

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—106th Cong., 2d Sess.

S. 2697

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

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LUGAR

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Agreements, contracts, and transactions in foreign currency, govern-
ment securities, and certain other commodities.
- Sec. 5. Legal certainty for excluded derivative transactions.
- Sec. 6. Electronic trading facilities.

- Sec. 7. Hybrid instruments.
- Sec. 8. Futures on securities.
- Sec. 9. Exempted transactions.
- Sec. 10. Finding and purposes.
- Sec. 11. Prohibited transactions.
- Sec. 12. Designation of boards of trade as contract markets.
- Sec. 13. Derivatives transaction execution facilities.
- Sec. 14. Derivatives clearing organizations.
- Sec. 15. Common provisions applicable to registered entities.
- Sec. 16. Exempt boards of trade.
- Sec. 17. Suspension or revocation of designation as contract market.
- Sec. 18. Authorization of appropriations.
- Sec. 19. Preemption.
- Sec. 20. Predispute resolution agreements for institutional customers.
- Sec. 21. Consideration of costs and benefits and antitrust laws.
- Sec. 22. Contract enforcement between eligible counterparties.
- Sec. 23. Legal certainty for swap agreements.
- Sec. 24. Commission oversight; deficiency orders.
- Sec. 25. Technical and conforming amendments.
- Sec. 26. Effective date.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

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

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

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

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

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

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

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

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

16 **SEC. 3. DEFINITIONS.**

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

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

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

25 “(8) DERIVATIVES CLEARING ORGANIZATION.—

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

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

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

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

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

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

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

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

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

20 “(A) a single nonexempted security;

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

23 “(C) an index in which during at least 3
24 of the 4 calendar quarters preceding the date of
25 any transaction in the index, a single non-

1 exempted security accounted for a daily average
2 of 30 percent or more of the value of the index.

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

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

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

11 “(11) ELIGIBLE COMMERCIAL PARTICIPANT.—
12 The term ‘eligible commercial participant’ means an
13 eligible contract participant described in clause (i),
14 (ii), (v), or (vii) of paragraph (12)(A) or in subpara-
15 graph (12)(C) that—

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

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

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

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

3 “(A) acting for its own account—

4 “(i) a financial institution;

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

8 “(iii) an investment company subject
9 to regulation under the Investment Com-
10 pany Act of 1940 (15 U.S.C. 80a–1 et
11 seq.) or a foreign person performing a
12 similar role or function subject as such to
13 foreign regulation (regardless of whether
14 each investor in the investment company or
15 the foreign person is itself an eligible con-
16 tract participant);

17 “(iv) a commodity pool that—

18 “(I) has total assets exceeding
19 \$5,000,000; and

20 “(II) is formed and operated by a
21 person subject to regulation under
22 this Act or a foreign person per-
23 forming a similar role or function sub-
24 ject as such to foreign regulation (re-
25 gardless of whether each investor in

1 the commodity pool or the foreign per-
2 son is itself an eligible contract partici-
3 pant);

4 “(v) a corporation, partnership, pro-
5 prietorship, organization, trust, or other
6 entity—

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

9 “(II) the obligations of which
10 under an agreement, contract, or
11 transaction are guaranteed or other-
12 wise supported by a letter of credit or
13 keepwell, support, or other agreement
14 by an entity described in subclause
15 (I), in clause (i), (ii), (iii), (iv), or
16 (vii), or in subparagraph (C); or

17 “(III) that—

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

20 “(bb) enters into an agree-
21 ment, contract, or transaction in
22 connection with the conduct of
23 the entity’s business or to man-
24 age the risk associated with an
25 asset or liability owned or in-

1 curred or reasonably likely to be
2 owned or incurred by the entity
3 in the conduct of the entity's
4 business;

5 “(vi) an employee benefit plan subject
6 to the Employee Retirement Income Secu-
7 rity Act of 1974 (29 U.S.C. 1001 et seq.)
8 or a foreign person performing a similar
9 role or function subject as such to foreign
10 regulation—

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

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

15 “(aa) an investment adviser
16 subject to regulation under the
17 Investment Advisers Act of 1940
18 (15 U.S.C. 80b-1 et seq.) or a
19 commodity trading advisor sub-
20 ject to regulation under this Act;

21 “(bb) a foreign person per-
22 forming a role or function similar
23 to that of such an investment ad-
24 viser or commodity trading advi-
25 sor subject to foreign regulation

1 in the performance of that role or
2 function;

3 “(cc) a financial institution;
4 or

5 “(dd) an insurance company
6 (as defined in section 2 of the
7 Bank Holding Company Act of
8 1956 (12 U.S.C. 1841));

9 “(vii)(I) a governmental entity (in-
10 cluding the United States, a State, or a
11 foreign government) or political subdivision
12 of a governmental entity;

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

15 “(III) an instrumentality, agency, or
16 department of an entity described in sub-
17 clause (I) or (II);

18 “(viii) a broker or dealer subject to
19 regulation under the Securities Exchange
20 Act of 1934 (15 U.S.C. 78a et seq.) or a
21 foreign person performing a similar role or
22 function subject as such to foreign regula-
23 tion, except that, if the broker or dealer or
24 foreign person is a natural person or pro-
25 prietorship, the broker or dealer or foreign

