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COMMODITY FUTURES MODERNIZATION ACT OF 2000

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Mr. LUGAR, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

The Committee on Agriculture, Nutrition, and Forestry, having considered an original 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, reports favorably thereon and recommends that the bill do pass.

CONTENTS

I. Purpose, need and background	Page 1
II. Section-by-section analysis	5
III. Legislative history and votes in the Committee	13
IV. Regulatory impact statement	16
V. Budgetary impact of the bill	17
VI. Changes in existing law	20

I. PURPOSE, NEED AND BACKGROUND

Signed into law in 1974, the modern Commodity Exchange Act (“CEA” or “the Act”) is the body of law that governs the futures industry in the United States. Enforced by the Commodity Futures Trading Commission (“CFTC”), this Act attempts to ensure that futures market participants are not defrauded and that the markets remain efficient, transparent and free from manipulation. Authorization for the funding of the CFTC expires on September 30th of this year.

The Commodity Futures Modernization Act of 2000 would reauthorize appropriations for the CFTC for five additional years and would reform the CEA in three primary ways. First, it would incorporate the unanimous recommendations of the President’s Working

Group (“Working Group” or “PWG”), consisting of the principals from the U.S. Treasury Department (“Treasury”), the Federal Reserve System (“Fed”), the Securities and Exchange Commission (“SEC”) and the CFTC on the proper legal and regulatory treatment of over-the-counter (“OTC”) derivatives. Second, it would codify the regulatory relief proposal of the CFTC to ensure that futures exchanges are appropriately regulated and remain competitive. Third, this legislation would reform the Shad-Johnson jurisdictional accord, which sought to establish jurisdictional boundaries between the agencies and banned the trading of single stock futures 18 years ago.

Derivative instruments, both exchange-traded and those traded over-the-counter, have played a significant role in our economy’s current economic expansion due to their innovative nature and their risk-transferring attributes. According to the International Swaps and Derivatives Association, the global derivatives market has a notional value that exceeds \$58 trillion. Identified by Alan Greenspan as the ‘most significant event in finance of the past decade,’ the development of the derivatives marketplace has substantially added to the productivity and wealth of our nation.

Derivatives enable companies to unbundle and transfer risk to those entities who are willing and able to accept it. By doing so, efficiency is enhanced as firms are able to concentrate on their core business objectives. A farmer can purchase a futures contract, one type of derivative, in order to lock in a price for a crop at harvest. Automobile manufacturers, whose profits earned overseas can fluctuate with changes in currency values, can minimize this uncertainty through derivatives, allowing them to focus on the business of building cars. Banks significantly lessen their exposure to interest rate movements by entering into derivatives contracts known as interest rate swaps, which enable these institutions to hedge their risk by exchanging variable and fixed rates of interest.

The CEA primarily governs one class of derivative transaction—futures contracts. The Act requires that these contracts be traded on a CFTC-regulated futures exchange. If a futures contract is being traded off of an exchange, a court of law could rule the contract to be illegal and unenforceable. When Congress enacted the CEA and created the CFTC to enforce it, the meanings of “futures contract” and “exchange” were relatively apparent and the OTC derivatives business was in its infancy. However, in the 26 years since the statute’s creation, the growth of the OTC derivatives market has significantly outpaced the exchange-traded futures market. Along with this expansion, the boundaries between exchanges and OTC markets and between futures and swaps began to blur both practically and in legal status and treatment.

CFTC CONCEPT RELEASE

In 1998, the CFTC issued its concept release on OTC derivatives, which was perceived by many as foreshadowing possible regulation of these instruments as futures. The possibility of regulatory action had considerable ramifications, given the size and importance of the OTC market. This action significantly magnified the long-standing legal uncertainty surrounding these instruments, raising concerns in the OTC market, including suggestions it would cause portions of the business to move overseas.

This prospect led the Treasury, the Fed and the SEC to oppose the concept release and request that Congress enact a moratorium on the CFTC's ability to regulate these instruments until after the Working Group could complete a study on the issue. As a result, Congress passed a six-month moratorium on the CFTC's ability to regulate OTC derivatives. In November 1999, the Working Group completed its unanimous recommendations on OTC derivatives and presented Congress with these findings.

ADOPTION OF PRESIDENT'S WORKING GROUP REPORT

This legislation adopts many of the recommendations of the PWG report. The bill contains several mechanisms for ensuring that legal certainty is attained and that certain transactions remain outside the CEA. The electronic trading facility exclusion would exclude transactions in certain financial and other intangible commodities from the Act if conducted: (1) on a principal to principal basis; (2) between institutions or persons with high net worth; and (3) on an electronic trading facility. A second exclusion would exclude certain transactions from the CEA if (1) conducted between institutions or persons with high net worth; and (2) not traded on a trading facility. A third exclusion confirms and clarifies the Treasury Amendment language already contained in the CEA by excluding all transactions in foreign currency and government securities from the Act unless those transactions are futures contracts and traded on an organized exchange. As recommended by the Working Group, the bill would clarify the CFTC's jurisdiction over off-exchange retail futures transactions in foreign currency that are not effected with a regulated entity. A fourth exclusion for hybrid securities and depository instruments clarifies circumstances under which structured securities and depository instruments with embedded futures- and commodity option-like payments are excluded from regulations under the CEA. Another important recommendation of the PWG was to authorize clearing organizations, including futures clearinghouses, to clear OTC derivatives in an effort to lessen systemic risk. This bill incorporates this recommendation and establishes a regulatory framework for this activity.

ADOPTION OF THE CFTC'S REGULATORY MODERNIZATION PROPOSAL

The second major portion of this legislation addresses regulatory modernization and reform for the futures industry. When the CEA was enacted in 1974, the futures industry was primarily agricultural in nature. Farmers, agri-businesses and speculators traded futures contracts in open-outcry pits on futures exchanges in an effort to transfer volatile price risk. Realizing that futures trading was an effective way to transfer all types of risks, the financial sector began to develop and trade financial futures, and this market has flourished. Today non-agricultural futures comprise approximately 85 percent of the volume on U.S. futures exchanges. With the widespread adoption of computer technology, electronic exchanges began to compete head-to-head with open-outcry futures exchanges at a fraction of the cost. Last year witnessed the Swiss-German electronic futures exchange, Eurex, overtaking the Chicago Board of Trade as the global leader in futures trading volume. Many industry observers believe that the regulatory structure of

the CEA has had a significant competitive impact on the U.S. futures exchanges and has inhibited the development of the OTC markets.

In February of 2000, the CFTC issued a proposal that would provide regulatory reform to futures exchanges and their customers. Instead of listing specific requirements for complying with the CEA, the proposal would require exchanges to meet internationally agreed-upon core principles. The CFTC proposal creates tiers of regulation for exchanges based on whether the underlying commodities being traded are susceptible to manipulation or whether the users of the exchange are limited to institutional customers.

The legislation incorporates a similar framework and provides for three levels of regulation. A board of trade that is designated as a contract market would receive the highest level of oversight due to the fact that products offered on a contract market are susceptible to manipulation or are offered to retail customers. The bill provides for a second level of regulation under which, in lieu of contract market designation, a board of trade may register as a derivatives transaction execution facility (“DTEF”) if the products being offered by the board of trade are not susceptible to manipulation and are traded among institutional customers or retail customers who utilize large futures commission merchants (“FCMs”). A third option provided in the bill allows a board of trade to choose to be an exempt board of trade (“XBOT”) and not be subject to the Act (except for the CFTC’s anti-manipulation authority) if the products being offered are traded among institutions or high net worth persons and the instruments are not susceptible to manipulation. This bill would allow a board of trade that is a DTEF or an XBOT to opt to trade derivatives that are otherwise excluded from the Act. To the extent that these products are traded on these facilities, the CFTC would have exclusive jurisdiction over them. With this provision, it was the intent of the Committee to provide these facilities that trade certain specified derivatives with a choice—if regulation is beneficial, the facility may choose to be regulated. If not, the facility may choose to be excluded or exempted from the Act.

REFORM OF THE SHAD-JOHNSON JURISDICTIONAL ACCORD

The third portion of the bill addresses the Shad-Johnson jurisdictional accord. In 1982, SEC Chairman John Shad and CFTC Chairman Phillip Johnson reached an agreement on allocating between the agencies jurisdiction over futures on securities. Known as the Shad-Johnson Accord, this agreement prohibited the trading of futures on non-exempt securities and narrow-based indices of non-exempt securities (as defined by the Securities Act of 1933 and the Securities Exchange Act of 1934), allocated to the SEC jurisdiction over options on securities and securities indices, and allocated to the CFTC jurisdiction over futures on exempt securities and broad-based indices of securities.

Many have suggested that the Shad-Johnson accord, meant as a temporary agreement, should now be repealed. The Working Group unanimously agreed that the Accord can be repealed if regulatory disparities are resolved between the regulation of futures and securities. In April 2000, the General Accounting Office (“GAO”) found no legitimate policy reason for maintaining the ban on single stock futures. The GAO noted in its report that these products are al-

ready being traded in foreign markets, synthetically in the options markets, and that economically equivalent transactions are being conducted in the OTC market.

Despite an eight month effort to get the two agencies to reach an agreement on lifting the ban on single stock futures, the SEC and the CFTC were unable to come to any agreement before this bill was introduced. Furthermore, they were unable to reach agreement before the bill was reported out of the Committee despite continued urging from the Chairmen of the Senate Agriculture and Banking Committees.

This legislation would repeal the prohibition on single stock futures and narrow-based stock index futures. It would allow these products, termed designated futures on securities, to trade on either a CFTC-regulated contract market or a SEC-regulated national securities exchange or association. The SEC would maintain its insider trading and anti-fraud enforcement authority over these products even though traded on a futures exchange and the CFTC would maintain its anti-manipulation authority, including the ability to enforce its large trader reporting requirements, over these products even though traded on a national securities exchange or association. Each agency would be required to provide the other regulator with notice before exercising these authorities affecting markets outside their primary jurisdictions. Under the bill, margin levels on these products would be required to be harmonized with the options markets. The bill allows for the creation of an Inter-market Margin Board, consisting of members from the Fed, the CFTC and the SEC, to set and maintain margin levels for these products. The bill provides a one year period before the repeal of Shad-Johnson is effective in order to provide the regulators adequate time to implement the regulatory safeguards contained in the bill.

The various sections of this legislation have support from a broad spectrum of regulators and industry participants. Input has been solicited and received throughout the drafting process from numerous groups, including the CFTC, the Treasury, the Fed, the Chicago Board of Trade, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the International Swaps and Derivatives Association, the National Futures Association, the Coalition of Commercial and Investment Banks, the Securities Industry Association, the Coalition of Commercial and Investment Banks, the American Farm Bureau Federation, the National Cattlemen's Beef Association, the American Bankers Association, the New York Stock Exchange, the U.S. Securities Markets Coalition, the Bond Market Association, the Foreign Exchange Committee, the Futures Industry Association, and the Financial Services Roundtable.

II. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title and Table of Contents. The Act is entitled the Commodity Futures Modernization Act of 2000.

Sec. 2. Purposes. The section lists 8 purposes for the bill including reauthorizing and streamlining the CEA; eliminating unnecessary regulation for the futures exchanges; clarifying the jurisdiction of the CFTC over certain retail foreign currency transactions; transforming the role of the CFTC; providing a legislative and regulatory framework for the trading of futures on securities; pro-

moting innovation and reducing systemic risk for futures and OTC derivatives; allowing clearing of OTC derivatives; and enhancing the competitive position of the U.S. financial institutions and markets.

Sec. 3. Definitions. The section adds definitions to section 1(a) of the CEA for the following terms: derivatives clearing organization; designated future on a security; electronic trading facility; eligible commercial participant; eligible contract participant; exclusion-eligible commodity; exempted security; financial commodity; financial institution; hybrid instrument; national securities exchange; option; organized exchange; registered entity; security and trading facility.

Sec. 4. Agreements, Contracts, and Transactions in Foreign Currency, Government Securities and Certain Other Commodities. The section strikes clause (ii) of subparagraph 2(a)(1)(A) (the current law Treasury Amendment) and replaces it with a new subsection 2(c), which states that nothing in the CEA applies to transactions in foreign currency, government securities and other similar instruments unless these instruments are futures or commodity options traded on an organized exchange. The bill defines “organized exchange” as a trading facility that either serves retail customers, permits brokered or similar agency trades, or performs a self regulatory role. New section 2(c)(2) also excludes from CFTC regulation foreign currency transactions (other than those conducted on an organized exchange) between specified regulated entities and persons who are not eligible contract participants (i.e. retail customers). These excluded transactions include transactions executed on an electronic facility on which only a single firm is entitled to act as a market-maker and on which non-market maker counterparties may not accept bids and offers of other non-market-maker counterparties (either directly or through the market-maker running a matched book in which non-market-maker counterparties’ bids and offers become bids and offers of the market-maker).

The Committee intends that new section 2(c) of the Commodity Exchange Act codify the decision in *Dunn v. Commodity Futures Trading Commission*, 519 U.S. 465 (1997). Accordingly, the meaning of the phrase “transactions in” that is referenced in section 2(c) should be interpreted in a manner consistent with the holding of that decision. In making these clarifications, the Committee does not intend to draw any distinction between the use of the words “in” or “involving” contained elsewhere in the CEA.

Sec. 5. Legal Certainty for Over-the-Counter Transactions. The section amends section 2 of the CEA to create a new subsection 2(d), which provides two exclusions from the CEA for OTC derivatives. Paragraph (1) of subsection 2(d) provides that nothing in the CEA applies to transactions in an exclusion-eligible commodity if the transaction: (1) is between eligible contract participants (institutions or high net worth persons) and (2) is not executed on a trading facility. The second exclusion in paragraph 2(d)(2) provides that nothing in the CEA shall apply to a transaction in an exclusion-eligible commodity if the transaction: (1) is entered into on a principal to principal basis between parties trading for their own accounts; (2) is between eligible contract participants (large, institutional entities) and (3) is executed on an electronic trading facility.

The exclusion for transactions conducted on a trading facility only applies to principal to principal transactions. The exclusion does not apply if an eligible contract participant: (1) acts as broker or in an equivalent agency capacity for any other party; or (2) trades in its own name for the economic risk and benefit of any other party. This limitation does not preclude an eligible contract participant from transacting with a counterparty and contemporaneously entering into an economically identical hedging transaction, for the eligible contract participant's own account and risk, on a trading facility. The limitation also does not preclude certain regulated eligible contract participants from acting in a discretionary investment management or equivalent fiduciary capacity for another eligible contract participant as contemplated under the definition of eligible contract participant.

Finally, transactions between participants that are otherwise conducted on a principal to principal basis are not ineligible for the exclusion merely because the trading facility itself or its sponsor acts in the capacity of an inter-participant broker by bringing buyers and sellers together.

Sec. 6. Excluded Electronic Trading Facilities. The section amends section 2 of the CEA to create a new subsection 2(e) that clarifies that trading instruments that are otherwise excluded from the CEA on an electronic trading facility does not subject the transactions to regulation under the CEA. Paragraph (2) of subsection 2(e) states that nothing in the CEA shall prohibit a contract market or derivatives transaction execution facility from establishing and operating an excluded electronic trading facility.

Sec. 7. Hybrid Instruments. The section amends section 2 of the CEA to create a new subsection 2(f) that provides that nothing in the CEA applies to a hybrid instrument that is predominantly a security or depository instrument. Paragraph (2) of subsection 2(f) defines predominant in terms of any hybrid instrument in which (1) the issuer of the instrument receives payment in full of the purchase price at the time the instrument is delivered; (2) the purchaser is not required to make additional payments; (3) the issuer of the instrument is not subject to mark-to-market margining requirements; and (4) the instrument is not marketed as a futures contract. Paragraph (3) of subsection 2(f) clarifies that mark-to-marketing requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral securing its obligations under the instrument.

