, or rule  
7 amendment complies with this Act (including regula-  
8 tions under this Act).

9           “(2) PRIOR APPROVAL.—

10           “(A) IN GENERAL.—A registered entity  
11 may request that the Commission grant prior  
12 approval to any new contract or other instru-  
13 ment, new rule, or rule amendment.

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

21           “(C) AGRICULTURAL CONTRACTS.—Not-  
22 withstanding any other provision of this section,  
23 a designated contract market shall submit for  
24 prior approval by the Commission each rule  
25 amendment that materially changes a term or

1 condition in any contract of sale of a com-  
2 modity for future delivery or related option  
3 traded through the facilities of the designated  
4 contract market, if—

5 “(i) the commodity is specifically list-  
6 ed in section 1a(3); and

7 “(ii) the rule amendment applies to  
8 contracts and delivery months that have  
9 previously been listed for trading and have  
10 open interest.

11 “(3) APPROVAL.—The Commission shall ap-  
12 prove any such new contract or instrument, new  
13 rule, or rule amendment unless the Commission  
14 finds that the new contract or instrument, new rule,  
15 or rule amendment would violate this Act.

16 “(d) VIOLATION OF CORE PRINCIPLES.—

17 “(1) IN GENERAL.—If the Commission deter-  
18 mines, on the basis of substantial evidence, that a  
19 registered entity is violating any of the applicable  
20 core principles specified in sections 5(d), 5a(d), and  
21 5b(d)(2), the Commission shall—

22 “(A) notify the registered entity of the de-  
23 termination; and

24 “(B) afford the registered entity an oppor-  
25 tunity to make appropriate changes to bring the

1 registered entity into compliance with the core  
2 principles.

3 “(2) FAILURE TO MAKE CHANGES.—If, not  
4 later than 30 days after receiving a notification  
5 under paragraph (1), a registered entity fails to  
6 make changes that, in the opinion of the Commis-  
7 sion, are necessary to accomplish the objectives of  
8 the core principles, the Commission may take fur-  
9 ther action in accordance with this Act.

10 “(e) RESERVATION OF EMERGENCY AUTHORITY.—  
11 Notwithstanding any other provision of this section, the  
12 Commission shall retain the full scope of its emergency  
13 powers under section 8a(9) to direct any contract market  
14 to take emergency action in compliance with the provisions  
15 and standards of section 8a(9).”.

16 **SEC. 15. EXEMPT BOARDS OF TRADE.**

17 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
18 is amended by inserting after section 5c (as added by sec-  
19 tion 14) the following:

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

21 “(a) IN GENERAL.—Except as otherwise provided in  
22 this section, a contract of sale (or option on such a con-  
23 tract) of a commodity for future delivery traded on or  
24 through the facilities of an exempt board of trade shall

1 be exempt from all provisions of this Act, other than sec-  
2 tion 2(g).

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

8 “(1) that have—

9 “(A) a nearly inexhaustible deliverable sup-  
10 ply;

11 “(B) a deliverable supply that is suffi-  
12 ciently large, and a cash market sufficiently liq-  
13 uid, to render any contract traded on the com-  
14 modity highly unlikely to be susceptible to ma-  
15 nipulation; or

16 “(C) no cash market; and

17 “(2) that are entered into only between persons  
18 that—

19 “(A) are eligible contract participants at  
20 the time at which the persons enter into the  
21 contract; or

22 “(B) enter into the contract or option for  
23 the benefit only of eligible contract participants.

24 “(c) ANTIMANIPULATION REQUIREMENTS.—A party  
25 to a futures contract or related option that is traded on

1 an exempt board of trade shall be subject to sections 4b,  
2 4o, 6(c), and 9(a)(2), and the Commission shall enforce  
3 those provisions with respect to any such trading.