1 person shall not be considered to be an eli-
2 gible contract participant unless the broker
3 or dealer or foreign person also meets the
4 requirements of clause (v) or (xi);

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

17 “(x) a floor broker or floor trader sub-
18 ject to regulation under this Act, to the ex-
19 tent that the floor broker or floor trader
20 trades on or through the facilities of a reg-
21 istered entity or exempt board of trade or
22 any affiliate of a registered entity or ex-
23 empt board of trade; or

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

1 “(B)(i) a person described in any of
2 clauses (i) through (x) of subparagraph (A) or
3 in subparagraph (C), acting as broker or per-
4 forming an equivalent agency function on behalf
5 of another person described in subparagraph
6 (A) or (C); or

7 “(ii)(I) an investment adviser subject to
8 regulation under the Investment Advisers Act of
9 1940 (15 U.S.C. 80b-1 et seq.);

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

12 “(III) a foreign person performing a role
13 or function similar to that of such an invest-
14 ment adviser or commodity trading advisor sub-
15 ject to foreign regulation in the performance of
16 that role or function; or

17 “(IV) a person described in any of clauses
18 (i) through (x) of subparagraph (A) or in sub-
19 paragraph (C), that is acting as an investment
20 manager or fiduciary (but excluding a person
21 acting as a broker or performing an equivalent
22 agency function) for another person described
23 in subparagraph (A) or (C) and that is author-
24 ized by the other person to commit the other
25 person to the transaction; or

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

4 “(13) EXCLUSION-ELIGIBLE COMMODITY.—

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

7 “(i) a financial commodity; and

8 “(ii) a commodity that has no cash
9 market.

10 “(B) EXCLUSION.—The term ‘exclusion-el-
11 igible commodity’ does not include any com-
12 modity described in paragraph (3) that is an
13 agricultural commodity.

14 “(14) EXEMPTED SECURITY.—

15 “(A) IN GENERAL.—The term ‘exempted
16 security’ means a security that is an exempted
17 security under section 3(a) of the Securities Act
18 of 1933 (15 U.S.C. 77c(a)) or section 3(a) of
19 the Securities Exchange Act of 1934 (15
20 U.S.C. 78c(a)).

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

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

3 “(A) an interest rate, exchange rate, cur-
4 rency, security, security index, credit risk, debt
5 or equity instrument, or index or measure of in-
6 flation; or

7 “(B) any other rate, differential, index, or
8 measure of economic risk, return, or value (ex-
9 cluding any rate, differential, index, or measure
10 based on a commodity not described in subpara-
11 graph (A) that has a finite supply).

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

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

18 “(B) a corporation organized under section
19 25A of the Federal Reserve Act (12 U.S.C. 611
20 et seq.), commonly known as an ‘Edge Act cor-
21 poration’;

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

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

4 “(E) a depository institution (as defined in
5 section 3 of the Federal Deposit Insurance Act
6 (12 U.S.C. 1813));

7 “(F) a foreign bank or a branch or agency
8 of a foreign bank (each as defined in section
9 1(b) of the International Banking Act of 1978
10 (12 U.S.C. 3101(b)));

11 “(G) a trust company; or

12 “(H) a regulated subsidiary or affiliate of
13 an entity described in any of subparagraphs (A)
14 through (G).”;

15 (3) by inserting after paragraph (21) (as reded-
16 signed by paragraph (1)) the following:

17 “(22) HYBRID INSTRUMENT.—The term ‘hybrid
18 instrument’ means a deposit (as defined in section 3
19 of the Federal Deposit Insurance Act (12 U.S.C.
20 1813)) offered by a financial institution, or a secu-
21 rity, having 1 or more payments indexed to the
22 value, level, or rate of 1 or more commodities.”;

23 (4) by inserting after paragraph (25) (as reded-
24 signed by paragraph (1)) the following:

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

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

7 “(B) an association that is registered as a
8 national securities association under section
9 15A of the Securities Exchange Act of 1934
10 (15 U.S.C. 78o–3).

11 “(27) OPTION.—The term ‘option’ means an
12 agreement, contract, or transaction that is of the
13 character of, or is commonly known to the trade as,
14 an ‘option,’ ‘privilege,’ ‘indemnity,’ ‘bid,’ ‘offer,’
15 ‘put,’ ‘call,’ ‘advance guaranty,’ or ‘decline guar-
16 anty.’

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

19 “(A) permits—

20 “(i) trading by or on behalf of a per-
21 son that is not an eligible contract partici-
22 pant; or

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

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

3 “(i) govern the conduct of partici-
4 pants, other than rules that govern the
5 submission of orders or execution of trans-
6 actions on the trading facility; or

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

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

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

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

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

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

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

22 “(32) TRADING FACILITY.—

23 “(A) IN GENERAL.—The term ‘trading fa-
24 cility’ means a person or group of persons that
25 constitutes, maintains, or provides a physical or

1 electronic facility or system in which multiple
2 participants have the ability to execute or trade
3 agreements, contracts, or transactions by ac-
4 cepting bids and offers made by other partici-
5 pants that are open to multiple participants in
6 the facility or system.