New section 2(f)(2)(C) refers to mark-to-market margining requirements between the purchaser and the issuer of the hybrid instrument, and it is not intended to preclude a hybrid instrument from qualifying for the exclusion based on the issuer being subject to mark-to-market margining requirements when hedging the initial transaction on a regulated futures exchange or in another market.

Sec. 8. Futures on Securities. Subsection (a) amends section 2 of the CEA by adding a new subsection 2(g) that repeals the Shad Johnson jurisdictional accord. The new paragraph 2(g)(1) is a savings clause to ensure that excluded OTC equity derivatives remain outside the CEA and the jurisdiction of the CFTC. This paragraph also prohibits the CFTC from designating a board of trade as a contract market in options on securities (as in current law).

Paragraph (2) allows the trading of futures on security indexes on contract markets and gives the CFTC exclusive jurisdiction in regulating these futures. In order for these products to be designated as a contract market, the contracts must be cash settled and must not be susceptible to manipulation (applies to both the price of the contract or the underlying securities (or an option on such securities)).

Paragraph (3) allows the trading of designated futures on securities (defined in the bill as a contract for future delivery on a single non-exempted security, an index based on fewer than 5 non-exempted securities or any index in which a single stock predominates by its value accounting for more than 30 percent of the index's total value). The Act authorizes these products to be traded on designated contract markets and national securities exchanges or associations.

Paragraph (4) provides criteria for contract market designation of these products including: cash settlement; real-time audit trails; insusceptibility to price manipulation (both of the contract and the underlying stock or an option on that stock); eligibility for listing on a national securities exchange; margin requirements; conflict of interest rules; and making information available to the regulators.

Paragraph (5) authorizes the SEC to enforce the securities laws related to insider trading and fraud with respect to designated futures on securities listed on a contract market after providing the CFTC with notice. This paragraph also requires the SEC and the CFTC, beginning three years from the date of enactment, to jointly compile a report on the implementation of this new authority and, four years after the date of enactment, to submit the report to Congress.

Paragraph (6) authorizes the CFTC to enforce its large trader reporting and other anti-fraud and anti-manipulation authorities for designated futures on securities listed on a national securities exchange after providing the SEC with notice. It requires national securities exchanges to provide the CFTC with information to enforce these provisions.

Paragraph (7) provides the process for listing a designated future on a security on either a futures exchange or a national securities exchange.

As in current law, paragraph (8) provides the Federal Reserve with the authority to set margin requirements and delegate this authority. The paragraph would allow the Fed to create a three member board consisting of principals of the CFTC, SEC and the Fed, or their confirmed designees to set and maintain margin levels on designated futures on securities. Paragraph (9) would allow futures commission merchants to offer to U.S. customers futures on foreign stock or foreign stock indices listed on foreign boards of trade as long as the U.S. is not the primary market for such products. New section 2(g)(9) of the Act confirms the scope of the Commission's interest in futures contracts on foreign securities or foreign securities indices listed for trading on a foreign exchange. Except as set forth in this section, the Commission, consistent with existing law, will have no authority to review or approve any futures contract (or option thereon) on a foreign security or foreign security index listed for trading on a foreign exchange.

Paragraph (10) mandates that a registered futures association adopt customer suitability rules for the trading of designated futures on securities.

Subsection (b) of section 8 of the bill contains a sense of the Senate that Congress, to the extent necessary, should harmonize the tax treatment of equity options and designated futures on securities and the transaction fees for equity options and designated futures on securities prior to section 8 of the bill taking effect.

Sec. 9. Exempted Transactions. The section adds a new section that would allow for an exemption for transactions other than agricultural products that are traded between institutional entities on a bilateral basis. The CFTC would retain its anti-fraud, anti-manipulation authorities over these transactions.

Although this exemption is limited to transactions between eligible contract participants that occur off of a trading facility, the CFTC is encouraged to use its current exemptive authority, as appropriate and consistent with the public interest, under section 4(c) of the CEA to exempt transactions between eligible contract participants that occur on an electronic trading facility.

Sec. 10. Protection of the Public Interest. Replaces section 3 of the CEA with a new section listing the responsibilities of the CFTC in protecting the public interest.

Sec. 11. Prohibited Transactions. Re-writes the current section 4c for clarity.

Sec. 12. Designation of Boards of Trade as Contract Markets. Strikes current law sections 5 and 5a and adds a new section 5 providing for the designation of boards of trade as contract markets. Subsection (b) contains criteria that boards of trade must meet in order to be designated as a contract market. These include establishing and enforcing rules preventing market manipulation; ensuring fair and equitable trading; specifying how the trade execution facility operates—including any electronic matching systems; ensuring the financial integrity of transactions; disciplining members or market participants who violate the rules; allowing for public access to the board of trade rules and enabling the board of trade to obtain information in order to enforce its rules. Existing contract markets would be automatically designated “contract markets” under this section.

Subsection (d) sets out the 17 core principles that must be met to maintain designation as a contract market. This subsection provides that a board of trade must: monitor and enforce compliance with the contract market rules; list only contracts that are not susceptible to manipulation; monitor trading to prevent manipulation, price distortion and delivery or settlement disruptions; adopt position limits for speculators; adopt rules to provide for the exercise of emergency authority, including the authority to liquidate or transfer open positions, suspend trading and make margin calls; make available the terms and conditions of the contracts and the mechanisms for executing transactions; publish daily information on prices, bids, offers, volume, open interest, and opening and closing ranges; provide a competitive, open and efficient market and mechanism for executing transactions; provide for the safe storage of all trade information in a readily usable manner to assist in fraud prevention; provide for the financial integrity of the contracts, the futures commission merchants and customer funds; pro-

tect market participants from abusive practices; provide for alternative dispute resolutions for market participants and intermediaries; establish and enforce rules regarding fitness standards for those involved in market governance; ensure that the composition of the governing board represents the market participants and a diversity of interests (in the case of mutually owned exchanges); maintain records and make them available at any time for inspection by the Attorney General; and avoid taking any action that restrains trade or imposes anticompetitive burdens on the markets.

Sec. 13. Derivatives Transaction Execution Facilities. The section amends the CEA by adding a new section 5a authorizing a new trading designation, the derivatives transaction execution facility (DTEF). Under subsection (b), a board of trade may elect to operate as a DTEF rather than a contract market if it meets the DTEF designation requirements. A registered DTEF may trade any non-designated futures contract if the commodity underlying the contract: (1) has a nearly inexhaustible supply; (2) is not susceptible to manipulation; (3) does not have a cash market in commercial practice; or (4) is determined by the CFTC (based on market characteristics and the facility's surveillance history, capacity, and self-regulatory role) to be unlikely to be susceptible to manipulation. This subsection allows eligible commercial participants to trade on a DTEF contracts in non-agricultural commodities. In order to be eligible to trade on a DTEF, a person must (1) be authorized to trade on the DTEF by the exchange and (2) be either an eligible contract participant or a person trading through a registered FCM that has capital of at least \$20,000,000. For purposes of this section, the term 'authorized' should not be construed to require a board of trade to approve individually every customer trading through a qualified FCM on a DTEF.

Boards of trade that have been designated as contract markets may operate DTEFs if they provide a separate location for DTEF trading or, in the case of an electronic system, identify whether the trading is on a DTEF or contract market.

Subsection (c) provides requirements for boards of trade that wish to register as DTEFs, including: establishing and enforcing trading rules that will deter abuses and provide market participants impartial access to the markets and capture information that may be used in rule enforcement; define trading procedures to be used; and provide for the financial integrity of DTEF transactions.

To maintain registration as a DTEF, the board of trade must comply with 8 core principles listed in subsection (d): maintain and enforce rules; ensure orderly trading and provide trading information to the CFTC; publicly disclose information regarding contract terms, trading practices, and financial integrity protections; provide information on prices, bids and offers to market participants as well as daily information in volume and open interest for the actively traded contracts; establish and enforce rules regarding fitness standards for those involved in DTEF governance; maintain records and make them available at any time for inspection by the Attorney General; and avoid taking any action that restrains trade or imposes anticompetitive burdens on the markets.

Subsection (e) allows a broker-dealer or a bank in good standing to act as an intermediary on behalf of its customers and to receive customer funds serving as margin or security for the customer's

transactions. If the broker-dealer holds the DTEF customer funds or accounts for more than 1 business day, the broker-dealer must be a registered FCM and a member of a registered futures association. The CFTC and SEC are to coordinate in adopting rules to implement this subsection.

In complying with the implementation of this subsection, the Commission, in coordination with the SEC, shall endeavor to subject broker-dealers and financial institutions trading on a DTEF to record-keeping and reporting requirements that are comparable to and consistent with the requirements faced by futures commission merchants trading on a DTEF.

Under (f), the CFTC may adopt regulations to allow FCMs to provide their customers with the right to opt out of segregating customer funds for purposes of trading on the DTEF.

Subsection (g) clarifies that a DTEF may trade derivatives that otherwise would be excluded from the CEA. The CFTC has exclusive jurisdiction over these instruments to the extent that these instruments are traded on a DTEF.

Sec. 14. Derivatives Clearing Organizations. The section amends the CEA to create a new section 5b regarding derivatives clearing organizations. Under subsection (a), these clearing entities, which are allowed to clear derivatives (that are not a security), must register with the CFTC and meet a set of 13 core principles set out in subsection (d), including principles on financial resources of the clearing facility, participant eligibility, risk management systems, settlement procedures, treatment of client funds, default rules, rule enforcement, system safeguards, reporting, record keeping, public information disclosure, information sharing, and minimizing competitive restraints.

Under subsection (b), a derivatives clearing organization will not have to register with the CFTC if it is registered with another federal financial regulator and it does not clear futures. This is intended to encompass those clearing facilities registered with other financial regulators as well as those clearing facilities that have previously received an exemption from registration from these financial regulators. Under subsection (c), a derivatives clearing organization that is exempt from registration may opt to register with the CFTC. Subsection (e) provides that an existing clearing entity that clears futures contracts on a designated contract market will automatically be deemed a derivatives clearing organization for purposes of this section.

Sec. 15. Common Provisions Applicable to Registered Entities. The section amends the CEA to create a new section 5c that contains provisions affecting all registered entities (contract markets, derivatives transaction execution facilities and derivatives clearing organizations).

Subsection (a) would allow the CFTC to issue or approve interpretations to describe what would constitute an acceptable business practice under the core principles for registered entities.

Subsection (b) would allow a registered entity to delegate its self regulatory functions to a registered futures association, while specifying that responsibility for carrying out these functions remain with the registered entity.

Subsection (c) would enable the registered entity to trade new products or adopt or amend rules by providing the CFTC (and the

Treasury Department for contracts in government securities) a written certification that the new contract or new rule or amendment complies with the CEA. This subsection would allow a registered entity to request that the CFTC grant prior approval of a new contract, new rule or rule amendment. This subsection would require the CFTC to pre-approve any rule changes with regard to open interest agricultural contracts.

Subsection (d) grants the CFTC the authority to informally resolve potential violations of the core principles for registered entities.

Subsection (e) provides that nothing in this section limits or affects the emergency authorities of the CFTC.

Subsection (f) directs the CFTC to implement core principles for intermediaries. In carrying out this subsection, the Commission shall conduct a study of the Act and the Commission's rules, regulations and orders governing the conduct of persons required to be registered with the Commission. Within one year after the date of the enactment of the bill, the Commission would file a report with the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture. The report would identify: (1) the core principles and interpretations of acceptable business practices that the Commission has adopted as substitutes for the provisions of the Act and the Commission's rules and regulations thereunder; (2) the rules and regulations that the Commission has determined must be retained and the reasons therefor; (3) the extent to which the Commission believes that it can effect the changes identified in paragraph (1) through its exemptive authority under section 4(c) of the Act; and (4) the regulatory functions that the Commission currently performs that can be delegated to a registered futures association and the regulatory functions that the Commission has determined must be retained and the reasons therefor.

Subsection (g) adds a new provision (sec. 4c(a)(3)(B)) to allow futures commission merchants to trade futures off the floor of a futures exchange as long as the board of trade allows such transactions and the FCMS report, record and clear the transactions in accordance with the rules of the contract market or derivatives trading execution facility.

Sec. 16. Exempt Boards of Trade. The section amends the CEA to create a new section 5d regarding exempt boards of trade. Under subsections (a) and (b), futures contracts traded on an exempt board of trade would be exempt from the CEA if (1) participants are eligible contract participants (large institutional investors) and (2) the commodity underlying the futures contract is not a security, has an inexhaustible deliverable supply, is not subject to manipulation, or has no cash market. Subsection (c) subjects futures contracts traded on an exempt board of trade to the anti-manipulation provisions of the CEA. Under subsection (d), if the CFTC finds that an exempt board of trade is a significant source of price discovery for the underlying commodity, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

Sec. 17. Suspension or Revocation of Designation as Registered Entity. The section designates current section 5b as 5e and amends

it to authorize the CFTC to suspend the registration of a registered entity for 180 days for any violation of the CEA.

Sec. 18. Authorization of Appropriations. The section amends section 12(d) of the CEA by striking 2000 and reauthorizing appropriations through fiscal year 2005.

Sec. 19. Preemption. The section rewrites paragraph 12(e)(2) of the CEA for clarity and to conform with changes made in the bill. Re-states the current provisions that the CEA supersedes and preempts other laws in the case of transactions conducted on a registered entity or subject to regulation by the CFTC (even if outside the United States), and adds that in the case of excluded electronic trading facilities, and any agreements, contracts or transactions that are excluded or covered by a section 4(c) exemption, the CEA supersedes and preempts state gaming and bucket shop laws (except for the anti-fraud provisions of those laws that are generally applicable). It is not a requirement that the underlying transaction be a futures contract or commodity option in order to be eligible for the preemption from these state law provisions.

Sec. 20. Predispute Resolution Agreements for Institutional Customers. The section amends section 14 of the CEA to clarify that futures commission merchants, as a condition of doing business, may require customers that are eligible contract participants to waive their right to file a reparations claim with the CFTC.

Sec. 21. Consideration of Costs and Benefits. The section amends section 15 of the CEA to add a new subsection (a) requiring the CFTC, before promulgating regulations and issuing orders, to consider the costs and benefits of their action. This does not apply to orders associated with an adjudicatory or investigative process, emergency actions or findings of fact regarding compliance with CFTC rules.

Sec. 22. Contract Enforcement Between Eligible Counterparties. The section amends section 22 of the CEA to provide a safe harbor so that transactions will not be voidable based solely on the failure of the transaction to comply with the terms or conditions of an exclusion or exemption from the Act or CFTC regulations.

Sec. 23. Legal Certainty for Swaps. The section provides that nothing in the bill gives the SEC or CFTC jurisdiction over swap agreements. It requires the President's Working Group to conduct a study on the regulatory treatment of swaps in relation to the securities laws.

Sec. 24. Repeal of Deficiency Orders. The section repeals section 8e of the Commodity Exchange Act.

Sec. 25. Technical and Conforming Amendments. The section makes technical and conforming amendments throughout the CEA to reflect changes made by the bill.

Sec. 26. Effective Date. The Act takes effect on the date of enactment, except section 8 (dealing with futures on securities), which takes effect one year after enactment.

III. LEGISLATIVE HISTORY AND COMMITTEE VOTES

On July 30, 1998, the Senate Committee on Agriculture, Nutrition and Forestry held a hearing on the CFTC's concept release on OTC derivatives. Many industry observers believed that this document was the first step leading to regulating these transactions as futures. If these transactions were found to be off-exchange futures,

a court of law could rule them to be illegal and unenforceable. This possibility posed the risk of this trillion dollar industry moving offshore. Federal Reserve Chairman Alan Greenspan, Deputy Treasury Secretary Lawrence Summers and SEC Chairman Arthur Levitt testified in opposition to the CFTC's stance and urged Congress to adopt a regulatory moratorium on the CFTC until the President's Working Group could study and report to Congress on this issue. CFTC Chair Brooksley Born testified in support of the concept release and urged the Committee to refrain from taking this action. Tom Jasper, managing director of Salomon Smith Barney and William Miller, president of the End Users of Derivatives Association also testified regarding this subject.