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

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

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



1 **SEC. 16. SUSPENSION OR REVOCATION OF DESIGNATION**  
2 **AS CONTRACT MARKET.**

3 Section 5e of the Commodity Exchange Act (7 U.S.C.  
4 7b) (as redesignated by section 11(1)) is amended to read  
5 as follows:

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

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

15 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

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

19 **SEC. 18. PREEMPTION.**

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

23 “(2) the application of any Federal or State law  
24 (including any regulation) to an agreement, contract,  
25 or transaction in or involving any commodity, prod-

1 uct, right, service, or interest, except that this Act  
2 shall supersede and preempt—

3 “(A) any Federal or State law (including  
4 any regulation), in the case of any such agree-  
5 ment, contract, or transaction—

6 “(i) that is conducted on or subject to  
7 the rules of a registered entity or exempt  
8 board of trade;

9 “(ii) that is conducted on or subject  
10 to the rules of any board of trade, ex-  
11 change, or market located outside the  
12 United States, or any territory or posses-  
13 sion of the United States (in accordance  
14 with any terms or conditions specified by  
15 the Commission by regulation); and

16 “(iii) that is subject to regulation by  
17 the Commission under section 4e or 19;  
18 and

19 “(B) any State or local law that prohibits  
20 or regulates gaming or the operation of bucket  
21 shops (other than antifraud provisions of gen-  
22 eral applicability) in the case of—

23 “(i) an excluded trading facility under  
24 section 2(e); or

1                   “(ii) an agreement, contract, or trans-  
2                   action that—

3                   “(I) is excluded under subsection  
4                   (c), (d), or (f) of section 2; or

5                   “(II) is covered by the terms of  
6                   an exemption granted by the Commis-  
7                   sion under section 4(c) (regardless of  
8                   whether any such agreement, con-  
9                   tract, or transaction is otherwise sub-  
10                  ject to this Act); or”.

11 **SEC. 19. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**  
12 **STITUTIONAL CUSTOMERS.**

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

16                  “(g) PREDISPUTE RESOLUTION AGREEMENTS FOR  
17 INSTITUTIONAL CUSTOMERS.—Nothing in this section  
18 prohibits a registered futures commission merchant from  
19 requiring a customer that is an eligible contract partici-  
20 pant, as a condition to the commission merchant’s con-  
21 ducting a transaction for the customer, to enter into an  
22 agreement waiving the right to file a claim under this sec-  
23 tion.”.

1 **SEC. 20. CONSIDERATION OF COSTS AND BENEFITS AND**  
2 **ANTITRUST LAWS.**

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

6 **“SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND**  
7 **ANTITRUST LAWS.**

8 “(a) COSTS AND BENEFITS.—

9 “(1) IN GENERAL.—Before promulgating a reg-  
10 ulation under this Act or issuing an order (except as  
11 provided in paragraph (3)), the Commission shall  
12 consider the costs and benefits of the action of the  
13 Commission.

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

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

19 “(B) considerations of the efficiency, com-  
20 petitiveness, and financial integrity of futures  
21 markets;

22 “(C) considerations of price discovery;

23 “(D) considerations of sound risk manage-  
24 ment practices; and

25 “(E) other public interest considerations.

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

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

6           “(B) An emergency action.

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

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

10 **SEC. 21. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**  
11 **COUNTERPARTIES.**

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

15           “(4) CONTRACT ENFORCEMENT BETWEEN ELI-  
16 GIBLE COUNTERPARTIES.—No agreement, contract,  
17 or transaction between eligible contract participants  
18 shall be void, voidable, or unenforceable, and no  
19 such eligible contract participant shall be entitled to  
20 rescind, or recover any payment made with respect  
21 to, such an agreement, contract, or transaction,  
22 under this section based solely on the failure of the  
23 agreement, contract, or transaction to comply with  
24 the terms or conditions of an exemption or exclusion

1 from any provision of this Act or regulations of the  
2 Commission.”.

3 **SEC. 22. LEGAL CERTAINTY FOR SWAP AGREEMENTS.**

4 (a) DEFINITION OF SWAP AGREEMENT.—In this sec-  
5 tion, the term “swap agreement” has the meaning given  
6 the term in section 5220 of the Revised Statutes.