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

9 “(i) a person or group of persons sole-
10 ly because the person or group of
11 persons—

12 “(I) constitutes, maintains, or
13 provides an electronic facility or sys-
14 tem that enables participants to nego-
15 tiate the terms of and enter into bilat-
16 eral transactions with other partici-
17 pants as a result of the communica-
18 tions exchanged between the partici-
19 pants and not from interaction of
20 multiple orders within a centralized,
21 predetermined, nondiscretionary, auto-
22 mated trade matching algorithm; or

23 “(II)(aa) is a derivatives clearing
24 organization; or

1 “(bb) permits participants to
2 submit agreements, contracts, or
3 transactions to a derivatives clearing
4 organization;

5 “(ii) a government securities dealer or
6 government securities broker, to the extent
7 that the dealer or broker executes or
8 trades agreements, contracts, or trans-
9 actions in government securities, or assists
10 persons in communicating about, negoti-
11 ating, entering into, executing, or trading
12 an agreement, contract, or transaction in
13 government securities (as the terms ‘gov-
14 ernment securities dealer’, ‘government se-
15 curities broker’, and ‘government securi-
16 ties’ are defined in section 3(a) of the Se-
17 curities Exchange Act of 1934 (15 U.S.C.
18 78c(a))); or

19 “(iii) a facility on which bids and of-
20 fers and acceptances of bids and offers ef-
21 fected on the facility are not binding.”.

1 **SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN**
2 **FOREIGN CURRENCY, GOVERNMENT SECURI-**
3 **TIES, AND CERTAIN OTHER COMMODITIES.**

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

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

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

14 “(A) foreign currency;

15 “(B) government securities;

16 “(C) security warrants;

17 “(D) security rights;

18 “(E) sales and resales of installment loan
19 contracts;

20 “(F) purchase transactions and repurchase
21 transactions in a financial commodity; or

22 “(G) mortgages or mortgage purchase or
23 sale commitments.

24 “(2) COMMISSION JURISDICTION.—

25 “(A) AGREEMENTS, CONTRACTS, AND
26 TRANSACTIONS THAT ARE FUTURES TRADED

1 ON AN ORGANIZED EXCHANGE.—This Act ap-
2 plies to, and the Commission shall have juris-
3 diction over, an agreement, contract, or trans-
4 action described in paragraph (1) that—

5 “(i)(I) is a contract of sale of a com-
6 modity for future delivery (or an option on
7 such a contract); and

8 “(II) is executed or traded on an or-
9 ganized exchange;

10 “(ii)(I) is an option on a commodity
11 other than foreign currency or a security;
12 and

13 “(II) is executed or traded on an or-
14 ganized exchange; or

15 “(iii)(I) is an option on foreign cur-
16 rency; and

17 “(II) is executed or traded on an or-
18 ganized exchange that is not a national se-
19 curities exchange.

20 “(B) AGREEMENTS, CONTRACTS, AND
21 TRANSACTIONS IN RETAIL FOREIGN CUR-
22 RENCY.—This Act applies to, and the Commis-
23 sion shall have jurisdiction over, an agreement,
24 contract, or transaction in foreign currency
25 that—

1 “(i) is—

2 “(I) a contract of sale for future
3 delivery; or

4 “(II) an option; and

5 “(ii) is offered to, or entered into
6 with, a person that is not an eligible con-
7 tract participant, unless the counterparty,
8 or the person offering to be the
9 counterparty, of the person is—

10 “(I) a financial institution;

11 “(II) a broker or dealer reg-
12 istered under section 15(b) or 15C of
13 the Securities Exchange Act of 1934
14 (15 U.S.C. 78o(b), 78o-5) or a fu-
15 tures commission merchant registered
16 under this Act;

17 “(III) an associated person of a
18 broker or dealer registered under sec-
19 tion 15(b) or 15C of the Securities
20 Exchange Act of 1934 (15 U.S.C.
21 78o(b), 78o-5), or an affiliated person
22 of a futures commission merchant
23 registered under this Act, concerning
24 the financial or securities activities of
25 which the registered person makes

1 and keeps records under section
2 15C(b) or 17(h) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78o-
4 5(b), 78q(h)) or section 4f(e)(2)(B) of
5 this Act;

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

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

14 “(VI) an investment bank hold-
15 ing company (as defined in section
16 17(i) of the Securities Exchange Act
17 of 1934 (15 U.S.C. 78q(i))).”.

18 **SEC. 5. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**
19 **TRANSACTIONS.**

20 Section 2 of the Commodity Exchange Act (7 U.S.C.
21 2, 2a, 3, 4, 4a) (as amended by section 4) is amended
22 by adding at the end the following:

23 “(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

24 “(1) IN GENERAL.—Nothing in this Act (other
25 than section 5b or 12(e)(2)(B)) governs or applies to

1 an agreement, contract, or transaction in an exclu-
2 sion-eligible commodity if—

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

8 “(B) the agreement, contract, or trans-
9 action is not executed or traded on a trading fa-
10 cility.

11 “(2) ELECTRONIC TRADING FACILITY EXCLU-
12 SION.—Nothing in this Act (other than section 5b or
13 12(e)(2)(B)) governs or applies to an agreement,
14 contract, or transaction in an exclusion-eligible com-
15 modity if—

16 “(A) the agreement, contract, or trans-
17 action is entered into on a principal-to-principal
18 basis between parties trading for their own ac-
19 counts or as described in section 1a(11)(B)(ii);

20 “(B) the agreement, contract, or trans-
21 action is entered into only between persons that
22 are eligible contract participants (as defined in
23 subparagraph (A), (B)(ii), or (C) of section
24 1a(11)) at the time at which the persons enter

1 into the agreement, contract, or transaction;
2 and

3 “(C) the agreement, contract, or trans-
4 action is executed or traded on an electronic
5 trading facility.