In October 1998, Congress agreed to impose a six month regulatory moratorium on the CFTC with regard to OTC derivatives. This moratorium was contained in the annual agricultural appropriations bill.

On December 16, 1998, the Senate Committee on Agriculture, Nutrition and Forestry held a hearing regarding the status of the CFTC concept release on OTC derivatives and the near collapse of Long Term Capital Management hedge fund. All five CFTC commissioners testified, including Chair Brooksley Born, Commissioner David Spears, Commissioner John Tull, Commissioner Barbara Holum, and Commissioner James Newsome. Testifying on a second panel were Roger Anderson, Deputy Assistant Secretary for Federal Finance of the Treasury, Patrick Parkinson, Director of the Division of Research and Statistics of the Fed, Richard Lindsay, Director of the Division of Market Regulation of the SEC and Dan Waldman, General Counsel of the CFTC. A third panel, consisting of former CFTC chairs, included Susan Philips, Dean of the George Washington School of Business and Public Management; Wendy Gramm, James Buchanan Center of George Mason University; William Albrecht, Professor of Economics at the University of Iowa; and Martin Mayer, Guest Scholar at the Brookings Institute. The Committee also released for public comment 48 public policy questions regarding CEA reauthorization.

On February 25 and 26, 1999, the Senate and House Agriculture Committees held a joint Roundtable on Futures, Derivatives and Public Policy. Hosted by former CFTC chair Phillip Johnson and National Futures Association President Bob Wilmoth, this roundtable assembled a diverse group of eighteen individuals from the industry and academia to discuss derivatives policy and possible legislative solutions. These participants included Jack Coffee, Columbia University; George Crapple, Millburn Ridgefield Corp.; David Downey, Timber Hill LLC; Jerry Gulke, Strategic Marketing Services and farmer; Robert Kohlmeyer, World Perspectives; Howard Kramer, Schiff, Hardin & Waite; Robert Mackay, National Economic Research Associates Assoc.; Leo Melamed, Sakura Dellsher, INC.; Merton Miller, University of Chicago; Ernest T. Patrikis, American International Group; Todd Petzel, Common Fund; David Pryde, JP Morgan Futures; Thomas Russo, Lehman Brothers; Rich Sandor, Environmental Financial Products; Charles Smithson, CIBC World Markets; Steven Spence, Merrill Lynch; and Jack Wing, Illinois Institute of Technology.

On May 5, 1999, the Senate Committee on Agriculture, Nutrition and Forestry held a hearing regarding agricultural trade options

and how these instruments might benefit producers in managing the risks of farming. In 1997, the CFTC began a pilot program to allow these products to trade on a conditional basis. As of the hearing date, no one in the industry had signed up to participate in the program. The Committee heard from Commissioner David Spears regarding the CFTC's pilot program on agricultural trade options and whether additional rulemaking or legislation was necessary to fix it. Other witnesses included Jerry Slocum, President, North Mississippi Grain Company; Dan Dye, Vice President, Cargill; Scott Stewart, National Introducing Brokers Association; Steve Manaster, Director, Financial Risk Management Pamplin College of Business, Virginia Tech; Kenneth Ackerman, Risk Management Agency, United States Department of Agriculture; and Dave Rempe, Extension Assistant, Department of Agricultural Economics, Kansas State University.

On September 23, 1999, the Senate Committee on Agriculture, Nutrition and Forestry held a hearing to explore the impact of electronic trading on the derivatives industry and its regulation. Specifically, the Committee heard testimony regarding how this industry will look in the near- and long-term as a result of technological advances; what types of electronic trading activity should be regulated under the CEA; and whether electronic exchanges should be regulated differently than open outcry exchanges. The first panel, consisting of representatives from the futures exchanges and electronic OTC trading facilities, addressed the policies that should drive whether transactions are regulated. These witnesses included Roger Barton, BrokerTec; David P. Brennan and Thomas Donovan, Chicago Board of Trade; Shawn Dorsch, Derivatives Net, Inc. (Blackbird); Howard Lutnick, Cantor Fitzgerald; Leo Melamed, Chicago Mercantile Exchange; and Edward J. Rosen, Coalition of Commercial and Investment Banks. The second panel provided the Committee with demonstrations on electronic trading and commentary on the future of the industry. These witnesses included Phillip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom; David Downey, InterActive Brokers; and Matt Andresen, Island ECN.

On February 10, 2000, the Senate Committee on Agriculture, Nutrition and Forestry held a hearing on the release of the President's Working Group report on OTC derivatives and the CEA. Senate Agriculture Committee Chairman Richard Lugar and House Agriculture Committee Chairman Bob Smith had requested this report subsequent to the regulatory moratorium that Congress placed on the CFTC regarding OTC derivatives. This unanimous report made recommendations to Congress on the proper regulatory treatment for over-the-counter derivatives. Treasury Secretary Lawrence Summers, Federal Reserve Chairman Alan Greenspan, CFTC Chairman William Rainer, and Annette Nazareth, Director of the Division of Market Regulation of the SEC, testified in support of the report's recommendations. Also providing testimony were Chairman David Brennan, Chicago Board of Trade; Chairman Daniel Rappaport, New York Mercantile Exchange; Jerry Salzman, counsel for the Chicago Mercantile Exchange; Richard Grove, CEO and President of the International Swaps and Derivatives Association (ISDA); and Edward J. Rosen, counsel for the Coalition of Commercial and Investment Banks.

On June 8, 2000, Senate Agriculture Committee Chairman Richard Lugar, along with Senate Banking Committee Chairman Phil Gramm and Senator Peter Fitzgerald, introduced S. 2967, The Commodity Futures Modernization Act of 2000, legislation to reauthorize and amend the Commodity Exchange Act.

On June 21, 2000, the Senate Committee on Agriculture, Nutrition and Forestry and the Senate Committee on Banking, Housing, and Urban Affairs held a joint hearing to consider S. 2697, the Commodity Futures Modernization Act of 2000. Witnesses included members of the President's Working Group on Financial Markets consisting of Fed Chairman Alan Greenspan, Treasury Secretary Lawrence Summers, CFTC Chairman William Rainer and SEC Chairman Arthur Levitt.

COMMITTEE VOTE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the votes of the Committee in its consideration of the bill:

The Committee met in open session on Thursday, June 29, 2000, to mark up this bill. The bill was agreed to unanimously by voice vote. The Committee then ordered that the bill be favorably reported by a voice vote.

IV. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following evaluation is made concerning the regulatory impact of enacting this legislation:

The number of individuals and businesses who would be impacted by regulations issued under this bill is substantial. The entire futures industry in the United States would be directly affected by this legislation. Its impact would be one of lower cost both to the businesses and to individuals in the futures markets due to the expanded market opportunities opened under the bill and the decrease in the cost of implementing the regulations under the legislation. As for the record keeping requirements under the bill, the records that futures exchanges are required to keep are less circumscribed and therefore the cost will be lower for the futures exchanges. This cost savings will result in lower transaction costs to individuals and businesses trading on the exchanges.

The securities industry would likewise be affected as they would have new business opportunities opened to them with the repeal of the ban on single stock futures. Firms in the financial services business would experience a growth in opportunities as would individuals trading futures on these markets. Individuals and businesses in the securities markets would be better situated to manage their risk.

With the legislation's language to provide legal certainty for OTC derivatives transactions, firms and banks would experience decreased legal and paperwork costs associated with these transactions.

This bill would not affect the personal privacy of the individuals affected by the changes. The amount of additional paperwork that will result from the regulations to be promulgated pursuant to the bill, is moderate. The futures exchanges would be the most im-

pacted as they would have new levels of regulations under which they could choose to operate. During the transition period when new regulations are being implemented, the paperwork burden on the futures exchanges might be relatively high. But as the shift to the new structures is accomplished, the paperwork burden will decrease resulting in less paper work for the regulated industry.

The National Futures Association (“NFA”) and its members will be impacted as well by the bill. Section 8 of the bill mandates that the NFA adopt rules requiring its members who recommend purchase or sales of futures on securities to ascertain the suitability of the recommendation for that customer. This cost would be small because the NFA has had a substantially similar rule in effect since 1985. The bill also allows futures exchanges to delegate their self regulatory functions to a registered futures association, thus potentially increasing the NFA’s responsibilities under the Act.

V. BUDGETARY IMPACT OF THE BILL

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2697—Commodity Futures Modernization Act of 2000

Summary: S. 2697 would reauthorize funding for the activities of the Commodity futures Trading Commission (CFTC) during the 2001–2005 period. The bill would also allow the trading of single stock futures under certain conditions, with oversight being shared by the CFTC and the Securities and Exchange Commission (SEC). In addition, S. 2697 would clarify that certain over-the-counter derivative transactions are outside of the jurisdiction of the CFTC. The bill also would authorize the CFTC to designate boards of trade as contract markets or execution facilities for derivatives transactions.

Assuming appropriation of the necessary amounts, CBO estimates that implementing this legislation would cost \$363 million over the 2001–2005 period. Although most of this cost would be incurred by the CFTC, CBO estimates that the SEC would spend about \$3 million a year to regulate single stock futures. S. 2697 also would increase governmental receipts, because the bill would make single stock futures subject to fees charged by the SEC. Although CBO estimates that this increase in fee collections would not be significant, pay-as-you-go procedures would apply.

S. 2697 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs, if any, would not exceed the threshold established in the act (\$55 million in 2000, adjusted annually for inflation). The bill also contains a new private-sector mandate as defined by UMRA, but CBO estimates the costs of this mandate would not exceed the threshold established in the act (\$109 million in 2000, adjusted annually for inflation).

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 2697 is shown in the following table. The costs

of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Proposed changes to CFTC spending:					
Estimated authorization level	67	69	72	74	77
Estimated outlays	60	68	71	73	76
Proposed changes to SEC spending:					
Estimated authorization level	3	3	3	3	3
Estimated outlays	3	3	3	3	3
Total changes in spending:					
Estimated authorization level	70	72	75	77	80
Estimated outlays	63	71	74	76	79

¹ CBO estimates that enactment of S. 2697 also would result in an insignificant increase in revenues over the 2001–2005 period.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of fiscal year 2000 and that the necessary amounts will be appropriated by the start of each fiscal year. Provisions related to the regulation of single stock futures would take effect one year after enactment. CBO estimates that S. 2697 would cost \$363 million over the 2001–2005 period, and would have a negligible effect on revenues.

Spending subject to appropriation

S. 2697 would reauthorize funding for the activities of the CFTC during the 2001–2005 period. For 2000, the agency received an appropriation of \$63 million. Based on the agency's current budget and adjusting for anticipated inflation, this reauthorization would cost about \$59 million in 2001 and a total of \$343 million over the five-year period.

The bill also would make several changes to the Commodity Exchange Act that would increase the administrative costs of the CFTC. Based on information from the CFTC, CBO estimates that these changes to the CFTC's administrative responsibilities would cost \$1 million a year over the 2001–2005 period. The CFTC would share oversight of single stock futures transactions with the SEC. The bill also clarifies that the CFTC does not have jurisdiction over certain over-the-counter derivatives transactions. The CFTC also would be authorized to designate boards of trade as contract markets or execution facilities for derivatives transactions with the SEC. CBO estimates that these changes to the CFTC's regulatory responsibilities would require the agency to hire new staff.

S. 2697 also would require that the SEC play a significant role in overseeing the market for single stock futures. Based on information from the SEC, CBO estimates that the SEC would have to hire additional staff to handle these new responsibilities. These new personnel would cost about \$3 million a year during the 2001–2005 period.

Finally, CBO estimates that S. 2697 would increase the amount of offsetting collections received by the SEC, although the increase would not be significant. The bill would allow single stock futures to be traded on a national securities association and would therefore make them subject to transaction fees collected by the SEC. Under current law, fees on transactions conducted on national securities associations are recorded as offsetting collections, which

are credited as an offset to discretionary spending. However, based on information from the CFTC, the SEC, and private groups, CBO does not expect that the volume of transactions of single stock futures that would be conducted on national securities associations would be large enough to generate a significant increase in offsetting collections.

Revenues

Under current law, transactions conducted on national securities exchanges are also subject to certain SEC fees that are accounted for as governmental receipts (revenues). These fees are equal to 1/300 of a percent of the aggregate dollar amount of securities sales.

S. 2697 would allow the trading of single stock futures on national securities exchanges. By creating a new category of financial transactions that would be subject to SEC fees, this bill would increase revenues collected by the SEC. However, based on information provided by the CFTC, the SEC, and by private groups, CBO estimates that any increase in revenues would not be significant.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting receipts or direct spending. S. 2697 would affect receipts by adding a new set of financial transactions that would be subject to fees collected by the SEC. However, CBO estimates that the amount of additional receipts would not be significant.

Estimated impact on State, local, and tribal governments: S. 2697 would preempt state laws affecting certain commodities transactions that are conducted in markets regulated by the Commodities Futures Trading Commission. Such a preemption would be a mandate as defined by UMRA. CBO estimates that the costs of this mandate, if any, would not exceed the threshold in that act (\$55 million in 2000, adjusted annually for inflation). The bill would impose no other costs on state, local, or tribal governments.

Estimated impact on the private sector: Section 8 of the bill would require a registered futures association to adopt rules requiring a futures commission merchant, a commodity trading advisor, or an introducing broker that recommends a purchase or sale of a futures on a security, to ascertain the suitability of that recommendation for that customer. The national futures association already adopted a "know your customer" rule in 1985. According to industry sources, the requirements of that rule are very similar to the requirements of a suitability rule. Thus, CBO estimates that the direct costs of complying with this mandate would be negligible.

Previous CBO estimate: On June 29, 2000, CBO transmitted a cost estimate for H.R. 4541, the Commodity Futures Modernization Act of 2000, as ordered reported by the House Committee on Agriculture on June 27, 2000. Assuming appropriation of the necessary amounts, CBO estimates that H.R. 4541 would cost \$353 million over the 2001–2005 period. In comparison, CBO estimates that the costs of S. 2697 would total \$363 million during that time period. Although the two bills are similar in many respects, CBO estimates that the costs of S. 2697 would be higher because the SEC would require additional staff to regulate the trading of single stock futures on national securities exchanges and associations. S. 2697 also would increase the revenues and offsetting collections received

by the SEC, although we estimate that these increases would not be significant.

Estimate prepared by: Federal Costs: Kenneth Johnson. Impact on the State, Local and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Judith Ruud.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made in the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

SEC. 1a. DEFINITIONS.

As used in this Act:

* * * * *

(4) COMMODITY POOL OPERATOR.—The term “commodity pool operator” means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market *or derivatives transaction execution facility*, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.

(5) COMMODITY TRADING ADVISOR.—
 (A) IN GENERAL.—Except as otherwise provided in this paragraph, the term “commodity trading advisor” means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market *or derivatives transaction execution facility*;

* * * * *

(B) EXCLUSIONS.—Subject to subparagraph (C), the term “commodity trading advisor” does not include—

* * * * *

(vi) any contract market *or derivatives transaction execution facility*; and

* * * * *

(7) COOPERATIVE ASSOCIATION OF PRODUCERS.—The term “cooperative association of producers” * * *

(8) *DERIVATIVES CLEARING ORGANIZATION.*—

(A) *IN GENERAL.*—The term “derivatives clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to a derivative agreement, contract, or transaction (other than a security)—

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

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

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

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

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

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

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

(9) *DESIGNATED FUTURE ON A SECURITY.*—The term “designated future on a security” means a contract of sale (or option on such a contract) for future delivery of—

(A) a single nonexempted security;

(B) an index based on fewer than 5 nonexempted securities; or

(C) an index in which during at least 3 of the 4 calendar quarters preceding the date of any transaction in the index, a single nonexempted security accounted for a daily average of 30 percent or more of the value of the index.

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

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

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

(11) *ELIGIBLE COMMERCIAL PARTICIPANT.*—The term “eligible commercial participant” means an eligible contract participant described in clause (i), (ii), (v), or (vii) of paragraph (12)(A) or in subparagraph (12)(C) that—

(A) in connection with its business has a demonstrable capacity or ability, directly or through separate contractual agreements, to make or take delivery of the underlying physical commodity;

(B) incurs risk, in addition to price risk, related to the commodity; or

(C) is a dealer that regularly provides hedging, risk management, or market-making services to such eligible contract participants.