7 (b) LEGAL CERTAINTY.—

8 (1) IN GENERAL.—Nothing in this Act or any  
9 amendment made by this Act authorizes the Securi-  
10 ties and Exchange Commission to regulate, super-  
11 vise, or otherwise subject to oversight any activity,  
12 agreement, instrument, transaction, or product over  
13 which the Securities and Exchange Commission is  
14 not granted specific jurisdiction under this Act, any  
15 amendment made by this Act, or any other law.

16 (2) SWAP AGREEMENTS.—Nothing in this Act  
17 or any amendment made by this Act grants the  
18 Commodity Futures Trading Commission or the Se-  
19 curities and Exchange Commission any jurisdiction  
20 over any swap agreement, except that a registered  
21 entity may voluntarily submit to the jurisdiction of  
22 the Commodity Futures Trading Commission  
23 under section 12 or 13 of the Commodity Ex-  
24 change Act (7 U.S.C. 16, 13c).

25 (c) MORATORIUM ON RETAIL SWAP AGREEMENTS.—

1           (1) IN GENERAL.—During the 1-year period be-  
2           ginning on the date of enactment of this Act, no fi-  
3           nancial institution engaged in activities authorized  
4           or permitted under section 4(k) of the Bank Holding  
5           Company Act (12 U.S.C. 1843(k)) may initiate  
6           through a widespread offering the opportunity for  
7           individuals other than accredited investors to enter  
8           into swap agreements. In the preceding sentence, the  
9           term “accredited investor” means an individual with  
10          net worth of at least \$5,000,000.

11          (2) REPORT.—Not later than the date that is  
12          1 year after the date of enactment of this Act, the  
13          Federal banking agencies (as defined in section 3 of  
14          the Federal Deposit Insurance Act (12 U.S.C.  
15          1813)), the Department of the Treasury, the Com-  
16          modity Futures Trading Commission, and the Secu-  
17          rities and Exchange Commission shall submit to the  
18          Committee on Agriculture, Nutrition, and Forestry  
19          and the Committee on Banking, Housing, and  
20          Urban Affairs of the Senate, and the Committee on  
21          Agriculture and the Committee on Banking and Fi-  
22          nancial Services of the House of Representatives a  
23          report on—

1 (A) the regulatory framework under which  
2 swap agreements identified in paragraph (1)  
3 should be supervised;

4 (B) the jurisdictional issues relating to  
5 swap agreements identified in paragraph (1);  
6 and

7 (C) investor protection concerns in connec-  
8 tion with swap agreements identified in para-  
9 graph (1).

10 **SEC. 23. TECHNICAL AND CONFORMING AMENDMENTS.**

11 (a) COMMODITY EXCHANGE ACT.—

12 (1) Section 1a of the Commodity Exchange Act  
13 (7 U.S.C. 1a) (as amended by section 3(1)) is  
14 amended—

15 (A) in paragraphs (4), (5), (17), (18),  
16 (21), and (24), by inserting “or derivatives  
17 transaction execution facility” after “contract  
18 market” each place it appears; and

19 (B) in paragraph (25)—

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

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



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

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

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

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

11                   “(1) JURISDICTION OF COMMISSION.—

12                           “(A) IN GENERAL.—The”; and

13                           (B) in subsection (a)—

14                                   (i) in paragraph (1) (as amended by  
15                                   subparagraph (A))—

16   (I) by striking subparagraph (B);

17   (II) by striking “subparagraph  
18   (B) of this subparagraph” and insert-  
19   ing “subsection (g)”;

20   (III) by striking “contract mar-  
21   ket designated pursuant to section 5  
22   of this Act” and inserting “contract  
23   market designated or derivatives  
24   transaction execution facility reg-  
25   istered pursuant to section 5 or 5a”;

1 (IV) by striking clause (ii); and  
2 (V) in clause (iii), by striking  
3 “(iii) The” and inserting the fol-  
4 lowing:

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

7 (ii) in paragraph (7), by striking  
8 “contract market” and inserting “reg-  
9 istered entity”; and