6 “(3) EXCEPTION TO PREVENT MANIPULA-
7 TION.—Notwithstanding paragraphs (1) and (2),
8 any agreement, contract, or transaction in an exclu-
9 sion-eligible commodity (other than a financial com-
10 modity) that is susceptible to a material risk of ma-
11 nipulation shall be subject to sections 6(c) and
12 9(a)(2).”.

13 **SEC. 6. ELECTRONIC TRADING FACILITIES.**

14 Section 2 of the Commodity Exchange Act (7 U.S.C.
15 2, 2a, 3, 4, 4a) (as amended by section 5) is amended
16 by adding at the end the following:

17 “(e) ELECTRONIC TRADING FACILITIES.—

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

24 “(2) EFFECT ON AUTHORITY TO ESTABLISH
25 AND OPERATE.—Nothing in this Act shall prohibit a

1 board of trade designated by the Commission as a
2 contract market or derivatives transaction execution
3 facility, or an exempt board of trade, from estab-
4 lishing and operating an electronic trading facility
5 excluded under this Act by paragraph (1).”.

6 **SEC. 7. HYBRID INSTRUMENTS.**

7 Section 2 of the Commodity Exchange Act (7 U.S.C.
8 2, 2a, 3, 4, 4a) (as amended by section 6) is amended
9 by adding at the end the following:

10 “(f) EXCLUSION FOR QUALIFYING HYBRID INSTRU-
11 MENTS.—

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

16 “(2) PREDOMINANCE.—A hybrid instrument
17 shall be considered to be predominantly a security or
18 depository instrument if—

19 “(A) the issuer of the hybrid instrument
20 receives payment in full of the purchase price of
21 the hybrid instrument, substantially contem-
22 poraneously with delivery of the hybrid instru-
23 ment;

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

1 ment to the issuer in addition to the purchase
2 price paid under subparagraph (A), whether as
3 margin, settlement payment, or otherwise, dur-
4 ing the life of the hybrid instrument or at ma-
5 turity;

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

9 “(D) the hybrid instrument is not mar-
10 keted as a contract of sale for future delivery
11 of a commodity (or option on such a contract)
12 subject to this Act.

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

22 **SEC. 8. FUTURES ON SECURITIES.**

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

1 “(g) FUTURES ON SECURITIES.—

2 “(1) EXCLUSIONS.—

3 “(A) EXCLUSION OF OVER-THE-COUNTER
4 EQUITY INSTRUMENTS.—Nothing in this sub-
5 section governs or applies to—

6 “(i) an agreement, contract, or trans-
7 action in a commodity that is excluded
8 under subsection (c) or (d);

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

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

17 “(B) EXCLUSION OF SECURITY OPTIONS.—

18 This Act does not apply to, and the Commission
19 shall have no jurisdiction to designate a board
20 of trade as a contract market or register a de-
21 rivatives transaction execution facility for, any
22 transaction under which a party to the trans-
23 action acquires an option on 1 or more securi-
24 ties, group or index of securities, or interest in,

1 or interest that is based on the value of, a secu-
2 rity.

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

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

17 “(B) REQUIREMENTS FOR DESIGNA-
18 TION.—

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

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

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

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

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

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

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

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

13 “(A) is transacted on or subject to the
14 rules of—

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

19 “(ii) a securities exchange that is reg-
20 istered with the Securities and Exchange
21 Commission as a national securities ex-
22 change; and

23 “(B) meets the requirements of clauses (ii)
24 through (vii) of paragraph (4)(B).

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

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

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

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

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

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

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

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

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

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

16 “(vi) MARGINS FOR FUTURES CON-
17 TRACTS.—

18 “(I) IN GENERAL.—The contract
19 described in subparagraph (A) shall
20 be traded on a board of trade that es-
21 tablishes and maintains margin levels
22 for designated futures on securities
23 that are consistent with the margin
24 levels established and maintained on
25 an option contract on the same under-

1 lying security that is listed on any na-
2 tional securities exchange.

3 “(II) CONSISTENCY.—For the
4 purposes of subclause (I), a margin
5 for designated futures on securities
6 and options on securities shall be con-
7 sidered to be consistent if the margin
8 provides a similar level of protection
9 against defaults by counterparties,
10 taking into account any differences
11 in—

12 “(aa) the price volatility of
13 the contracts;

14 “(bb) the frequency with
15 which compliance with margin re-
16 quirements is assessed;

17 “(cc) the length of time per-
18 mitted to cure any margin defi-
19 ciency; and

20 “(dd) the degree of leverage
21 permitted by the margin.

22 “(vii) CONFLICTS OF INTEREST.—The
23 contract described in subparagraph (A)
24 shall be traded on a board of trade that es-
25 tablishes and enforces rules that protect

1 the customer from conflicts of interest and
2 related trading abuses on the part of bro-
3 kers or any other person performing simi-
4 lar roles or functions.