(12) *ELIGIBLE CONTRACT PARTICIPANT*.—The term “eligible contract participant” means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841));

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

(iv) a commodity pool that—

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

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

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

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

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

(III) that—

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

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

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

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

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

(aa) an investment adviser subject to regulation under the Investment Advisers Act of

1940 (15 U.S.C. 80b-1 et seq.) or a commodity trading advisor subject to regulation under this Act;

(bb) a foreign person performing a role or function similar to that of such an investment adviser or commodity trading advisor subject to foreign regulation in the performance of that role or function;

(cc) a financial institution; or

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

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

(II) a multinational or supranational government entity; or

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

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

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

(x) a floor broker or floor trader subject to regulation under this Act, to the extent that the floor broker or floor trader trades on or through the facilities of a registered entity or exempt board of trade or any affiliate of a registered entity or exempt board of trade; or

(xi) a natural person with total assets exceeding \$10,000,000;

(B)(i) a person described in any of clauses (i) through (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

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

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

(III) a foreign person performing a role or function similar to that of such an investment adviser or commodity trading advisor subject to foreign regulation in the performance of that role or function; or

(IV) a person described in any of clauses (i) through (x) of subparagraph (A) or in subparagraph (C), that is acting as an investment manager or fiduciary (but excluding a person acting as a broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and that is authorized by the other person to commit the other person to the transaction; or

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

(13) **EXCLUSION-ELIGIBLE COMMODITY.**—

(A) **IN GENERAL.**—The term “exclusion-eligible commodity” means—

(i) a financial commodity; and

(ii) a commodity that has no cash market.

(B) **EXCLUSION.**—The term “exclusion-eligible commodity” does not include any commodity described in paragraph (3) that is an agricultural commodity.

(14) **EXEMPTED SECURITY.**—

(A) **IN GENERAL.**—The term “exempted security” means a security that is an exempted security under section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) or section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(B) **EXCLUSION.**—The term “exempted security” does not include a municipal security (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

(15) **FINANCIAL COMMODITY.**—The term “financial commodity” means—

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

(B) any other rate, differential, index, or measure of economic risk, return, or value (excluding any rate, differential, index, or measure based on a commodity not described in subparagraph (A) that has a finite supply).

(16) **FINANCIAL INSTITUTION.**—The term “financial institution” means—

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

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

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

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

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

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

(G) a trust company; or

(H) a regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (G).

[(8)] (17) FLOOR BROKER.—The term “floor broker” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility * * *

[(9)] (18) FLOOR TRADER.—The term “floor trader” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account, any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility * * *

[(10)] (19) FOREIGN FUTURES AUTHORITY.—The term “foreign futures authority” * * *

[(11)] (20) FUTURE DELIVERY.—The term “future delivery” * * *

[(12)] (21) FUTURES COMMISSION MERCHANT.—The term “futures commission merchant” means an individual, association, partnership, corporation, or trust that—

(A) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and * * *

* * * * *

(22) HYBRID INSTRUMENT.—The term “hybrid instrument” means a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) offered by a financial institution, or a security, having 1 or more payments indexed to the value, level, or rate of 1 or more commodities.

[(13)] (23) INTERSTATE COMMERCE.—The term “interstate commerce” * * *

[(14)] (24) INTRODUCING BROKER.—The term “introducing broker” means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

[(15)] (25) MEMBER OF A [CONTRACT MARKET] REGISTERED ENTITY.—The term “member of a [contract market] registered entity” means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to

membership representation on, a contract market or given members' trading privileges thereon.

(26) *NATIONAL SECURITIES EXCHANGE.*—The term “national securities exchange” means—

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

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

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

(28) *ORGANIZED EXCHANGE.*—The term “organized exchange” means a trading facility that—

(A) permits—

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

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

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

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

(ii) include disciplinary sanctions other than the exclusion of participants from trading.

[(16)] (29) *PERSON.*—The term “person” * * *

(30) *REGISTERED ENTITY.*—The term “registered entity” means—

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

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

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

(31) *SECURITY.*—The term “security” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(32) *TRADING FACILITY.*—

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

(B) *EXCLUSIONS.*—The term “trading facility” does not include—

(i) a person or group of persons solely because the person or group of persons—

(I) constitutes, maintains, or provides an electronic facility or system that enables participants

to negotiate the terms of and enter into bilateral transactions with other participants as a result of the communications exchanged between the participants and not from interaction of multiple orders within a centralized, predetermined, nondiscretionary, automated trade matching algorithm; or

(II)(aa) is a derivatives clearing organization; (bb) permits participants to submit agreements, contracts, or transactions to a derivatives clearing organization;

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

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

* * * * *

[SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT.]

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

[(a)(1)(A)(i) The]

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

(1) JURISDICTION OF COMMISSION.—

(A) IN GENERAL.—The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in [subparagraph (B) of this paragraph] subsection (g), with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a [contract market designated pursuant to section 5 of this Act] contract market designated or derivatives transaction execution facility registered pursuant to section 5 or 5a

* * *

* * * * *

[(ii) Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage pur-

chase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.】

【(iii) The】 *(B) LIABILITY OF PRINCIPAL FOR ACT OF AGENT.*—*The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.*

【(B) Notwithstanding any other provision of law—

【(i) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof.

【(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”) and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): Provided, however, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

【(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

【(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

【(III) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall re-

flect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.

[(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph.

[(iv)(I) The Commission shall consult with the Securities and Exchange Commission with respect to any application which is submitted by a board of trade before December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. If, no later than fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of clause (ii) of this subparagraph is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. If such an oral hearing is held, the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(c) of this Act. If, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

[(II) Effective for any application submitted by a board of trade on or after December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities, the Commission shall transmit a copy of such application to the Securities and Exchange Commission for review. The Commission shall not approve any such application if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements set forth in clause (ii) of this subparagraph. Such determination shall be made by order no later than forty-five days after the close of the public comment period under clause (iii) of this subparagraph. In the event of such determination, the board of trade shall be afforded an opportunity for a hearing

on the record before the Securities and Exchange Commission. If a board of trade requests a hearing on the record, the hearing shall commence no later than thirty days following the receipt of the request, and a final determination shall be made no later than thirty days after the close of the hearing. A person aggrieved by any such order of the Securities and Exchange Commission may obtain judicial review thereof in the same manner and under such terms and conditions as are provided in section 6(b) of this Act.

【(v) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), or except as provided in clause (ii) of this subparagraph, any group or index of such securities or any interest therein or based on the value thereof.

【(vi)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for the stock index futures contract (or option thereon).

【(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon) at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

【(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority under this clause only to the Commission.

【(IV) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market, on finding an emergency to exist, to raise temporary emergency margin levels on any futures contract or option on the contract covered by this clause.

【(V) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III,2-095 under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a

stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.】

* * * * *

(7) No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this Act during his term of office, nor shall he participate, directly or indirectly, in any 【contract market】 *registered entity* operations or transactions of a character subject to regulation by the Commission * * *

(8)(B)(ii) When a board of trade applies for 【designation as a contract market】 *designation or registration as a contract market or derivatives transaction execution facility* involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not 【designate a board of trade as a contract market】 *designate or register a board of trade as a contract market or derivatives transaction execution facility* based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In 【designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act】 *designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any action under this Act (including emergency action under section 8a(9))* with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such 【designation, suspension, revocation, or emergency action】 *designation, registration, suspension, revocation, or other action* may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities

* * * * *

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all

cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

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

(1) *IN GENERAL.*—*Except as provided in paragraph (2), nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—*

- (A) *foreign currency;*
- (B) *government securities;*
- (C) *security warrants;*
- (D) *security rights;*
- (E) *sales and resales of installment loan contracts;*
- (F) *purchase transactions and repurchase transactions in a financial commodity; or*
- (G) *mortgages or mortgage purchase or sale commitments.*

(2) *COMMISSION JURISDICTION.*—

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

- (i) (I) *is a contract of sale of a commodity for future delivery (or an option on such a contract); and*
 - (II) *is executed or traded on an organized exchange;*
 - (ii) (I) *is an option on a commodity other than foreign currency or a security; and*
 - (II) *is executed or traded on an organized exchange;*
- or
- (iii) (I) *is an option on foreign currency; and*
 - (II) *is executed or traded on an organized exchange that is not a national securities exchange.*

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

- (i) *is—*
 - (I) *a contract of sale for future delivery; or*
 - (II) *an option; and*
- (ii) *is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—*
 - (I) *a financial institution;*
 - (II) *a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of*

1934 (15 U.S.C. 78o(b), 78o-5) or a futures commission merchant registered under this Act;

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

(IV) an insurance company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841));

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

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

(d) **EXCLUDED DERIVATIVE TRANSACTIONS.**—

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

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

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

(2) **ELECTRONIC TRADING FACILITY EXCLUSION.**—Nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an exclusion-eligible commodity if—

(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(11)(B)(ii);

(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants (as defined in subparagraph (A), (B)(ii), or (C) of section 1a(11)) at the time at which the persons enter into the agreement, contract, or transaction; and

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

(3) **EXCEPTION TO PREVENT MANIPULATION.**—Notwithstanding paragraphs (1) and (2), any agreement, contract, or transaction in an exclusion-eligible commodity (other than a financial commodity) that is susceptible to a material risk of manipulation shall be subject to sections 6(c) and 9(a)(2).

(e) **ELECTRONIC TRADING FACILITIES.**—

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

facility to transactions that satisfy the requirements of subsection (d)(2).

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

(f) *EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.*—

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

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

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

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

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

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

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

(g) *FUTURES ON SECURITIES.*—

(1) *EXCLUSIONS.*—

(A) *EXCLUSION OF OVER-THE-COUNTER EQUITY INSTRUMENTS.*—Nothing in this subsection governs or applies to—

(i) an agreement, contract, or transaction in a commodity that is excluded under subsection (c) or (d);

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

(iii) a hybrid instrument that is covered by an exclusion under subsection (f) or an exemption granted by the Commission under section 4(c) (whether or not the hybrid instrument is otherwise subject to this Act).

(B) *EXCLUSION OF SECURITY OPTIONS.*—This Act does not apply to, and the Commission shall have no jurisdiction to designate a board of trade as a contract market or register a derivatives transaction execution facility for, any transaction under which a party to the transaction acquires an option on 1 or more securities, group or index of securities,

or interest in, or interest that is based on the value of, a security.

(2) *INCLUSION OF TRADING OF NONDESIGNATED FUTURES ON SECURITIES ON A CONTRACT MARKET.*—

(A) *IN GENERAL.*—*This Act applies to, and the Commission shall have exclusive jurisdiction with respect to and may designate a board of trade as a contract market in, accounts, agreements, and transactions involving a contract of sale (or option on such a contract) for future delivery of a group or index of nonexempted securities (or an interest in, or interest that is based on the value of, such securities), none of which is a designated future on a security.*

(B) *REQUIREMENTS FOR DESIGNATION.*—

(i) *IN GENERAL.*—*No board of trade shall be designated as a contract market with respect to any contract of sale (or option on such a contract) for future delivery under subparagraph (A) unless—*

(I) *the board of trade files with the Commission an application for designation; and*

(II) *the board of trade demonstrates and the Commission expressly finds that the specific contract (or option on such a contract) with respect to which the application is made meets the minimum requirements of clauses (ii) and (iii).*

(ii) *MEANS OF EFFECTUATION OF SETTLEMENT OR DELIVERY.*—*Settlement of or delivery on a contract (or option on such a contract) described in subparagraph (A) shall be effected in cash or by means other than the transfer or receipt of a security other than an exempted security.*

(iii) *SUSCEPTIBILITY TO PRICE MANIPULATION.*—*Trading in a contract (or option on such a contract) described in subparagraph (A) shall not be readily susceptible to—*

(I) *manipulation of the price of the contract (or option on such a contract); or*

(II) *causing or being used in the manipulation of the price of any underlying security, option on a security, or option on a group or index that includes a security.*

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

(A) *is transacted on or subject to the rules of—*

(i) *a board of trade that has been designated by the Commission as a contract market for the commodity that is the subject of the contract; or*

(ii) *a securities exchange that is registered with the Securities and Exchange Commission as a national securities exchange; and*

(B) *meets the requirements of clauses (ii) through (vii) of paragraph (4)(B).*

(4) *MINIMUM REQUIREMENTS FOR DESIGNATED FUTURES ON SECURITIES TRADED ON A CONTRACT MARKET.*—

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

(B) *REQUIREMENTS FOR DESIGNATION.*—

(i) *IN GENERAL.*—No board of trade shall be designated as a contract market with respect to any contract of sale (or option on such a contract) under subparagraph (A) unless—

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

(II) the board of trade demonstrates and the Commission expressly finds that the specific contract (or option on such a contract) with respect to which the application is made meets the minimum requirements of clauses (ii) through (viii).

(ii) *MEANS OF EFFECTUATION OF SETTLEMENT OR DELIVERY.*—Settlement of or delivery on a contract (or option on such a contract) described in subparagraph (A) shall be effected in cash or by means other than the transfer or receipt of a security other than an exempted security.

(iii) *REAL-TIME AUDIT TRAIL.*—Trading in a contract (or option on such a contract) described in subparagraph (A) shall occur on a contract market that executes trades by means of a system that provides a real-time audit trail.

(iv) *SUSCEPTIBILITY TO PRICE MANIPULATION.*—Trading in a contract (or option on such a contract) described in subparagraph (A) shall not be readily susceptible to—

(I) manipulation of the price of the contract (or option on such a contract); or

(II) causing or being used in the manipulation of the price of any underlying security, option on a security, or option on a group or index that includes a security.

(v) *UNDERLYING SECURITY APPROVED FOR LISTING ON NATIONAL SECURITIES EXCHANGE.*—Each security that underlies a designated future on a security shall—

(I) meet all requirements for the listing of an option on that security on a national securities exchange; or

(II) be the subject of options trading on a national securities exchange.

(vi) *MARGINS FOR FUTURES CONTRACTS.*—

(I) *IN GENERAL.*—The contract described in subparagraph (A) shall be traded on a board of trade that establishes and maintains margin levels for designated futures on securities that are consistent with the margin levels established and maintained on an option contract on the same underlying secu-

rity that is listed on any national securities exchange.

(II) *CONSISTENCY.*—For the purposes of subclause (I), a margin for designated futures on securities and options on securities shall be considered to be consistent if the margin provides a similar level of protection against defaults by counterparties, taking into account any differences in—

- (aa) the price volatility of the contracts;
- (bb) the frequency with which compliance with margin requirements is assessed;
- (cc) the length of time permitted to cure any margin deficiency; and
- (dd) the degree of leverage permitted by the margin.

(vii) *CONFLICTS OF INTEREST.*—The contract described in subparagraph (A) shall be traded on a board of trade that establishes and enforces rules that protect the customer from conflicts of interest and related trading abuses on the part of brokers or any other person performing similar roles or functions.

(viii) *PROVISION OF INFORMATION NECESSARY FOR ENFORCEMENT.*—The contract described in subparagraph (A) shall be traded on a board of trade that, in accordance with regulations promulgated by the Commission, collects, maintains, and promptly provides to the Securities and Exchange Commission on request such information as the Commission and the Securities and Exchange Commission jointly determine to be appropriate for the performance of the enforcement responsibilities described in paragraph (5).

(5) *SEC ENFORCEMENT AUTHORITY FOR DESIGNATED FUTURES ON SECURITIES CONTRACTS LISTED ON A CONTRACT MARKET.*—

(A) *IN GENERAL.*—On notice to the Commission, the Securities and Exchange Commission may enforce the provisions of the securities laws specified in subparagraph (B) against any person that purchases or sells a designated future on a security to the same extent as if the person had purchased or sold an option on a security.