10 (iii) in paragraph (8)(B)(ii)—

11 (I) in the first sentence, by strik-  
12 ing “designation as a contract mar-  
13 ket” and inserting “designation or  
14 registration as a contract market or  
15 derivatives transaction execution facil-  
16 ity”;

17 (II) in the second sentence, by  
18 striking “designate a board of trade  
19 as a contract market” and inserting  
20 “designate or register a board of  
21 trade as a contract market or deriva-  
22 tives transaction execution facility”;  
23 and

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

1                   suspending, or revoking the designa-  
2                   tion of, a board of trade as a contract  
3                   market” and inserting “designating,  
4                   registering, or refusing, suspending,  
5                   or revoking the designation or reg-  
6                   istration of, a board of trade as a con-  
7                   tract market or derivatives trans-  
8                   action execution facility”.

9                   (3) Section 4 of the Commodity Exchange Act  
10                  (7 U.S.C. 6) is amended—

11                   (A) in subsection (a)—

12                   (i) by inserting “exempted by oper-  
13                   ation of section 5d or unless” after “Un-  
14                   less”;

15                   (ii) in paragraph (1), by striking  
16                   “designated by the Commission as a ‘con-  
17                   tract market’ for” and inserting “des-  
18                   ignated or registered by the Commission as  
19                   a contract market or derivatives trans-  
20                   action execution facility for”;

21                   (iii) in paragraph (2), by striking  
22                   “member of such”; and

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

1 (B) in subsection (c)—

2 (i) in paragraph (1)—

3 (I) by striking “designated as a  
4 contract market” and inserting “des-  
5 ignated or registered as a contract  
6 market or derivatives transaction exe-  
7 cution facility”; and

8 (II) by striking “section  
9 2(a)(1)(B)” and inserting “section  
10 2(g)”; and

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

14 (4) Section 4a of the Commodity Exchange Act  
15 (7 U.S.C. 6a) is amended—

16 (A) in subsection (a)—

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

20 (ii) in the second sentence, by insert-  
21 ing “or derivatives transaction execution  
22 facility” after “contract market”;

23 (B) in subsection (b), by inserting “or de-  
24 rivatives transaction execution facility” after  
25 “contract market” each place it appears; and

1 (C) in subsection (e)—

2 (i) by striking “contract market or”  
3 each place it appears and inserting “con-  
4 tract market, derivatives transaction execu-  
5 tion facility, or”;

6 (ii) by striking “licensed or des-  
7 ignated” each place it appears and insert-  
8 ing “licensed, designated, or registered”;  
9 and

10 (iii) by striking “contract market, or”  
11 and inserting “contract market or deriva-  
12 tives transaction execution facility, or”.

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

17 (6) Sections 4c(g), 4d, 4e, and 4f of the Com-  
18modity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f)  
19 are amended by inserting “or derivatives transaction  
20 execution facility” after “contract market” each  
21 place it appears.

22 (7) Section 4g of the Commodity Exchange Act  
23 (7 U.S.C. 6g) is amended—

1 (A) in subsection (b), by striking “clear-  
2 inghouse and contract market” and inserting  
3 “registered entity”; and

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

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

11 (9) Section 4i of the Commodity Exchange Act  
12 (7 U.S.C. 6i) is amended in the first sentence by in-  
13 sserting “or derivatives transaction execution facility”  
14 after “contract market”.

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

17 (11) Section 4l of the Commodity Exchange Act  
18 (7 U.S.C. 6l) is amended by inserting “or derivatives  
19 transaction execution facilities” after “contract mar-  
20 kets” each place it appears.

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

23 (A) in the third sentence of subsection (a),  
24 by striking “Act or contract markets” and in-

1           serting “Act, contract markets, or derivatives  
2           transaction execution facilities”; and

3                   (B) in subsection (b), by inserting “deriva-  
4           tives transaction execution facility,” after “con-  
5           tract market,”.