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

18 “(5) SEC ENFORCEMENT AUTHORITY FOR DES-
19 IGNATED FUTURES ON SECURITIES CONTRACTS
20 LISTED ON A CONTRACT MARKET.—

21 “(A) IN GENERAL.—On notice to the Com-
22 mission, the Securities and Exchange Commis-
23 sion may enforce the provisions of the securities
24 laws specified in subparagraph (B) against any
25 person that purchases or sells a designated fu-

1 ture on a security to the same extent as if the
2 person had purchased or sold an option on a se-
3 curity.

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

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

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

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

18 “(D) REPORT.—Not earlier than the date
19 that is 3 years after the date of enactment of
20 this subsection, the Commission and the Securi-
21 ties and Exchange Commission shall begin to
22 compile, and not later than the date that is 4
23 years after the date of enactment of this sub-
24 section, the Commission and the Securities and
25 Exchange Commission shall submit to Con-

1 gress, a report on the implementation of this
2 subsection.

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

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

12 “(B) LARGE TRADER REPORTING, ANTI-
13 FRAUD, AND ANTIMANIPULATION AUTHORITY.—
14 On notice to the Securities and Exchange Com-
15 mission, the Commission shall enforce sections
16 4b, 4i, 4o, 6(c), and 9(a)(2) against any person
17 that purchases or sells a designated future on
18 a security on a national securities exchange.

19 “(C) PROVISION OF INFORMATION NEC-
20 CESSARY FOR ENFORCEMENT.—A designated fu-
21 ture on a security shall be traded on a national
22 securities exchange that, in accordance with
23 regulations promulgated by the Securities and
24 Exchange Commission, collects, maintains, and
25 promptly provides to the Commission on re-

1 quest such information as the Securities and
2 Exchange Commission and the Commission
3 jointly determine to be appropriate for the per-
4 formance of the enforcement responsibilities de-
5 scribed in subparagraph (B).

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

8 “(A) CONTRACT MARKET PROCESS.—

9 “(i) IN GENERAL.—The Commission
10 shall transmit to the Securities and Ex-
11 change Commission a copy of any applica-
12 tion that is submitted by a board of trade
13 for designation as a contract market with
14 respect to a contract of sale (or option on
15 such a contract) for future delivery of a
16 nonexempted security or a group or index
17 of nonexempted securities.

18 “(ii) HEARING.—

19 “(I) OBJECTION BY SEC.—If, not
20 later than 15 days following trans-
21 mittal of an application under clause
22 (i), the Securities and Exchange Com-
23 mission submits to the Commission an
24 objection to designation of the board
25 of trade as a contract market in the

1 contract (or option on such a con-
2 tract) based on evidence (including an
3 economic analysis of relevant factors
4 including benefits and costs) that any
5 minimum requirement under para-
6 graph (2)(B) or (4)(B) is not met, the
7 Commission shall afford the Securities
8 and Exchange Commission an oppor-
9 tunity for a hearing on the record be-
10 fore the Commission.

11 “(II) TIMING.—A hearing under
12 subclause (I) shall be held before the
13 Commission takes action on the appli-
14 cation, and not less than 30 nor more
15 than 45 days after the Securities and
16 Exchange Commission submits the ob-
17 jection.

18 “(B) NATIONAL SECURITIES EXCHANGE
19 PROCESS.—

20 “(i) IN GENERAL.—The Securities
21 and Exchange Commission shall transmit
22 to the Commission a copy of any applica-
23 tion that is submitted by a person for list-
24 ing of a designated future on a security on
25 a national securities exchange.

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

16 “(8) MARGIN.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of this Act, any designated con-
19 tract market in a contract for sale of future de-
20 livery of a nonexempted security or non-
21 exempted securities index (or option on such a
22 contract) shall file with the Board of Governors
23 of the Federal Reserve System any rule estab-
24 lishing or changing the level of initial margin or
25 maintenance margin for the nonexempted secu-

1 rity or nonexempted securities index futures
2 contract (or option on such a contract).

3 “(B) REQUEST TO SET MARGIN.—

4 “(i) IN GENERAL.—The Board may at
5 any time request a contract market to set
6 the margin for a nonexempted security or
7 nonexempted securities index futures con-
8 tract (or option on a nonexempted security
9 or nonexempted securities index futures
10 contract) at a level that the Board deter-
11 mines is appropriate to—

12 “(I) preserve the financial integ-
13 rity of the contract market or of the
14 clearing system of the contract mar-
15 ket;

16 “(II) prevent competitive distor-
17 tions between markets offering similar
18 products; or

19 “(III) prevent systemic risk.

20 “(ii) FAILURE TO SET MARGIN.—If
21 the contract market fails to comply with a
22 request under clause (i) within the time
23 specified by the Board in the request, the
24 Board may direct the contract market to

1 alter or supplement the rules of the con-
2 tract market as specified in the request.

3 “(C) DELEGATION OF AUTHORITY TO THE
4 COMMISSION.—Subject to such conditions as
5 the Board may determine, the Board may dele-
6 gate any or all of its authority with respect to
7 margin levels—

8 “(i) in the case of a designated future
9 on a security or other stock index futures
10 contract or related option, to the Commis-
11 sion, if the contract or option is traded on
12 a designated contract market or derivatives
13 transaction execution facility; or

14 “(ii) in the case of a designated future
15 on a security—

16 “(I) to the Securities and Ex-
17 change Commission, if the designated
18 future on a security is listed on a na-
19 tional securities exchange; or

20 “(II) to the intermarket margin
21 board established under subparagraph
22 (D).