(B) *PROVISIONS OF THE SECURITIES LAWS.*—The provisions of the securities laws referred to in subparagraph (A) are—

- (i) section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p); and
- (ii) section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)).

(C) *AUTHORITY OF SEC.*—Nothing in this paragraph expands the authority of the Securities and Exchange Commission with respect to registered entities or contracts of sale of a commodity for future delivery (or options on such contracts) except as specifically provided in this paragraph.

(D) *REPORT.*—Not earlier than the date that is 3 years after the date of enactment of this subsection, the Commission and the Securities and Exchange Commission shall

begin to compile, and not later than the date that is 4 years after the date of enactment of this subsection, the Commission and the Securities and Exchange Commission shall submit to Congress, a report on the implementation of this subsection.

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

(A) IN GENERAL.—*Except as provided in subparagraph (B), the Securities and Exchange Commission shall have jurisdiction over a designated future on a security to the extent that the designated future on a security is traded on a national securities exchange.*

(B) LARGE TRADER REPORTING, ANTI-FRAUD, AND ANTI-MANIPULATION AUTHORITY.—*On notice to the Securities and Exchange Commission, the Commission shall enforce sections 4b, 4i, 4o, 6(c), and 9(a)(2) against any person that purchases or sells a designated future on a security on a national securities exchange.*

(C) PROVISION OF INFORMATION NECESSARY FOR ENFORCEMENT.—*A designated future on a security shall be traded on a national securities exchange that, in accordance with regulations promulgated by the Securities and Exchange Commission, collects, maintains, and promptly provides to the Commission on request such information as the Securities and Exchange Commission and the Commission jointly determine to be appropriate for the performance of the enforcement responsibilities described in subparagraph (B).*

(7) PROCESS FOR LISTING FUTURES ON A SECURITY.—

(A) CONTRACT MARKET PROCESS.—

(i) IN GENERAL.—*The Commission shall transmit to the Securities and Exchange Commission a copy of any application that is submitted by a board of trade for designation as a contract market with respect to a contract of sale (or option on such a contract) for future delivery of a nonexempted security or a group or index of nonexempted securities.*

(ii) HEARING.—

(I) OBJECTION BY SEC.—*If, not later than 15 days following transmittal of an application under clause (i), the Securities and Exchange Commission submits to the Commission an objection to designation of the board of trade as a contract market in the contract (or option on such a contract) based on evidence (including an economic analysis of relevant factors including benefits and costs) that any minimum requirement under paragraph (2)(B) or (4)(B) is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for a hearing on the record before the Commission.*

(II) TIMING.—*A hearing under subclause (I) shall be held before the Commission takes action on the application, and not less than 30 nor more*

than 45 days after the Securities and Exchange Commission submits the objection.

(B) NATIONAL SECURITIES EXCHANGE PROCESS.—

(i) *IN GENERAL.*—The Securities and Exchange Commission shall transmit to the Commission a copy of any application that is submitted by a person for listing of a designated future on a security on a national securities exchange.

(ii) *OBJECTION BY THE COMMISSION.*—If, not later than 15 days following transmittal of an application under clause (i), the Commission submits to the Securities and Exchange Commission an objection to listing of a designated future on a security on a national securities exchange based on evidence (including an economic analysis of relevant factors including benefits and costs) that any minimum requirement under paragraph (4)(B) is not met, the Securities and Exchange Commission shall afford the Commission an opportunity for a hearing on the record before the Securities and Exchange Commission.

(8) MARGIN.—

(A) *IN GENERAL.*—Notwithstanding any other provision of this Act, any designated contract market in a contract for sale of future delivery of a nonexempted security or nonexempted securities index (or option on such a contract) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the level of initial margin or maintenance margin for the nonexempted security or nonexempted securities index futures contract (or option on such a contract).

(B) REQUEST TO SET MARGIN.—

(i) *IN GENERAL.*—The Board may at any time request a contract market to set the margin for a nonexempted security or nonexempted securities index futures contract (or option on a nonexempted security or nonexempted securities index futures contract) at a level that the Board determines is appropriate to—

(I) preserve the financial integrity of the contract market or of the clearing system of the contract market;

(II) prevent competitive distortions between markets offering similar products; or

(III) prevent systemic risk.

(ii) *FAILURE TO SET MARGIN.*—If the contract market fails to comply with a request under clause (i) within the time specified by the Board in the request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

(C) *DELEGATION OF AUTHORITY TO THE COMMISSION.*—Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority with respect to margin levels—

(i) in the case of a designated future on a security or other stock index futures contract or related option, to

the Commission, if the contract or option is traded on a designated contract market or derivatives transaction execution facility; or

- (ii) in the case of a designated future on a security—
 - (I) to the Securities and Exchange Commission, if the designated future on a security is listed on a national securities exchange; or
 - (II) to the intermarket margin board established under subparagraph (D).

(D) INTERMARKET MARGIN BOARD.—

(i) **ESTABLISHMENT.**—With the concurrence of the Securities and Exchange Commission and the Commission, the Board may establish an intermarket margin board consisting of the Chairman of the Board, the Chairman of the Commission, and the Chairman of the Securities and Exchange Commission, or their designees.

(ii) **DUTIES.**—The intermarket margin board established under clause (i) may set and maintain margin levels and rules pertaining to margin for a designated future on a security listed on a contract market or on a national securities exchange.

(iii) **REQUIREMENT AS TO DESIGNEES.**—An individual may not be designated as a member of the intermarket margin board unless the individual is an officer of the United States appointed by the President with the advice and consent of the Senate.

(E) RELATIONSHIP TO OTHER AUTHORITY.—Nothing in this section supersedes or limits the authority of the Commission under section 8a(9).

(F) JUDICIAL REVIEW.—

(i) **IN GENERAL.**—Any action taken by the Board (or by the Commission acting under the delegation of authority under subparagraph (C) or by the intermarket margin board established under subparagraph (D)) under this paragraph directing a contract market to alter or supplement a contract market rule shall be subject to review only in the United States Court of Appeals for the judicial circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit.

(ii) **BASIS FOR REVIEW.**—Review under clause (i) shall be based on the examination of all information before the Board (or the Commission, Securities and Exchange Commission, or intermarket margin board) at the time at which the action was taken.

(iii) **STANDARD OF REVIEW.**—The court reviewing an action of the Board (or the Commission, Securities and Exchange Commission, or intermarket margin board) shall not enter a stay or order of mandamus unless the court determines, after notice and hearing, that the action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(9) *FUTURES ON SECURITIES LISTED ON FOREIGN EXCHANGES.*—Nothing in this Act requires or authorizes the Commission to review or approve any contract, rule, regulation, or action adopted by a foreign board of trade, exchange, or market, or a clearinghouse for such a board of trade, exchange, or market, relating to any transaction involving a contract of sale for future delivery (or option on such a contract) in any security, including any foreign government debt security, or group or index of such securities, if—

(A)(i) in the case of a contract of sale for future delivery (or option on such a contract) in a single equity security, the United States is not the primary trading market for the underlying security; or

(ii) in the case of a contract of sale for future delivery (or option on such a contract) in or involving a group or index of equity securities, less than 25 percent of the weighting of the group or index is derived from securities for which the United States is the primary trading market for the securities underlying the contract for future delivery (or option on the contract); and

(B) settlement of or delivery on the contract for future delivery (or option on such a contract) is to be effected in cash or by means other than the transfer or receipt of a security in the United States other than an exempted security.

(10) *SUITABILITY STANDARDS.*—

(A) *RULES.*—

(i) *IN GENERAL.*—Not later than 270 days after the date of enactment of this subsection, a registered futures association shall adopt rules requiring a futures commission merchant, a commodity trading advisor, or an introducing broker that recommends to any customer the purchase or sale of a designated future on a security to ascertain through reasonable due diligence that the recommendation is suitable for that customer in light of the customer's financial position and trading goals.

(ii) *PROCEDURE.*—Before adopting a rule under clause (i), a registered futures association shall—

(I) consult with the Commission and the Securities and Exchange Commission; and

(II) submit the proposed rule to the Commission for approval in accordance with section 17(j).

(iii) *TIMING.*—If the Commission fails to disapprove a proposed rule within 90 days after the date on which the rule is submitted for approval, the rule shall become effective on the day after that date.

(B) *COMPLIANCE.*—No futures commission merchant, commodity trading advisor, or introducing broker shall recommend to any customer the purchase or sale of a designated future on a security unless the futures commission merchant, commodity advisor, or introducing broker complies with the rules, adopted under subparagraph (A,) of a registered futures association of which such merchant, advisor, or broker is a member.

(h) *EXEMPTED TRANSACTIONS.*—

(1) *EXEMPTION.*—*Except as provided in paragraph (2) and except with respect to a contract, agreement, or transaction in or involving an agricultural commodity specified in section 1a(3), nothing in this Act applies to a contract, agreement, or transaction—*

(A) that is entered into solely between eligible contract participants;

(B) that is not entered into or traded on or through a trading facility; and

(C) except for contract, agreement, or transaction submitted for clearance or settlement to a clearinghouse as provided under section 5b, in which the creditworthiness of any party having an actual or potential obligation under the contract, agreement, or transaction would be a material consideration in entering into or determining the terms of the contract, agreement, or transaction (including pricing, cost, credit enhancement terms).

(2) *RESERVATION OF AUTHORITY.*—*A contract, agreement, or transaction described in paragraph (1) shall be subject to—*

(A) sections 4b, 4n, 5b and 12(e)(2)(B);

(B) any anti-fraud regulation promulgated by the Commission under section 4c(b); and

(C) sections 6(c) and 9(a)(2), to the extent that those provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery.

[SEC. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as “futures” are affected with a national public interest. Such futures transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce. The prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce. Such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price. The transactions and prices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, rendering regulation imperative for the protection of such commerce and the national public interest therein. Furthermore, transactions which are of the character of, or are commonly known to the trade as, “options” are or may be utilized by commercial and other entities for risk shifting and other purposes. Options transactions are in interstate commerce or affect such commerce and the national economy, rendering regulation of such transactions imperative for the protection of such commerce and the national public interest.]

SEC. 3. FINDING AND PURPOSES.

(a) *FINDING.*—Congress finds that the futures contracts and options contracts that are subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public interest, in that such futures contracts and options contracts provide a means for managing and assuming price risks, discovering prices, and disseminating pricing information through trading in liquid, fair, and financially secure trading facilities.

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

(1) to serve the public interest described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants, and market professionals under the oversight of the Commission; and

(2) to authorize the Commission—

(A) to deter and prevent price manipulation or any other disruptions to market integrity;

(B) to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk;

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

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

SEC. 4. (a) Unless exempted by operation of section 5d or unless exempted by the Commission * * *

(1) such transaction is conducted on or subject to the rules of a board of trade which has been [designated by the Commission as a “contract market” for] *designated or registered by the Commission as a contract market or derivatives transaction execution facility* for such commodity;

(2) such contract is executed or consummated by or through a [member of such] contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each contract market or *derivatives transaction execution facility* member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

* * * * *

(c)(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade [designated as a contract market] *designated or registered as a contract market or derivatives transaction execution facility* for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms

or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except [section 2(a)(1)(B)] *section 2(g)*), if the Commission determines that the exemption would be consistent with the public interest.

* * * * *

(2)(B) the agreement, contract, or transaction—

- (i) will be entered into solely between appropriate persons; and
- (ii) will not have a material adverse effect on the ability of the Commission or any contract market or *derivatives transaction execution facility* to discharge its regulatory or self-regulatory duties under this Act * * *

* * * * *

SEC. 4a. EXCESSIVE SPECULATION AS BURDEN ON INTERSTATE COMMERCE.

(a) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or *derivatives transaction execution facilities* causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facilities* as the Commission

* * * * *

(b) The Commission shall, in such rule, regulation, or order, fix a reasonable time (not to exceed ten days) after the promulgation of the rule, regulation, or order; after which, and until such rule, regulation, or order is suspended, modified, or revoked, it shall be unlawful for any person—

- (1) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or *derivatives transaction execution facilities* or markets to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or
- (2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facilities* in excess of any position limit fixed by the Commission for or with respect to such commodity.

* * * * *

(e) Nothing in this section shall prohibit or impair the adoption by any [contract market or] *contract market, derivatives transaction execution facility*, or by any other board of trade [licensed

or designated] *licensed, designated, or registered* by the Commission of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such [contract market, or] *contract market, derivatives transaction execution facility, or* under options on such contracts or commodities traded on or subject to the rules of such [contract market or] *contract market, derivatives transaction execution facility, or* such board of trade: Provided, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such [contract market or] *contract market, derivatives transaction execution facility, or* such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this Act for any person to violate any bylaw, rule, regulation, or resolution of any [contract market or] *contract market, derivatives transaction execution facility, or* other board of trade [licensed or designated] *licensed, designated, or registered* by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission: Provided, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits.

SEC. 4b. CONTACTS DESIGNED TO DEFRAUD OR MISLEAD.

(a) It shall be unlawful (1) for any member of a [contract market] *registered entity*, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any [contract market] *registered entity*, for or on behalf of any other person, or

* * * * *

[SEC. 4c PROHIBITED TRANSACTIONS

[(a) It shall be unlawful * * * for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

[(A) if such transaction is, is of the character of, or is commonly known to the trade as, a “wash sale”, “cross trade”, or “accommodation trade”, or is a fictitious sale; or

[(B) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such

transactions and such rules shall have been approved by the Commission.]

SEC. 4c. PROHIBITED TRANSACTIONS.

(a) *IN GENERAL.*—

(1) *PROHIBITION.*—*It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving any commodity if the transaction is used or may be used to—*

- (A) *hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;*
- (B) *determine the price basis of any such transaction in interstate commerce in the commodity; or*
- (C) *deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.*

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

- (A)(i) *is, is of the character of, or is commonly known to the trade as, a “wash sale” or “accommodation trade”;* or
- (ii) *is a fictitious sale; or*
- (B) *is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.*

(b) No person shall offer to enter into, * * *

* * * * *

(g) The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market or derivatives transaction execution facility placed by a member of the contract market or derivatives transaction execution facility who is present on the floor at the time such order is placed.

SEC. 4d. DEALING BY UNREGISTERED FUTURES COMMISSION MERCHANTS OR INTRODUCING MERCHANTS PROHIBITED.

It shall be unlawful for any person to engage as futures commission merchant or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless—

* * * * *

(2) such person shall, if a futures commission merchant, whether a member or nonmember of a contract market or derivatives transaction execution facility, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: Provided, however, That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and depos-

ited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market *or derivatives transaction execution facility*, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearing-house organization of such contract market *or derivatives transaction execution facility* or with any member of such contract market, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: Provided further, That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: Provided further, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market *or derivatives transaction execution facility* and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

SEC. 4e. REQUIRED REGISTRATION OF FLOOR TRADERS AND FLOOR BROKERS.

It shall be unlawful for any person to act as floor trader in executing purchases and sales, or as floor broker in executing any orders for the purchase or sale, of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market *or derivatives transaction execution facility* unless such person shall have registered, under this Act, with the Commission as such floor trader or floor broker and such registration shall not have expired nor been suspended nor revoked.

SEC. 4f. REGISTRATION OF FUTURES COMMISSION MERCHANTS, INTRODUCING BROKERS, AND FLOOR BROKERS.

(a) Any person desiring to register as a futures commission merchant, introducing broker, floor broker, or floor trader hereunder shall be registered upon application to the Commission. The application shall be made in such form and manner as prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the appli-

cant is or will be engaged, including in the case of an application of a futures commission merchant or an introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockholders, if a corporation, as the Commission may direct. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this Act.

(b) Notwithstanding any other provisions of this Act, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligations as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: Provided, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market *or derivatives transaction execution facility* and conforms to minimum financial standards and related reporting requirements set by such contract market *or derivatives transaction execution facility* in its bylaws, rules, regulations, or resolutions and approved by the Commission as adequate to effectuate the purposes of this subsection * * *

* * * * *

(B) The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a contract market *or derivatives transaction execution facility* or other self-regulatory organization with primary responsibility for examining the registered futures commission merchant's financial and operational condition.