6           (13) The Commodity Exchange Act (as amend-  
7           ed by paragraphs (10), (11), and (12)) is amended  
8           by redesignating section 4k through 4p (7 U.S.C. 6k  
9           through 6p) as sections 4j through 4o, respectively.

10           (14) Section 6 of the Commodity Exchange Act  
11           (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

12                   (A) in subsection (a)—

13                           (i) in the first sentence—

14                                   (I) by striking “board of trade  
15                                   desiring to be designated a ‘contract  
16                                   market’ shall make application to the  
17                                   Commission for such designation” and  
18                                   inserting “person desiring to be des-  
19                                   ignated or registered as a registered  
20                                   entity shall make application to the  
21                                   Commission for such designation or  
22                                   registration”;

23                                   (II) by striking “above condi-  
24                                   tions” and inserting “conditions set  
25                                   forth in this Act”; and

1 (III) by striking “above require-  
2 ments” and inserting “the require-  
3 ments of this Act”;

4 (ii) in the second sentence, by striking  
5 “designation as a contract market within  
6 one year” and inserting “designation or  
7 registration as a registered entity within  
8 180 days”;

9 (iii) in the third sentence—

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

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

14 (iv) in the last sentence, by striking  
15 “designate as a ‘contract market’ any  
16 board of trade that has made application  
17 therefor, such board of trade” and insert-  
18 ing “designate or register as a registered  
19 entity any person that has made applica-  
20 tion therefor, such person”;

21 (B) in subsection (b)—

22 (i) in the first sentence—

23 (I) by striking “designation of  
24 any board of trade as a ‘contract mar-  
25 ket’ upon” and inserting “designation



1 or registration of any registered entity  
2 on”;

3 (II) by striking “board of trade”  
4 each place it appears and inserting  
5 “registered entity”; and

6 (III) by striking “designation as  
7 set forth in section 5 of this Act” and  
8 inserting “designation or registration  
9 as set forth in sections 5 through 5c”;  
10 (ii) in the second sentence—

11 (I) by striking “board of trade”  
12 the first place it appears and inserting  
13 “registered entity”; and

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

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

20 (C) in subsection (c)—

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

1 (ii) by striking “contract markets”  
2 each place it appears and inserting “reg-  
3 istered entities”; and

4 (iii) by striking “trading privileges”  
5 each place it appears and inserting “privi-  
6 leges”;

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

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

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

16 (A) in the first sentence of subsection (a),  
17 by striking “designated as a ‘contract market’  
18 shall” and inserting “designated or registered  
19 as a contract market or a derivatives trans-  
20 action execution facility”; and

21 (B) in subsection (b), by striking “des-  
22 ignated as a contract market” and inserting  
23 “designated or registered as a contract market  
24 or a derivatives transaction execution facility”.

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

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

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

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

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

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

20          (19) Section 7 of the Commodity Exchange Act  
21 (7 U.S.C. 11) is amended—

22           (A) in the first sentence—

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

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

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

6 (iv) by striking “contract market”  
7 each place it appears and inserting “reg-  
8 istered entity”;

9 (B) in the second sentence—

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

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

16 (C) in the last sentence—

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

19 (ii) by striking “designated again a  
20 contract market” and inserting “des-  
21 ignated or registered again a registered en-  
22 tity”.

23 (20) Section 8(c) of the Commodity Exchange  
24 Act (7 U.S.C. 12(c)) is amended in the first sen-

1 tence by striking “board of trade” and inserting  
2 “registered entity”.

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

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

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

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

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

16 (A) by striking “contract market” each  
17 place it appears and inserting “registered enti-  
18 ty”;

19 (B) in subsection (a), by striking “section  
20 5a(b)” and inserting “sections 5 through 5c”;

21 (C) in subsection (b)—

22 (i) in paragraph (1), by striking “a  
23 contract market’s trade monitoring system  
24 implemented pursuant to section 5a(b)”  
25 and inserting “the trade monitoring system

1 of a registered entity implemented pursu-  
2 ant to sections 5 through 5e”;

3 (ii) by striking paragraph (3) and in-  
4 serting the following:

5 “(3) REMEDIES.—On becoming final, the Com-  
6 mission deficiency order may require the registered  
7 entity to—

8 “(A) institute appropriate improvements in  
9 its trade monitoring system necessary to correct  
10 the deficiencies in the order;

11 “(B) satisfy stated objective performance  
12 criteria to correct the deficiencies; or

13 “(C) upgrade or reconfigure existing sys-  
14 tems for collecting or processing relevant data  
15 on trading and trader or broker activity, includ-  
16 ing, where appropriate, the commitment of ad-  
17 ditional resources.”; and

18 (iii) in paragraph (5)—

19 (I) in the paragraph heading, by  
20 striking “DESIGNATION AS CONTRACT  
21 MARKET” and inserting “DESIGNA-  
22 TION OR REGISTRATION AS REG-  
23 ISTERED ENTITY”;

24 (II) by inserting “or registra-  
25 tion” after “designation”; and

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

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

5 (E) in the paragraph heading of subsection  
6 (e)(2), by striking “CONTRACT MARKETS” and  
7 inserting “REGISTERED ENTITIES”.

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

10 (A) by striking “contract market” each  
11 place it appears and inserting “registered enti-  
12 ty”; and

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

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

17 (A) in subsection (a)(1)(B), by striking  
18 “contract market” and inserting “registered en-  
19 tity”; and

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

22 (26) Sections 15 and 17 of the Commodity Ex-  
23 change Act (7 U.S.C. 19, 21) are amended by strik-  
24 ing “contract market” each place it appears and in-  
25 serting “registered entity”.

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

3           (A) in subsection (a)—

4           (i) in paragraph (1)—

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

9           (II) in subparagraph (C)(i), by  
10 striking “contract market” and insert-  
11 ing “registered entity”;

12           (ii) in paragraph (2), by striking “sec-  
13 tions 5a(11),” and inserting “sections  
14 5(d)(13), 5b(d)(2)(H)(i),”; and

15           (iii) in paragraph (3), by striking  
16 “contract market” and inserting “reg-  
17 istered entity”; and

18           (B) in subsection (b)—

19           (i) in paragraph (1)—

20           (I) by striking “contract market  
21 or clearing organization of a contract  
22 market” and inserting “registered en-  
23 tity”;



1 (II) by striking “section 5a(8)  
2 and section 5a(9) of this Act” and in-  
3 serting “sections 5 through 5c”;

4 (III) by striking “contract mar-  
5 ket, clearing organization of a con-  
6 tract market, or licensed board of  
7 trade” and inserting “registered enti-  
8 ty”; and

9 (IV) by striking “contract market  
10 or licensed board of trade” and insert-  
11 ing “registered entity”;

12 (ii) in paragraph (3)—

13 (I) by striking “a contract mar-  
14 ket, clearing organization, licensed  
15 board of trade,” and inserting “reg-  
16 istered entity”; and

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

20 (iii) in paragraph (4), by striking  
21 “contract market, licensed board of trade,  
22 clearing organization,” and inserting “reg-  
23 istered entity”; and

24 (iv) in paragraph (5), by striking  
25 “contract market, licensed board of trade,

1 clearing organization,” and inserting “reg-  
2 istered entity”.

3 (b) FEDERAL DEPOSIT INSURANCE CORPORATION  
4 IMPROVEMENT ACT OF 1991.—Section 402(2) of the Fed-  
5 eral Deposit Insurance Corporation Improvement Act of  
6 1991 (12 U.S.C. 4402(2)) is amended by striking sub-  
7 paragraph (B) and inserting the following:

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

11 (c) REVISED STATUTES.—Chapter three of title LXII  
12 of the Revised Statutes is amended by adding at the end  
13 the following:

14 **“SEC. 5220. SWAP AGREEMENTS.**

15 “(a) IN GENERAL.—The term ‘swap agreement’  
16 means—

17 “(1) an individually negotiated contract, agree-  
18 ment, warrant, note, option, or transaction that is  
19 based, in whole or in part, on the occurrence of any  
20 event, or on the value of, any interest in, or any  
21 quantitative measure relating to, 1 or more commod-  
22 ities, securities, currencies, interest rates, indices,  
23 other rates, or other assets;

24 “(2) any other agreement or combination of  
25 agreements that is similar to a contract, agreement,

1 warrant, note, option, or transaction described in  
2 paragraph (1); and

3 “(3) an option to enter into a contract, agree-  
4 ment, warrant, note, or option described in para-  
5 graph (1) or an agreement described in paragraph  
6 (2).