23 “(D) INTERMARKET MARGIN BOARD.—

24 “(i) ESTABLISHMENT.—With the con-
25 currence of the Securities and Exchange

1 Commission and the Commission, the
2 Board may establish an intermarket mar-
3 gin board consisting of the Chairman of
4 the Board, the Chairman of the Commis-
5 sion, and the Chairman of the Securities
6 and Exchange Commission, or their des-
7 ignees.

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

14 “(iii) REQUIREMENT AS TO DES-
15 IGNEES.—An individual may not be des-
16 ignated as a member of the intermarket
17 margin board unless the individual is an
18 officer of the United States appointed by
19 the President with the advice and consent
20 of the Senate.

21 “(E) RELATIONSHIP TO OTHER AUTHOR-
22 ITY.—Nothing in this section supersedes or lim-
23 its the authority of the Commission under sec-
24 tion 8a(9).

25 “(F) JUDICIAL REVIEW.—

1 shall not enter a stay or order of man-
2 damus unless the court determines, after
3 notice and hearing, that the action was ar-
4 bitrary, capricious, an abuse of discretion,
5 or otherwise not in accordance with law.

6 “(9) FUTURES ON SECURITIES LISTED ON FOR-
7 EIGN EXCHANGES.—Nothing in this Act requires or
8 authorizes the Commission to review or approve any
9 contract, rule, regulation, or action adopted by a for-
10 eign board of trade, exchange, or market, or a clear-
11 inghouse for such a board of trade, exchange, or
12 market, relating to any transaction involving a con-
13 tract of sale for future delivery (or option on such
14 a contract) in any security, including any foreign
15 government debt security, or group or index of such
16 securities, if—

17 “(A)(i) in the case of a contract of sale for
18 future delivery (or option on such a contract) in
19 a single equity security, the United States is
20 not the primary trading market for the under-
21 lying security; or

22 “(ii) in the case of a contract of sale for
23 future delivery (or option on such a contract) in
24 or involving a group or index of equity securi-
25 ties, less than 25 percent of the weighting of

1 the group or index is derived from securities for
2 which the United States is the primary trading
3 market for the securities underlying the con-
4 tract for future delivery (or option on the con-
5 tract); and

6 “(B) settlement of or delivery on the con-
7 tract for future delivery (or option on such a
8 contract) is to be effected in cash or by means
9 other than the transfer or receipt of a security
10 in the United States other than an exempted
11 security.

12 “(10) SUITABILITY STANDARDS.—

13 “(A) RULES.—

14 “(i) IN GENERAL.—Not later than
15 270 days after the date of enactment of
16 this subsection, a registered futures asso-
17 ciation shall adopt rules requiring a fu-
18 tures commission merchant, a commodity
19 trading advisor, or an introducing broker
20 that recommends to any customer the pur-
21 chase or sale of a designated future on a
22 security to ascertain through reasonable
23 due diligence that the recommendation is
24 suitable for that customer in light of the

1 customer's financial position and trading
2 goals.

3 “(ii) PROCEDURE.—Before adopting a
4 rule under clause (i), a registered futures
5 association shall—

6 “(I) consult with the Commission
7 and the Securities and Exchange
8 Commission; and

9 “(II) submit the proposed rule to
10 the Commission for approval in ac-
11 cordance with section 17(j).

12 “(iii) TIMING.—If the Commission
13 fails to disapprove a proposed rule within
14 90 days after the date on which the rule
15 is submitted for approval, the rule shall be-
16 come effective on the day after that date.

17 “(B) COMPLIANCE.—No futures commis-
18 sion merchant, commodity trading advisor, or
19 introducing broker shall recommend to any cus-
20 tomer the purchase or sale of a designated fu-
21 ture on a security unless the futures commis-
22 sion merchant, commodity advisor, or intro-
23 ducing broker complies with the rules, adopted
24 under subparagraph (A,) of a registered futures

1 association of which such merchant, advisor, or
2 broker is a member.”.

3 (b) SENSE OF THE SENATE.—It is the sense of the
4 Senate that, not later than the date on which the amend-
5 ment made by subsection (a) takes effect, Congress should
6 take such action as is necessary to harmonize—

7 (1) the tax treatment of equity options and des-
8 ignated futures on securities; and

9 (2) the transaction fees for equity options and
10 designated futures on securities.

11 **SEC. 9. EXEMPTED TRANSACTIONS.**

12 Section 2 of the Commodity Exchange Act (7 U.S.C.
13 2, 2a, 3, 4, 4a) (as amended by section 8(a)) is amended
14 by adding at the end the following:

15 “(h) EXEMPTED TRANSACTIONS.—

16 “(1) EXEMPTION.—Except as provided in para-
17 graph (2) and except with respect to a contract,
18 agreement, or transaction in or involving an agricul-
19 tural commodity specified in section 1a(3), nothing
20 in this Act applies to a contract, agreement, or
21 transaction—

22 “(A) that is entered into solely between eli-
23 gible contract participants;

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

1 “(C) except for contract, agreement, or
2 transaction submitted for clearance or settle-
3 ment to a clearinghouse as provided under sec-
4 tion 5b, in which the creditworthiness of any
5 party having an actual or potential obligation
6 under the contract, agreement, or transaction
7 would be a material consideration in entering
8 into or determining the terms of the contract,
9 agreement, or transaction (including pricing,
10 cost, credit enhancement terms).