SEC. 4g. REPORTING AND RECORDKEEPING.

* * * * *

(b) Every [clearinghouse and contract market] registered entity shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule* * *

* * * * *

(f) Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different [clearinghouses, contract markets, and exchanges] *registered entity* when such determinations are warranted in the judgment of the Commission.

SEC. 4h. FALSE SELF-REPRESENTATION AS [CONTRACT MARKET] REGISTERED ENTITY MEMBER PROHIBITED.

It shall be unlawful for any person falsely to represent such person to be a member of a [contract market] *registered entity* or the representative or agent of such member, or to be a registrant under this Act or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any [contract market] *registered entity*.

SEC. 4i. REPORTS OF DEALS EQUAL TO OR IN EXCESS OF TRADING LIMIT.

It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facility*—

* * * * *

[SEC. 4j. TRADES AND EXECUTIONS BY FLOOR BROKERS.

[(a)(1) The Commission shall issue regulations to prohibit the privilege of dual trading on each contract market which has not been exempted from such regulations under paragraph (3). The regulations issued by the Commission under this paragraph—

[(A) shall provide that the prohibition of dual trading thereunder shall take effect not less than thirty days after the issuance of the regulations;

[(B) shall provide for exceptions, as the Commission determines necessary and appropriate, to ensure fairness and orderly trading in affected contract markets, including—

[(i) transition measures and a reasonable phase-in period,

[(ii) exceptions for spread transactions and the correction of trading errors,

[(iii) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this paragraph, and

[(iv) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest;

[(C) shall establish procedures for the application for and issuance of exemptions under paragraph (3) which, among other things, shall specify the relevant data required to be submitted by the board of trade with each application;

[(D) shall specify the methodology by which it shall determine the average daily trading volume on a contract market for purposes of paragraph (4) based on a moving daily average of either six or twelve months; and

[(E) shall establish an expeditious procedure to revoke an exemption granted under paragraph (3) providing sufficient no-

tice, opportunity for hearing, and findings to assure fundamental fairness.

[(2) As used in this section, the term “dual trading” means the execution of customer orders by a floor broker during any trading session in which the floor broker executes any trade in the same contract market for—

[(A) the account of such floor broker;

[(B) an account for which such floor broker has trading discretion; or

[(C) an account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d).

[(3) The Commission shall exempt a contract market from the regulations issued under paragraph (1), either unconditionally or on stated conditions (including stated periods of time) relevant to the attainment or maintenance of compliance with the standards in subparagraphs (A) and (B), upon finding that—

[(A) the trade monitoring system in place at the contract market satisfies the requirements of section 5a(b) with regard to violations attributable to dual trading at such contract market; or

[(B)(i) there is a substantial likelihood that a dual trading suspension would harm the public interest in hedging or price basing at such contract market, and

[(ii) other corrective actions, such as those described in section 8e, are sufficient and appropriate to bring the contract market into compliance with the standard in subparagraph (A).

[(4)(A) The regulations issued by the Commission under paragraph (1) shall not apply to any contract market in which the Commission determines that the average daily trading volume is less than the threshold trading level established for the contract market under this paragraph.

[(B) The threshold trading level shall be set initially at eight thousand contracts.

[(C) The Commission may, by rule or order—

[(i) increase, or

[(ii) at any time following the date three years after the date of enactment of this paragraph, decrease, the threshold trading level for specific contract markets after taking into consideration the actual or potential effects of a dual trading ban on the public interest in hedging or price basing at the affected contract market.

[(D) The Commission shall provide the affected contract market with adequate notice of any such increase or decrease.

[(5) Before the Commission denies an application for an exemption under paragraph (3) or exempts a contract market subject to conditions, it shall—

[(A) provide the affected board of trade with notice of the reason or reasons that the application was not approved as submitted, including—

[(i) any reason the Commission has to believe that the trade monitoring system in place at the contract market does not satisfy the requirements of paragraph (3)(A) and the basis for such reason;

[(ii) any corrective action or actions, such as those described in section 8e, that the Commission believes the affected contract market must take to satisfy the requirements of paragraph (3)(A), and an acceptable timetable for such corrective action; and

[(iii) any conditions or limitations that the Commission proposes to attach to the exemption under paragraph (3);

[(B) provide the affected board of trade with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the board of trade, through an oral presentation of views and comments to the Commission, in order to make the demonstration required under paragraph (3) or otherwise to petition the Commission with respect to its application; and

[(C) make findings, based on the information, views, and arguments placed before it in connection with the application, as to whether—

[(i) the standard in either paragraph (3)(A) or (3)(B) applies, and

[(ii) any conditions or limitations which the Commission proposes to attach under paragraph (3) are appropriate in light of the purposes of this subsection.

The Commission shall publish in the Federal Register notice of any exemptive petitions filed under paragraph (3) and any proposed or final actions the Commission may take on such petitions. Unless the Commission determines that more immediate action is appropriate in the public interest, any Commission order denying an application or exempting a contract market conditionally shall not take effect for at least twenty days following the issuance of the order.

[(6) Violation of an order issued under this subsection shall be considered a violation of an order of the Commission for purposes of—

[(i) establishing liability and assessing penalties against a contract market or any director, officer, agent, or employee thereof under section 6b or 6c; or

[(ii) initiating proceedings under section 5b or 6(a).

[(7) Any board of trade which has applied to the Commission to exempt a contract market from the regulations issued under paragraph (1) may obtain judicial review of any final action of the Commission to deny such application, to issue an exemption subject to conditions, or to revoke an exemption, only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, under the standards applicable to rulemaking proceedings under section 553 of title 5, United States Code.

[(8)(A) The Commission shall issue the regulations required under paragraph (1) not later than two hundred and seventy days after the enactment of this section. If, prior to the effective date of the prohibition on dual trading under such regulations, a board of trade submits to the Commission an application for an exemption for a contract market under paragraph (3), the Commission shall not apply the prohibition against dual trading under paragraph (1)

to the contract market until the Commission has approved or denied the application.

[(B) The Commission shall approve or deny any application for an exemption under paragraph (3) within seventy-five days after receipt of the application, or as soon as practicable.

[(b) If, in addition to the regulations issued pursuant to subsection (a), the Commission has reason to believe that dual trading-related or facilitated abuses are not being or cannot be effectively addressed by subsection (a), the Commission shall make a determination, after notice and opportunity for hearing, whether or not a floor broker may trade for his own account or any account in which such broker has trading discretion, and also execute a customer's order for future delivery and, if the Commission determines that such trades and such executions shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades and such executions shall be conducted: Provided, That any such determination shall, at a minimum, take into account the effect upon the liquidity of trading of each market: And provided further, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

[(c) The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required, make a determination, after notice and opportunity for hearing, whether or not a futures commission merchant may trade for its own account or any proprietary account, as defined by the Commission, and if the Commission determines that such trades shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades shall be conducted: Provided, That any such determination, at a minimum, shall take into account the effect upon the liquidity of trading of each market: And provided further, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

[(d)(1) Except as provided in paragraph (2), a floor broker may not execute an order of a customer if such floor broker knows the opposite party to the transaction to be a floor broker or floor trader with whom such trader or broker has a relationship involving trading on such contract market as—

[(A) a partner in a partnership;

[(B) an employer or employee; or

[(C) Such other affiliation as the Commission may specify by rule.

[(2) Paragraph (1) shall not apply—

[(A) if the Commission has adopted rules that the Commission certifies to Congress require procedures and standards designed to prevent violations of this Act attributable to the trading described in paragraph (1); or

[(B) to any contract market that has implemented rules designed to prevent violations of this Act attributable to the trading described in paragraph (1), except that, if the Commission determines, by rule or order, that such rules are not adequate to prevent such violations, paragraph (1) shall become effective with respect to such contract market after a reasonable period determined by the Commission.]

SEC. 4[k]j. REGISTRATION OF ASSOCIATES OF FUTURES COMMISSION MERCHANTS, COMMODITY POOL OPERATORS, AND COMMODITY TRADING ADVISORS.

* * * * *

SEC. 4[l]k. COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS.

It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things—

* * * * *

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to and their operations are directed toward and cause the purchase and sale of commodities for future delivery on or subject to the rules of contract markets or *derivatives transaction execution facilities*; and

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets or *derivatives transaction execution facilities*.

SEC. 4[m]l. USE OF MAILS OR OTHER MEANS OR INSTRUMENTALITIES OF INTERSTATE COMMERCE BY COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS.

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SEC. 4[n]m. REGISTRATION OF COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS.

* * * * *

SEC. 4[o]n. FRAUD AND MISREPRESENTATION BY COMMODITY TRADING ADVISORS, COMMODITY POOL OPERATORS, AND ASSOCIATED PERSONS.

* * * * *

SEC. 4[p]o. STANDARDS AND EXAMINATIONS.

(a) * * * The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this [Act or contract markets] Act, *contract markets*, or *derivatives transaction execution facilities* may adopt written proficiency examinations.

* * * * *

(b) The Commission shall issue regulations to require new registrants, within six months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract mar-

ket *derivatives transaction execution facility*, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

[SEC. 5. DESIGNATION OF BOARD OF TRADE AS “CONTRACT MARKET”

[The Commission is hereby authorized and directed to designate any board of trade as a “contract market” when, and only when, such board of trade complies with and carries out the following conditions and requirements:

[(1) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture or the Commission for the purpose: Provided, That any board of trade not so located shall be designated as a “contract market” if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Commission.

[(2) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Commission may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Commission, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions or transactions for future delivery consummated on or subject to the rules of a board of trade, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Commission may direct, showing the details and terms of all cash and future transactions entered into by them, consummated on or subject to the rules of a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and shall at all times be open to the inspection of any representative of the Commission or United States Department of Justice.

[(3) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

[(4) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

[(5) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any

duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: Provided, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

[(6) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of section 6(c), and the orders issued pursuant to the provisions of section 5a of this Act, and for compliance in all other respects with the requirements applicable to such board of trade under this Act.

[(7) When such board of trade demonstrates that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest.

[(8) When such board of trade demonstrates that every contract market for which such board of trade is designated complies with the requirements of section 5a(b).

[SEC. 5a. DUTIES OF CONTRACT MARKETS

[(a) Each contract market shall—

[(1) promptly furnish the Commission copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

[(2) keep all books, records, minutes, and journals of proceedings of such contract market, and its governing board, committees, subsidiaries, and affiliates in a manner that will clearly describe all matters discussed by such contract market, governing board, committees, subsidiaries and affiliates and reveal any action taken in such matters, and allow inspection at all times by any authorized representative of the Commission or United States Department of Justice of all such books, records, minutes, and journals of proceedings. Such books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct;

[(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Commission may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the Commission or United States Department of Justice;

[(4) when so directed by order of the Commission, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during

which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Commission finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, it shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as it finds will prevent or tend to prevent such "squeezes" and market congestion: Provided, however, that such order shall not apply to then existing contracts;

[(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Commission finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, it shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as it finds will prevent or diminish such unfair practices: Provided, however, That such order shall not apply to then existing contracts;

[(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated and adopted by the Commission;

[(7) require that receipts issued under the United States Warehouse Act shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: Provided, however, That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes: And provided further, That this subsection shall apply only to futures contracts for those commodities which may be delivered from a warehouse subject to the United States Warehouse Act;

[(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, that (i) have been approved by the Commission pursuant to paragraph (12) of this section, (ii) have become effective under such paragraph, or (iii) must be enforced pursuant to any Commission rule, regulation, or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board

thereof or any committee, that has been disapproved by the Commission;

【(9) enforce all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or by any committee, which provide minimum financial standards and related reporting requirements for futures commission merchants who are members of such contract market, and which have been approved by the Commission;

【(10) permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives: Provided, That any order issued under this paragraph shall not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open: And provided further, That no requirement for an additional delivery point or points shall be promulgated following hearings until the contract market affected has had notice and opportunity to file exceptions to the proposed order determining the location and number of such delivery point or points;

【(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: Provided, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the contract market, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a contract market, such procedure shall provide, to the extent appropriate—

【(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

[(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

[(12)(A) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions ("rules") made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this Act or the Commission's regulations which would be violated. At the conclusion of such proceedings,

the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be made effective by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph.

[(B)(i) The Commission shall issue regulations to specify the terms and conditions under which, in an emergency as defined by the Commission, a contract market may, by a two-thirds vote of its governing board, make a rule (hereinafter referred to as an "emergency rule") effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under subparagraph (A), or during any period of review by the Commission, if the contract market makes every effort practicable to notify the Commission of such emergency rule, along with a complete explanation of the emergency involved, prior to making the emergency rule effective. If the contract market does not provide the Commission with such notification and explanation before making the emergency rule effective, the contract market shall provide the Commission with such notification and explanation at the earliest possible date. The Commission may delegate the power to receive such notification and explanation to such individuals as the Commission determines necessary and appropriate.

[(ii) Within ten days of the receipt from a contract market of notification of such an emergency rule and an explanation of the emergency involved, or as soon as practicable, the Commission shall determine whether it is appropriate either—

[(I) to permit such rule to remain in effect during the pendency of the emergency, or

[(II) to suspend the effect of such rule pending review either under the procedures of subparagraph (A) or otherwise.

The Commission shall submit a report on its determination and the basis thereof with respect to such emergency rule to the affected contract market, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. If the report is submitted more than ten days after the Commission's receipt of notification of such an emergency rule from a contract market, the report shall explain why submission within such ten-day period was not practicable. A determination by the Commission to suspend the effect of a rule under this subparagraph shall be subject to judicial review on the same basis as an emergency determination under section 8a(9). Nothing in this paragraph shall be construed to limit the authority of the Commission under section 8a(9);

[(13) provide for disclosure to the contract market and the Commission of any trade, business, or financial partnership, cost-, profit-, or capital-sharing agreements or other formal arrangement among or between floor brokers and traders on such contract market where such partnership agreement or arrangement is material and known to the floor broker or floor trader;

[(14)(A) provide for meaningful representation on the governing board of the contract market's board of trade of a diversity of interests, including—

[(i) futures commission merchants;

[(ii) producers of, and consumers, processors, distributors, or merchandisers of, principal commodities traded on the board of trade;

[(iii) floor brokers and traders; and

[(iv) participants in a variety of pits or principal groups of commodities traded on the exchange.

[(B) provide that no less than 20 percent of the regular voting members of such board be comprised of nonmembers of such contract market's board of trade with—

[(i) expertise in futures trading, or the regulation thereof, or in commodities traded through contracts on the board of trade; or

[(ii) other eminent qualifications making such person capable of participating in and contributing to board deliberations.

[(C) provide that no less than 10 percent of the regular voting members of such board be comprised where applicable of farmers, producers, merchants, or exporters of principal commodities traded on the exchange;

[(15)(A) provide on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.

[(B) Consistent with Commission rules, a major disciplinary committee hearing a disciplinary matter shall include—

[(i) a majority of qualified persons representing a trading status other than that of the subject of the proceeding; and

[(ii) where appropriate to carry out the purposes of this Act, qualified persons who are not members of the exchange.

[(C) For purposes of this paragraph, a trading status on a contract market may include, consistent with Commission rules, such categories as

[(i) floor brokers and traders;

[(ii) producers, consumers, processors, distributors, or merchandisers of commodities;

[(iii) futures commission merchants; and

[(iv) members of the aforementioned categories who participate in particular contract markets or principal groups of commodities on the board of trade.