7 “(b) INCLUSIONS.—The term ‘swap agreement’ in-  
8 cludes a master swap agreement, and all supplements to  
9 a master swap agreement, without regard to whether the  
10 master swap agreement contains a contract, agreement,  
11 warrant, note, option, or transaction that is not a swap  
12 agreement described in subsection (a), but only to the ex-  
13 tent that the master swap agreement contains such a con-  
14 tract, agreement, warrant, note, option, or transaction.”.

15 (d) GRAMM-LEACH-BLILEY ACT.—Section 206 of the  
16 Gramm-Leach-Bliley Act (15 U.S.C. 78c note; Public Law  
17 106–102) is amended—

18 (1) in subsection (a), by striking paragraph (6)  
19 and inserting the following:

20 “(6) a swap agreement (as defined in section  
21 5220 of the Revised Statutes).”;

22 (2) by striking subsection (b); and

23 (3) by redesignating subsections (c) and (d) as  
24 subsections (b) and (c), respectively.

1 (e) SECURITIES ACT OF 1933.—The Securities Act  
2 of 1933 (15 U.S.C. 77a et seq.) is amended by inserting  
3 after section 3 the following:

4 **“SEC. 3A. SWAP AGREEMENTS.**

5 “Nothing in this Act (including regulations under  
6 this Act) authorizes the Commission to regulate, super-  
7 vise, or otherwise subject to oversight—

8 “(1) an activity, agreement, instrument, trans-  
9 action, or product over which the Commission is not  
10 explicitly granted jurisdiction or enforcement author-  
11 ity under this Act; or

12 “(2) a swap agreement (as defined in section  
13 5220 of the Revised Statutes), without regard to  
14 whether the swap agreement is entered into or en-  
15 gaged in by a depository institution (as defined in  
16 section 3 of the Federal Deposit Insurance Act (12  
17 U.S.C. 1813)).”.

18 (f) SECURITIES EXCHANGE ACT OF 1934.—The Se-  
19 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)  
20 is amended by inserting after section 3 the following:

21 **“SEC. 3A. SWAP AGREEMENTS.**

22 “Nothing in this Act (including regulations under  
23 this Act) authorizes the Commission to regulate, super-  
24 vise, or otherwise subject to oversight—

1           “(1) an activity, agreement, instrument, trans-  
2           action, or product over which the Commission is not  
3           explicitly granted jurisdiction or enforcement author-  
4           ity under this Act; or

5           “(2) a swap agreement (as defined in section  
6           5220 of the Revised Statutes), without regard to  
7           whether the swap agreement is entered into or en-  
8           gaged in by a depository institution (as defined in  
9           section 3 of the Federal Deposit Insurance Act (12  
10          U.S.C. 1813)).”.

11          (g) TRUST INDENTURE ACT OF 1939.—The Trust  
12          Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is  
13          amended by inserting after section 304 the following:

14          **“SEC. 304A. SWAP AGREEMENTS.**

15          “Nothing in this Act (including regulations under  
16          this Act) authorizes the Commission to regulate, super-  
17          vise, or otherwise subject to oversight—

18                 “(1) an activity, agreement, instrument, trans-  
19                 action, or product over which the Commission is not  
20                 explicitly granted jurisdiction or enforcement author-  
21                 ity under this Act; or

22                 “(2) a swap agreement (as defined in section  
23                 5220 of the Revised Statutes), without regard to  
24                 whether the swap agreement is entered into or en-  
25                 gaged in by a depository institution (as defined in

1 section 3 of the Federal Deposit Insurance Act (12  
2 U.S.C. 1813)).”.