11 “(2) RESERVATION OF AUTHORITY.—A con-
12 tract, agreement, or transaction described in para-
13 graph (1) shall be subject to —

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

15 “(B) any antifraud regulation promulgated
16 by the Commission under section 4c(b); and

17 “(C) sections 6(c) and 9(a)(2), to the ex-
18 tent that those provisions prohibit manipulation
19 of the market price of any commodity in inter-
20 state commerce or for future delivery.”.

21 **SEC. 10. FINDING AND PURPOSES.**

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

1 **“SEC. 3. FINDING AND PURPOSES.**

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

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

12 “(1) to serve the public interest described in
13 subsection (a) through a system of effective self-reg-
14 ulation of trading facilities, clearing systems, market
15 participants, and market professionals under the
16 oversight of the Commission; and

17 “(2) to authorize the Commission—

18 “(A) to deter and prevent price manipula-
19 tion or any other disruptions to market integ-
20 rity;

21 “(B) to ensure the financial integrity of all
22 transactions subject to this Act and the avoid-
23 ance of systemic risk;

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

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

4 “(ii) is a fictitious sale; or

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

8 **SEC. 12. DESIGNATION OF BOARDS OF TRADE AS CON-**
9 **TRACT MARKETS.**

10 The Commodity Exchange Act is amended—

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

13 (2) by striking sections 5 and 5a (7 U.S.C. 7,
14 7a) and inserting the following:

15 **“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CON-**
16 **TRACT MARKETS.**

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

22 “(b) CRITERIA FOR DESIGNATION.—

23 “(1) IN GENERAL.—To be designated as a con-
24 tract market, the board of trade shall demonstrate

1 to the Commission that the board of trade meets the
2 criteria specified in this subsection.

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

10 “(3) FAIR AND EQUITABLE TRADING.—The
11 board of trade shall establish and enforce trading
12 rules to ensure fair and equitable trading through
13 the facilities of the contract market, and the capac-
14 ity to detect, investigate, and discipline any person
15 that violates the rules.

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

18 “(A) establish and enforce rules defining,
19 or specifications detailing, the manner of oper-
20 ation of the trade execution facility maintained
21 by the board of trade, including rules or speci-
22 fications describing the operation of any elec-
23 tronic matching platform; and

1 “(B) demonstrate that the trading facility
2 operates in accordance with the rules or speci-
3 fications.

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

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

17 “(7) PUBLIC ACCESS.—The board of trade shall
18 provide the public with access to the rules, regula-
19 tions, and contract specifications of the board of
20 trade.

21 “(8) ABILITY TO OBTAIN INFORMATION.—The
22 board of trade shall establish and enforce rules that
23 will allow the board of trade to obtain any necessary
24 information to perform any of the functions de-
25 scribed in this subsection, including the capacity to

1 carry out such international information-sharing
2 agreements as the Commission may require.

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

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

8 “(1) IN GENERAL.—To maintain the designa-
9 tion of a board of trade as a contract market, a
10 board of trade shall comply with the core principles
11 specified in this subsection.

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

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

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

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

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

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

14 “(B) suspend or curtail trading in any con-
15 tract; and

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

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

22 “(A) the terms and conditions of the con-
23 tracts of the contract market; and

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

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

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

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

21 “(11) FINANCIAL INTEGRITY OF CONTRACTS.—
22 The board of trade shall establish and enforce rules
23 providing for the financial integrity of any contracts
24 traded on the contract market, including rules to en-
25 sure the financial integrity of any futures commis-

1 sion merchants and introducing brokers and the pro-
2 tection of customer funds.

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

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

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

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

1 “(16) COMPOSITION OF BOARDS OF MUTUALLY
2 OWNED CONTRACT MARKETS.—In the case of a mu-
3 tually owned contract market, the board of trade
4 shall provide for meaningful representation on its
5 governing board of the diversity of interests that
6 trade on that contract market.

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

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

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

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

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

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

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

7 **SEC. 13. DERIVATIVES TRANSACTION EXECUTION FACILI-**
8 **TIES.**

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

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

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

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

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

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

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

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

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

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

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

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

17 “(D)(i) the underlying commodity is not an
18 agricultural commodity specified in section
19 1a(3); and

20 “(ii) trading access to the derivatives
21 transaction execution facility is limited to eligi-
22 ble commercial participants trading for their
23 own account; or

24 “(E) the Commission determines, based on
25 the market characteristics, surveillance history,

1 self-regulatory record, and capacity of the facil-
2 ity that trading in the futures contract is un-
3 likely to be susceptible to manipulation.

4 “(3) ELIGIBLE TRADERS.—To trade on a reg-
5 istered derivatives transaction execution facility, a
6 person shall—

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

9 “(B)(i) be an eligible contract participant;
10 or

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

13 “(I) is registered with the Commis-
14 sion;

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

17 “(III) is a clearing member of a de-
18 rivatives clearing organization; and

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

21 “(4) TRADING BY CONTRACT MARKETS.—A
22 board of trade that is designated as a contract mar-
23 ket shall, to the extent that the contract market also
24 operates a registered derivatives transaction execu-
25 tion facility—

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

6 “(B) if the board of trade uses the same
7 electronic trading system for trading on the
8 contract market and derivatives transaction
9 execution facility of the board of trade, identify
10 whether the electronic trading is taking place
11 on the contract market or the derivatives trans-
12 action execution facility.