[(D) If a contract market takes final disciplinary action against a member for a violation that involves the execution of

a customer transaction and results in financial harm to such customer, the contract market shall promptly inform the futures commission merchant identified on the records of such contract market as having cleared such transaction, and such futures commission merchant shall promptly inform the person identified on its records as the owner of the account for which such transaction was executed, of the disciplinary action and the principal facts thereof;

[(16) provide that no member found by the Commission, a contract market, a registered futures association, or a court of competent jurisdiction to have committed any violation of this Act or any other provision of law that would reflect on the fitness of the member may serve on any contract market oversight or disciplinary panel for an appropriate period (as defined by Commission rule); and

[(17)(A) provide for the avoidance of conflict of interest in deliberations by the governing board and any disciplinary and oversight committees. In order to comply with this subparagraph, each contract market shall adopt rules and procedures to require, at a minimum, that

[(i) any member of a governing board or a disciplinary or other oversight committee must abstain from confidential deliberations and voting on any matter where the named party in interest is the member, the member's employer, the member's employee, or any other person that has a business, employment, or family relationship with the member that warrants abstention by the member;

[(ii) any member of a governing board or a disciplinary or other oversight committee must abstain from voting on any significant action that would not be submitted to the Commission for its prior approval, if, as determined in accordance with regulations promulgated by the Commission, the member knowingly has a direct and substantial financial interest in the result of the vote, based either on positions held personally or at an affiliated firm;

[(iii) prior to the deliberations of the governing board, disciplinary board, or other oversight committee, acting directly or indirectly through an authorized member or contract market official, the positions of the members of such board or committee, and positions of the firm or firms with which such members are affiliated, are reviewed: Provided, however, That no contract market or official, employee, member, other than the member whose position or positions are being reviewed, or agent thereof shall be subject to liability, except for liability in an action initiated by the Commission, for having conducted this review and for having taken or not taken further action; and

[(iv) the board or committee shall clearly reflect, in the minutes of such meeting, that the review required in clause (iii) occurred and any decisions by a member to abstain or by the board or committee whether to direct a member or members to abstain from deliberations or voting on the matter before the board or committee.

Any member prohibited from voting on a rule pursuant to this paragraph shall not be included in determining whether there

has been a two-thirds vote of members of the governing board or committee as required by subparagraph (12).

[(B) For the purposes of this paragraph, the term “significant action that would not be submitted to the Commission for its prior approval” includes—

[(i) any nonphysical emergency rule; or

[(ii) any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect on prices in any contract traded on such contract market, but does not include any rule not submitted for prior Commission approval because such rule is unrelated to terms and conditions of any contract traded on such contract market.

[(C) Notwithstanding the provisions of subparagraph (A)(ii), the Commission shall issue rules establishing the conditions under which a member of a board or committee who is required to abstain from voting on a significant action, as provided in subparagraph (A)(ii), may participate in deliberations on that action prior to such vote, where the member’s participation is consistent with the public interest.

[(b)(1) Each contract market shall maintain and utilize a system to monitor trading to detect and deter violations of the contract market’s rules and regulations committed in the making of trades and the execution of customer orders on the floor or subject to the rules of such contract market. The system shall include—

[(A) physical observation of trading areas;

[(B) audit trail and recordkeeping systems able to capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and out-trades);

[(C) systems capable of reviewing, and used to review, data on trades effectively on a regular basis to detect violations committed in making trades and executing customer orders on the floor or subject to the rules of such contract market, including—

[(i) all types of violations attributable to dual trading; and

[(ii) to the full extent feasible, as determined by the Commission, all other types of violations involving the making of trades and the execution of customer orders;

[(D) the use of information gathered through such system on a consistent basis to bring appropriate disciplinary actions against violators;

[(E) the commitment of resources to such system necessary for such system to be effective in detecting and deterring such violations, including adequate staff to develop and prosecute disciplinary actions; and

[(F) the assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

[(2) The audit trail system of the contract market shall, consistent with Commission regulations, accurately record—

[(A) the times of trades in increments of no more than one minute in length; and

[(B) the sequence of trades for each floor trader and broker.

[(3) Beginning three years after the date of enactment of this subsection, the audit trail system of each contract market, except as provided in paragraph (5) and except to the extent the Commission determines that circumstances beyond the control of the contract market prevent compliance despite the contract market's affirmative good faith efforts to comply, shall—

[(A) for all trades, record accurately and promptly the essential data on terms, participants, and times as required by the Commission by rule, including the time of execution of such trade, through a means that—

[(i) records such data in a form which cannot be altered except in a manner that will leave a complete and independent record of such alteration;

[(ii) continually provides such data to the contract market;

[(iii) identifies such time, to the extent practicable as determined by the Commission—

[(I) independently of the person making the trade;

[(II) through a mechanism that records the time automatically when entered by the person making the trade; or

[(III) through such other means that will capture a similarly reliable time; and

[(iv) is adequately precise to determine, to the extent practicable as determined by the Commission by rule or order—

[(I) the sequence of all trades by each floor trader; and

[(II) the sequence of all trades by each floor broker; and

[(B) to the extent practicable as determined by the Commission by rule or order, for customer trades, record the time that each order is received on the floor of the board of trade, is received by the floor broker for execution (or when such order is transmitted in an extremely rapid manner to the broker), and is reported from the floor of the board of trade as executed, through a means that—

[(i) records such times in a form which cannot be altered except in a manner that will leave a complete and independent record of such alteration;

[(ii) continually provides such data to the contract market;

[(iii) identifies such time—

[(I) independently of the person making the trade or processing the order;

[(II) through a mechanism that records the time automatically when entered by the person making the trade or processing such order, as appropriate; or

[(III) through such other means as will capture a similarly reliable time; and

[(iv) is adequately precise to determine—

[(I) the sequence in which, for each futures commission merchant, floor broker, or member firm, as applicable, all orders are received on and reported from the floor of the contract market; and

[(II) the sequence in which orders are received by each floor broker for execution.

[(4) The Commission may, by rule, establish standards under which the audit trail systems required under paragraph (3) shall record, to the extent practicable—

[(A) the sequence of all trades made by all floor traders and floor brokers; and

[(B) the interval between the time of receipt and the time of execution of each order by the floor broker executing the order.

[(5)(A) The Commission shall, by rule or order, make exemptions from the requirements of paragraph (3)—

[(i) for an exchange with respect to which the Commission finds that—

[(I) the volume of trading on such exchange is relatively small and the exchange has demonstrated substantial compliance with the objectives of such paragraph; and

[(II) the trade monitoring system at such exchange otherwise maintains a high level of compliance with this subsection; and

[(ii) to the extent determined appropriate by the Commission, for categories of customer orders with respect to which the Commission finds that such orders are transmitted to and reported from the trading pit in an extremely rapid manner such that substantial compliance with the objectives of paragraph (3) can be otherwise achieved.

[(B) For purposes of subparagraph (A)(i)(I) the Commission shall find that the volume of trading at an exchange is relatively small if, among other things, the Commission determines that the average daily trading volume for each contract market for which the board of trade is designated is less than the threshold trading level established for the contract market under section 4j(a)(4).

[(6) Any rule or order adopted by the Commission under paragraphs (4) and (5) shall become effective thirty legislative days or ninety calendar days, whichever is later, after submission of such rule or order to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. For purposes of this paragraph, the term “legislative day” means any day on which either House of Congress is in session.]

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

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

(b) *CRITERIA FOR DESIGNATION.*—

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

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

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

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

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

(B) demonstrate that the trading facility operates in accordance with the rules or specifications.

(5) *FINANCIAL INTEGRITY OF TRANSACTIONS.*—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market.

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

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

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

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

(d) *CORE PRINCIPLES FOR CONTRACT MARKETS.*—

(1) *IN GENERAL.*—To maintain the designation of a board of trade as a contract market, a board of trade shall comply with the core principles specified in this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) *PROTECTION OF MARKET PARTICIPANTS.*—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party (including a party acting as an agent for the participants).

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

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

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

(16) *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.*—In the case of a mutually owned contract

market, the board of trade shall provide for meaningful representation on its governing board of the diversity of interests that trade on that contract market.

(17) **RECORDKEEPING.**—The board of trade shall—

(A) maintain full records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years;

(B) make the records readily available during at least the first 2-years of the 5-year period and provide the records to the Commission during that 2-year period at the expense of the person required to maintain the records; and

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

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

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

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

SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

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

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

(2) registered as a derivatives transaction execution facility under subsection (c).

(b) **REQUIREMENTS FOR TRADING FUTURES CONTRACTS OR OTHER DERIVATIVES TRANSACTIONS.**—

(1) **IN GENERAL.**—A registered derivatives transaction execution facility under subsection (a) may trade any futures contract (or option on such a contract) that is not a designated future on a security on or through the facility only by satisfying the requirements of this section.

(2) **REQUIREMENTS FOR UNDERLYING COMMODITIES.**—A registered derivatives transaction execution facility may trade any futures contract only if—

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

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

(C) the underlying commodity has no cash market;

(D)(i) the underlying commodity is not an agricultural commodity specified in section 1a(3); and

(ii) trading access to the derivatives transaction execution facility is limited to eligible commercial participants trading for their own account; or

(E) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the futures contract is unlikely to be susceptible to manipulation.

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

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

(B)(i) be an eligible contract participant; or

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

(I) is registered with the Commission;

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

(III) is a clearing member of a derivatives clearing organization; and

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

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

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

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

(c) *CRITERIA FOR REGISTRATION.*—

(1) *IN GENERAL.*—To be registered as a registered derivatives transaction execution facility, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this paragraph.

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

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

(B) use technological means to—

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

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

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

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

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

(1) *IN GENERAL.*—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection.

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

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

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

(A) contract terms and conditions;

(B) trading conventions, mechanisms, and practices;

(C) financial integrity protections; and

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

(5) *DAILY PUBLICATION OF TRADING INFORMATION.*—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the derivatives transaction execution facility.

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

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

(8) *RECORDKEEPING.*—The board of trade shall—

(A) maintain full records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of at least 5 years;

(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

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

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

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

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

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

(1) *IN GENERAL.*—A registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

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

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

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

(A) a broker-dealer be in good standing with the Securities and Exchange Commission and a depository institution or institution of the Farm Credit System be in good standing, as determined by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) (including the Farm Credit Administration), as applicable; and

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

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

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

(g) *ELECTION TO TRADE EXCLUDED TRANSACTIONS.*—

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

(2) *EXCLUSIVE JURISDICTION OF THE COMMISSION.*—The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent

that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.

SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

(a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b), it shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(8).

(b) EXCLUSION OF DERIVATIVES CLEARING ORGANIZATIONS SUBJECT TO OTHER REGULATORY AUTHORITIES.—A derivatives clearing organization shall not be required to register with the Commission, and the Commission shall have no jurisdiction with respect to the derivatives clearing organization, if the derivatives clearing organization—

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

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

(C) is subject to the supervisory jurisdiction of a foreign regulatory authority that is recognized by the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Commission as overseeing a system of consolidated supervision comparable to that provided under applicable United States law; and

(2) does not clear a contract of sale for future delivery, option on a contract of sale for future delivery, or option on a commodity that is not a security (unless the contract or option is excluded under subsection (c) or (d) of section 2).

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

(d) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

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

(2) CORE PRINCIPLES.—

(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph.

(B) FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization without interruption in various market conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) *RECORDKEEPING.*—The applicant shall—

(i) maintain full records of all activities related to the business of the applicant as a derivatives clearing

organization in a form and manner acceptable to the Commission for a period of at least 5 years;

(ii) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

(iii) keep the records open to inspection by any representative of the Commission or the Department of Justice.

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

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

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

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

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

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

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

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

(e) *EXISTING DERIVATIVES CLEARING ORGANIZATIONS.*—A derivatives clearing organization shall be deemed to be registered under this section to the extent that—

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

(2) the Commission has reviewed and approved the rules of the derivatives clearing organization before that date.

(f) *APPOINTMENT OF TRUSTEE.*—

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

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

(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets

of the derivatives clearing organization, wherever located; and

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

(g) *Linking Of Regulated Clearing Facilities.*—

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

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

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

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

(1) *IN GENERAL.*—Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of the core principles for registered entities specified in sections 5(d), 5a(d), and 5b(d)(2) to describe what would constitute an acceptable business practice under the core principles.

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

(3) *EFFECT OF INTERPRETATION.*—An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with the core principles.

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

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

(2) *RESPONSIBILITY.*—A registered entity that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

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

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

(2) *PRIOR APPROVAL.*—

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

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

(C) *AGRICULTURAL CONTRACTS.*—Notwithstanding any other provision of this section, a designated contract market shall submit for prior approval by the Commission each rule amendment that materially changes a term or condition in any contract of sale of a commodity for future delivery or related option traded through the facilities of the designated contract market, if—

(i) the commodity is specifically listed in section 1a(3); and

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

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

(d) *VIOLATION OF CORE PRINCIPLES.*—

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

(A) notify the registered entity of the determination; and

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

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

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

(f) *CORE PRINCIPLES FOR INTERMEDIARIES.*—The Commission shall—

(1) review the provisions of this Act relating to registered entities and intermediaries (including the regulations and interpretations applying those provisions); and

(2) to the extent appropriate and consistent with this Act, administer those provisions in a manner that is consistent with core principles and interpretations of acceptable business practices for intermediaries as described in this section.

(g) *EFFECT OF ACT.*—Nothing in this Act—

- (1) prohibits an exchange of—
 - (A) futures in connection with a cash commodity transaction;
 - (B) futures for cash commodities;
 - (C) transfer trades or office trades; or
 - (D) futures for swaps; or
- (2) prohibits a futures commission merchant, acting as a principal or agent, from entering into or confirming the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, and cleared in accordance with the rules of the contract market.

SEC. 5d. EXEMPT BOARDS OF TRADE.

(a) *IN GENERAL.*—Except as otherwise provided in this section, a contract of sale (or option on such a contract) of a commodity for future delivery traded on or through the facilities of an exempt board of trade shall be exempt from all provisions of this Act, other than section 2(g).

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

- (1) that have—
 - (A) a nearly inexhaustible deliverable supply;
 - (B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to manipulation; or
 - (C) no cash market;
- (2) that are entered into only between persons that—
 - (A) are eligible contract participants at the time at which the persons enter into the contract; or
 - (B) enter into the contract or option for the benefit only of eligible contract participants; and
- (3) that are not contracts of sale (or options on the contract) for future delivery of any security, including any group or index of securities or any interest in, or interest that is based on the value of, any security.

(c) *ANTI-MANIPULATION REQUIREMENTS.*—A party to a futures contract or related option that is traded on an exempt board of trade shall be subject to sections 4b, 4o, 6(c), and 9(a)(2), and the Commission shall enforce those provisions with respect to any such trading.

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

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

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

[SEC. 5b. SUSPENSION OR REVOCATION OF DESIGNATION AS “CONTRACT MARKET”

【The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules, regulations, or orders of the Commission or the commission5b–1 thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a “contract market” in accordance with the procedure and subject to the judicial review provided in section 6(b) of this Act.】

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

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

SEC. 6. APPLICATION FOR DESIGNATION AS “[CONTRACT MARKET] REGISTERED ENTITY”.

(a) Any 【board of trade desiring to be designated a “contract market” shall make application to the Commission for such designation】 *person desiring to be designated or registered as a registered entity shall make application to the Commission for such designation or registration and accompany the same with a showing that it complies with the 【above conditions】 conditions set forth in this Act, and with a sufficient assurance that it will continue to comply with the 【above requirements】 the requirements of this Act.* The Commission shall approve or deny an application for 【designation as a contract market within one year】 *designation or registration as a registered entity within 180 days* of the filing of the application. If the Commission notifies the 【board of trade】 *person* that its application is materially incomplete and specifies the deficiencies in the application, the running of the 【one-year period】 *180-day period* shall be stayed from the time of such notification until the application is resubmitted in completed form: Provided, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to 【designate as a “contract market” any board of trade that has made application therefore, such board of trade】 *designate or register as a registered entity any person that has made application therefore, such person* shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the 【designation of any board of trade as a “contract market” upon】 *designation or registration of*

any registered entity on a showing that such [board of trade] registered entity is not enforcing or has not enforced its rules of government made a condition of its [designation as set forth in section 5 of this Act] designation or registration as set forth in sections 5 through 5c or that such [board of trade] registered entity, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission or the Commission thereunder. Such suspension or revocation shall only be after a notice to the officers of the [board of trade] registered entity affected and upon a hearing on the record: Provided, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such [board of trade] person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such [board of trade] person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the [board of trade] person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such [board of trade] person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(c) EXCLUSION OF PERSONS FROM PRIVILEGE OF “[CONTRACT MARKETS] REGISTERED ENTITY; ENFORCEMENT POWERS OF COMMISSION.—If the Commission has reason to believe that any person (other than a [contract market] registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any [contract market] registered entity, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission or the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any [contract mar-

ket] *registered entity*, and directing that all [contract markets] *registered entities* refuse all [trading privileges] *privileges* to such person, until further notice of the Commission and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission or before an Administrative Law Judge designated by the Commission, which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in the fifth sentence of this subsection) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States, any State or any foreign country or jurisdiction at any designated place of hearing. A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Upon evidence received, the Commission may (1) prohibit such person from trading on or subject to the rules of any [contract market] *registered entity* and require all [contract markets] *registered entities* to refuse such person all [trading privileges] *privileges* thereon for such period as may be specified in the order, (2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person, (3) assess such person a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation and (4) require restitution to customers of damages proximately

caused by violations of such persons. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said **[contract markets]** *registered entities*. After the issuance of the order by the Commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending person praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

The first, second, and tenth sentences through the end of section 6(c) are classified to 7 U.S.C. 9. The third through the ninth sentence of section 6(c) are classified to 7 U.S.C. 15.