3 (h) INVESTMENT COMPANY ACT OF 1940.—The In-  
4 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)  
5 is amended by inserting after section 6 the following:

6 **“SEC. 6A. SWAP AGREEMENTS.**

7 “Nothing in this Act (including regulations under  
8 this Act) authorizes the Commission to regulate, super-  
9 vise, or otherwise subject to oversight—

10 “(1) an activity, agreement, instrument, trans-  
11 action, or product over which the Commission is not  
12 explicitly granted jurisdiction or enforcement author-  
13 ity under this Act; or

14 “(2) a swap agreement (as defined in section  
15 5220 of the Revised Statutes), without regard to  
16 whether the swap agreement is entered into or en-  
17 gaged in by a depository institution (as defined in  
18 section 3 of the Federal Deposit Insurance Act (12  
19 U.S.C. 1813)).”.

20 (i) INVESTMENT ADVISERS ACT OF 1940.—The In-  
21 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)  
22 is amended by inserting after section 206A the following:

1 **“SEC. 206B. SWAP AGREEMENTS.**

2 “Nothing in this Act (including regulations under  
3 this Act) authorizes the Commission to regulate, super-  
4 vise, or otherwise subject to oversight—

5 “(1) an activity, agreement, instrument, trans-  
6 action, or product over which the Commission is not  
7 explicitly granted jurisdiction or enforcement author-  
8 ity under this Act; or

9 “(2) a swap agreement (as defined in section  
10 5220 of the Revised Statutes), without regard to  
11 whether the swap agreement is entered into or en-  
12 gaged in by a depository institution (as defined in  
13 section 3 of the Federal Deposit Insurance Act (12  
14 U.S.C. 1813)).”.

15 (j) PUBLIC UTILITY HOLDING COMPANY ACT OF  
16 1935.—The Public Utility Holding Company Act of 1935  
17 (15 U.S.C. 79 et seq.) is amended by inserting after sec-  
18 tion 34 the following:

19 **“SEC. 34A. SWAP AGREEMENTS.**

20 “Nothing in this Act (including regulations under  
21 this Act) authorizes the Commission to regulate, super-  
22 vise, or otherwise subject to oversight—

23 “(1) an activity, agreement, instrument, trans-  
24 action, or product over which the Commission is not  
25 explicitly granted jurisdiction or enforcement author-  
26 ity under this Act; or

1           “(2) a swap agreement (as defined in section  
2           5220 of the Revised Statutes), without regard to  
3           whether the swap agreement is entered into or en-  
4           gaged in by a depository institution (as defined in  
5           section 3 of the Federal Deposit Insurance Act (12  
6           U.S.C. 1813)).”.

7           (k) SECURITIES INVESTOR PROTECTION ACT OF  
8           1970.—The Securities Investor Protection Act of 1970  
9           (15 U.S.C. 78aaa et seq.) is amended by adding at the  
10          end the following:

11       **“SEC. 17. SWAP AGREEMENTS.**

12          “Nothing in this Act (including regulations under  
13          this Act) authorizes the Commission to regulate, super-  
14          vise, or otherwise subject to oversight—

15               “(1) an activity, agreement, instrument, trans-  
16          action, or product over which the Commission is not  
17          explicitly granted jurisdiction or enforcement author-  
18          ity under this Act; or

19               “(2) a swap agreement (as defined in section  
20          5220 of the Revised Statutes), without regard to  
21          whether the swap agreement is entered into or en-  
22          gaged in by a depository institution (as defined in  
23          section 3 of the Federal Deposit Insurance Act (12  
24          U.S.C. 1813)).”.



1 **SEC. 24. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (b), this Act takes effect on the date of enactment of this  
4 Act.

5 (b) JURISDICTION OF COMMODITIES FUTURES  
6 TRADING COMMISSION.—Section 8, and the amendments  
7 made by that section, take effect 1 year after the date  
8 of enactment of this Act.

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