(d) **MANIPULATIONS OR OTHER VIOLATIONS.**—If any person (other than a **[contract market]** *registered entity*) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any **[contract market]** *registered entity*, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, * * *

* * * * *

(e) **ASSESSMENT OF MONEY PENALTIES.**—

(1) In determining the amount of the money penalty assessed under subsection (c), the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under subsection (c) shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by subsection (c) has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from **[trading on all contract markets]** *the privileges of all registered entities*; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under subsection (c) takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full

amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from **trading on all contract markets** *the privileges of all registered entities*; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

SEC. 6a. COOPERATIVE ASSOCIATIONS AND CORPORATIONS, EXCLUSION FROM BOARD OF TRADE.

(a) No board of trade which has been designated as a **contract market** *designated or registered as a contract market or a derivatives transaction execution facility* shall exclude from membership in, and all privileges on, such board of trade, any association or corporation

* * * * *

(b) No rule of any board of trade **designated as a contract market** *designated or registered as a contract market or a derivatives transaction execution facility* shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise

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SEC. 6b. NONENFORCEMENT OF RULES OF GOVERNMENT OR OTHER VIOLATIONS.

If any **contract market** *registered entity* is not enforcing or has not enforced its rules of government made a condition of its **designation as set forth in section 5 of this Act** *designation or registration as set forth in sections 5 through 5c*, or if any **contract market** *registered entity*, or any director, officer, agent, or employee of any contract market otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in section 6(b) of this Act, make and enter an order directing that such **contract market** *registered entity*, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than \$500,000 for each such violation. If such **contract market** *registered entity*, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such **contract market** *registered entity*, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending **contract market** *registered entity* or other person upon whom such penalty is imposed,

after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the gravity of the offense, and in the case of a contract market shall further consider whether the amount of the penalty will materially impair the **[contract market's ability]** *the ability of the registered entity* to carry on its operations and duties.

SEC. 6c. ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.

(a) Whenever it shall appear to the Commission that any **[contract market]** *registered entity* or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery,

* * * * *

SEC. 6d. JURISDICTION OF STATES.

(1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a **[contract market,]** *derivatives transaction execution facility*, clearinghouse, floor broker, or floor trader) has engaged in

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SEC. 7. VACATION OF REQUEST OF DESIGNATION AS “[CONTRACT MARKET] REGISTERED ENTITY.

Any **[board of trade]** *person* that has been designated or *registered* a **[contract market]** *registered entity* in the manner herein provided may have such designation or *registration* vacated and set aside by giving notice in writing to the Commission requesting that its designation or *registration* as a **[contract market]** *registered entity* be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation or *registration* shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the **[designation of such board of trade as a contract market]** *designation or registration of the registered entity*, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other **[contract markets]** *registered entities*. From and after the date upon which the vacation became effective the said **[board of trade]** *person* can thereafter be **[designated again a contract market]** *designated or registered again a registered entity* by making application to the Commission in the manner herein provided for an original application.

SEC. 8. PUBLIC DISCLOSURE.

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(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under

other provisions of law, relative to the conduct of any [board of trade] *registered entity* or to the transactions

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SEC. 8a. THE COMMISSION IS AUTHORIZED.

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(1)(F) if such person is subject to an outstanding order of the Commission denying trading privileges on any [contract market] *registered entity* to such person, denying, suspending, or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a [contract market] *registered entity* or with a member of a registered futures association;

* * * * *

(2)(F) if such person is subject to an outstanding order of the Commission denying [trading privileges] *privileges* on any contract market to such person, denying, suspending * * *

* * * * *

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a [contract market] *registered entity*, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such [contract market] *registered entity*, association, self-regulatory organization, or foreign regulatory body;

* * * * *

(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration

* * * * *

(4) in accordance with the procedure provided for in section 6(c) of this Act, to suspend, revoke, or place restrictions upon the registration of any person registered under this Act if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any [contract market] "*registered entity*" from any person if such person has been denied trading privileges on any [contract market] "*registered entity*" by order of the Commission under section 6(c) of this Act and the period of denial specified in such order shall not have expired: Provided, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in section 6(c) of this Act;

* * * * *

(6) to communicate to the proper committee or officer of any [contract market] *registered entity*, registered futures associa-

tion, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of this Act: Provided, That any information furnished by the Commission under this paragraph shall not be disclosed by such **[contract market]** *registered entity*, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding;

(7) to alter or supplement the rules of a **[contract market]** *registered entity* insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a **[contract market]** *registered entity* that such **[contract market]** *registered entity* effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such **[contract market]** *registered entity* has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such **[contract market]** *registered entity*, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such **[contract market]** *registered entity*. Such rules, regulations, or orders may specify changes with respect to such matters as—

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such **[contract market]** *registered entity*;

* * * * *

(8) to make and promulgate such rules and regulations with respect to those persons registered under this Act, who are not members of a **[contract market]** *registered entity*, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation;

(9) to direct the **[contract market]** *registered entity*, whenever it has reason to believe that an emergency exists,* * * Nothing herein shall be deemed to limit the meaning or interpretation given by a **[contract market]** *registered entity* to the terms “market emergency”, “emergency”, or equivalent language in its own bylaws, rules, regulations, or resolutions;

SEC. 8b. TRADING BAN VIOLATIONS.

It shall be unlawful for any person, against whom there is outstanding any order of the Commission prohibiting him from trading on or subject to the rules of any **[contract market]** *registered entity*, to make or cause to be made in contravention of such order, any

contract for future delivery of any commodity, on or subject to the rules of any contract market.

SEC. 8c. DISCIPLINARY ACTIONS.

(a)(1) Any exchange or the Commission if the exchange fails to act, may suspend, expel, or otherwise discipline any person who is a member of that exchange, or deny any person access to the exchange. Any such action shall be taken solely in accordance with the rules of that exchange.

(2) Any suspension, expulsion, disciplinary, or access denial procedure established by an exchange rule shall provide for written notice to the Commission and to the person who is suspended, expelled, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission.

(b) The Commission may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange. In addition, the Commission may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

(c) The Commission may affirm, modify, set aside, or remand any exchange decision it reviews pursuant to subsection (b), after a determination on the record whether the action of the exchange was in accordance with the policies of this Act. Subject to judicial review, any order of the Commission entered pursuant to subsection (b) shall govern the exchange in its further treatment of the matter.

(d) The Commission, in its discretion, may order a stay of any action taken pursuant to subsection (a) pending review thereof.

(e)(1) The Commission shall issue regulations requiring each **【contract market】** *registered entity* to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such **【contract market】** *registered entity*.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any individual who is found to have committed any major violation from service on the governing board of any **【contract market】** *registered entity* or registered futures association, or on any disciplinary committee thereof

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SEC. 9. VIOLATIONS GENERALLY.

(a) It shall be a felony punishable by a fine of not more than \$1,000,000 (or \$500,000 in the case of a person who is an individual) or imprisonment for not more than five years, or both, together with the costs of prosecution, for:

* * * * *

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any **contract market registered entity**, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, subsections (a) through (e) of subsection 4c, section 4h, **section 4o(1)** *section 4n(1)*, or section 19.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this Act or any rule or regulation thereunder or any undertaking contained in a registration statement required under this Act, or by any **contract market registered entity** or registered futures association in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a **contract market registered entity**, board of trade, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act * * *

(f) It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, **contract market registered entity**, or registered futures association, in violation of a regulation issued by the Commission * * *

* * * * *

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, **contract market registered entity**, or registered futures association * * *

SEC. 12. COMMISSION OPERATIONS.

* * * * *

(d) There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 1995 through **2000** 2005.

(e) Nothing in this Act shall supersede or preempt—

(1) criminal prosecution under any Federal criminal statute;

[(2) the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or, in the case of any State or local law that prohibits or regulates gaming or the operation of “bucket shops” (other than anti-fraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 4 of this Act, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 4c or 19 of this Act; or]

(2) the application of any Federal or State law (including any regulation) to an agreement, contract, or transaction in or involving any commodity, product, right, service, or interest, except that this Act shall supersede and preempt—

(A) any Federal or State law (including any regulation), in the case of any such agreement, contract, or transaction—

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

(ii) that is conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, or any territory or possession of the United States (in accordance with any terms or conditions specified by the Commission by regulation); and

(iii) that is subject to regulation by the Commission under section 4c or 19; and

(B) any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than anti-fraud provisions of general applicability) in the case of—

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

(ii) an agreement, contract, or transaction that—

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

(II) is covered by the terms of an exemption granted by the Commission under section 4(c) (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act); or

*(3) the application * * **

** * * * **

SEC. 14. COMPLAINTS AGAINST REGISTERED PERSONS.

*(a)(1) Any person complaining of any violation * * **

** * * * **

(B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a [contract market] registered entity, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in con-

nection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(f) Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all [contract markets] *registered entities* and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: Provided, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

[(g) The provisions of this section shall not become effective until fifteen months after the date of its enactment: Provided, That claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such 15-month period.]

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

- (1) *waiving the right to file a claim under this section; and*
- (2) *otherwise agreeing to submit any claim the customer may have against the futures commission merchant to binding arbitration pursuant to the rules and procedures of a registered entity or registered futures association or any other forum authorized to hear such claims.*

[SEC. 15. THE COMMISSION] SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

(a) *COSTS AND BENEFITS.*—

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

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

- (A) considerations of protection of market participants and the public;
- (B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;
- (C) considerations of price discovery;
- (D) considerations of sound risk management practices; and
- (E) other public interest considerations.

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

- (A) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.
- (B) An emergency action.
- (C) A finding of fact regarding compliance with a requirement of the Commission.

(b) *ANTITRUST LAWS.*—The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a [contract market] registered entity or registered futures association established pursuant to section 17 of this Act.

SEC. 15. ANTITRUST LAWS.

The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a [contract market] registered entities or registered futures association established pursuant to section 17 of this Act.

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SEC. 17. REGISTERED FUTURES ASSOCIATIONS

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(b) An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that

* * * * *

(2) the rules of the association provide that any person registered under this Act, [contract market] registered entities, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection * * * The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carry out the purpose of this section. Rules adopted by the association may provide that the associa-

tion may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated within the meaning of “associated person” as set forth in section 4k of this Act, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a **[contract market]** *registered entities* or has been and is barred or suspended from being associated with all members of such **[contract market]** *registered entities*, for violation of any rule of such **[contract market]** *registered entities*;

(3) * * *

(A) has been and is suspended or expelled from a registered futures association or from a **[contract market]** *registered entities* or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such **[contract market]** *registered entities*, for violation of any rule of such association or **[contract market]** *registered entities* which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade;

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to section 6(c) of this Act, or expelling or suspending him from membership in a registered futures association or a **[contract market]** *registered entities*, or barring or suspending him from being associated with a futures commission merchant;

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such **[contract market]** *registered entities* or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

(10) the rules of the association provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers’ claims and grievances against any member or employee thereof: Provided, That (A) the use of such procedure by a customer shall be voluntary, (B) the term “customer” as used in this paragraph shall not include another member of the association, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a **[contract market]** *registered entities*, such procedure shall provide, to the extent appropriate—

* * * * *

(o)(1) The Commission may require any futures association registered pursuant to this section to perform any portion of the registration functions under this Act with respect to each member of the association other than a **[contract market]** *registered entities*

and with respect to each associated person of such member, in accordance with rules, notwithstanding any other provision of law, adopted by such futures association and submitted to the Commission pursuant to section 17(j) of this Act, and subject to the provisions of this Act applicable to registrations granted by the Commission * * *

* * * * *

(q)(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any member of a registered futures association who is found to have committed any major violation from service on the governing board of any registered futures association or **[contract market]** *registered entities*, or on any disciplinary committee thereof * * *

* * * * *

SEC. 22. PRIVATE RIGHTS OF ACTION.

(a)(1) Any person (other than a contract market, clearing organization of a **[contract market, licensed board of trade]** *registered entity*, or registered futures association) who violates this Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person * * *

* * * * *

(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

(i) an option subject to section 4c of this Act (other than an option purchased or sold on a **[contract market]** *registered entity* or other board of trade);

* * * * *

(2) Except as provided in subsection (b), the rights of action authorized by this subsection and by **[sections 5a(11)]** “*sections 5(d)(13), 5b(d)(2)(H)(i),*”, 14, and 17(b)(10) of this Act shall be the exclusive remedies under this Act available to any person who sustains loss as a result of any alleged violation of this Act * * *

(3) In any action arising from a violation in the execution of an order on the floor of a **[contract market]** *registered entity*, the person referred to in paragraph (1) shall be liable for—

* * * * *

(4) **CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.**—*No agreement, contract, or transaction between eligible contract participants shall be void, voidable, or unenforceable, and no such eligible contract participant shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction, under this section based solely on the failure of the agreement, contract, or transaction to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.*

(b)(1)(A) A **[contract market or clearing organization of a contract market]** *registered entity* that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by **[section**

5a(8) and section 5a(9)] *sections 5 through 5c* of this Act, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by the Commission, or (C) any [contract market, clearing organization of a contract market, or licensed board of trade] *registered entity* that in enforcing any such bylaw, rule, regulation, or resolution violates this Act or any Commission rule, regulation, or order, shall be liable for actual damages sustained by a person who engaged in any transaction on or subject to the rules of such [contract market or licensed board of trade] *registered entity* to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations, or resolutions

* * * * *

(3) Any individual who, in the capacity as an officer, director, governor, committee member, or employee of a [contract market, clearing organization, licensed board of trade] *registered entity*, or a registered futures association willfully aids, abets, counsels, induces, or procures any failure by any such entity to enforce (or any violation of the Act in enforcing) any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person who engaged in any transaction specified in subsection (a) of this section on, or subject to the rules of, such [contract market, licensed board of trade] *registered entity* or, in the case of an officer, director, governor, committee member, or employee of a registered futures association, any transaction specified in subsection (a) of this section, in either case to the extent of such person's actual losses that resulted from such transaction and were caused by such failure or violation.

(4) A person seeking to enforce liability under this section must establish that the [contract market, licensed board of trade, clearing organization] *registered entity*, registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

(5) The rights of action authorized by this subsection shall be the exclusive remedy under this Act available to any person who sustains a loss as a result of (A) the alleged failure by a [contract market, licensed board of trade, clearing organization] *registered entity*, or registered futures association or by any officer, director, governor, committee member, or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action in enforcing any bylaw, rule, regulation, or resolution referred to in this subsection that is alleged to have violated this Act, or any Commission rule, regulation, or order

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**FEDERAL DEPOSIT INSURANCE CORPORATION
IMPROVEMENT ACT OF 1991.**

Section 402(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402(2)) is amended by striking subparagraph (B) and inserting the following:

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