13 “(c) CRITERIA FOR REGISTRATION.—

14 “(1) IN GENERAL.—To be registered as a reg-
15 istered derivatives transaction execution facility, the
16 board of trade shall demonstrate to the Commission
17 that the board of trade meets the criteria specified
18 in this paragraph.

19 “(2) DETERRENCE OF ABUSES.—The board of
20 trade shall establish and enforce trading rules that
21 will deter abuses and has the capacity to detect, in-
22 vestigate, and enforce those rules, including means
23 to—

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

3 or

4 “(B) use technological means to—

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

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

10 “(3) TRADING PROCEDURES.—The board of
11 trade shall establish and enforce rules or terms and
12 conditions defining, or specifications detailing, trad-
13 ing procedures to be used in entering and executing
14 orders traded on the facilities of the board of trade.

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

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

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

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

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

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

20 “(A) contract terms and conditions;

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

23 “(C) financial integrity protections; and

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

1 “(5) DAILY PUBLICATION OF TRADING INFOR-
2 MATION.—The board of trade shall make public
3 daily information on settlement prices, volume, open
4 interest, and opening and closing ranges for actively
5 traded contracts on the derivatives transaction exe-
6 cution facility.

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

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

19 “(8) RECORDKEEPING.—The board of trade
20 shall—

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

1 “(B) make the records readily available
2 during at least the first 2 years of the 5-year
3 period and provide the records to the Commis-
4 sion at the expense of the person required to
5 maintain the records; and

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

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

12 “(A) adopting any rule or taking any ac-
13 tion that results in any unreasonable restraint
14 of trade; or

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

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

21 “(1) IN GENERAL.—A registered derivatives
22 transaction execution facility may by rule allow a
23 broker-dealer, depository institution, or institution of
24 the Farm Credit System that meets the require-
25 ments of paragraph (2) to—

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

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

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

10 “(A) a broker-dealer be in good standing
11 with the Securities and Exchange Commission
12 and a depository institution or institution of the
13 Farm Credit System be in good standing, as de-
14 termined by the appropriate Federal banking
15 agency (as defined in section 3 of the Federal
16 Deposit Insurance Act (12 U.S.C. 1813)) (in-
17 cluding the Farm Credit Administration), as
18 applicable; and

19 “(B) if a broker-dealer, depository institu-
20 tion, or institution of the Farm Credit System
21 carries or holds customer accounts or funds for
22 transactions on the derivatives transaction exe-
23 cution facility for more than 1 business day, the
24 broker-dealer, depository institution, or institu-
25 tion of the Farm Credit System is registered as

1 a futures commission merchant and is a mem-
2 ber of a registered futures association.

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

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

21 “(g) ELECTION TO TRADE EXCLUDED TRANS-
22 ACTIONS.—

23 “(1) IN GENERAL.—A board of trade that is a
24 registered derivatives transaction execution facility
25 may trade on the facility any agreements, contracts,

1 or transactions that are excluded from this Act
2 under subsection (c) or (d) of section 2.

3 “(2) **EXCLUSIVE JURISDICTION OF THE COM-**
4 **MISSION.**—The Commission shall have exclusive ju-
5 risdiction over agreements, contracts, or transactions
6 described in paragraph (1) to the extent that the
7 agreements, contracts, or transactions are traded on
8 a derivatives transaction execution facility.”.

9 **SEC. 14. DERIVATIVES CLEARING ORGANIZATIONS.**

10 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
11 is amended by inserting after section 5a (as added by sec-
12 tion 13) the following:

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

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

21 “(b) **EXCLUSION OF DERIVATIVES CLEARING ORGA-**
22 **NIZATIONS SUBJECT TO OTHER REGULATORY AUTHORI-**
23 **TIES.**—A derivatives clearing organization shall not be re-
24 quired to register with the Commission, and the Commis-
25 sion shall have no jurisdiction with respect to the deriva-

1 tives clearing organization, if the derivatives clearing
2 organization—

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

6 “(B) is subject to the supervisory jurisdiction of
7 a Federal banking agency (as defined in section 3 of
8 the Federal Deposit Insurance Act (12 U.S.C.
9 1813)) or the National Credit Union Administration;
10 or

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

19 “(2) does not clear a contract of sale for future
20 delivery, option on a contract of sale for future deliv-
21 ery, or option on a commodity that is not a security
22 (unless the contract or option is excluded under sub-
23 section (c) or (d) of section 2).

24 “(c) VOLUNTARY REGISTRATION.—A derivatives
25 clearing organization that is exempt from registration

1 under subsection (b) may register with the Commission
2 as a derivatives clearing organization.

3 “(d) REGISTRATION OF DERIVATIVES CLEARING OR-
4 GANIZATIONS.—

5 “(1) APPLICATION.—A person desiring to reg-
6 ister as a derivatives clearing organization shall sub-
7 mit to the Commission an application in such form
8 and containing such information as the Commission
9 may require for the purpose of making the deter-
10 minations required for approval under paragraph
11 (2).

12 “(2) CORE PRINCIPLES.—

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

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

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

3 “(i) appropriate admission and con-
4 tinuing eligibility standards (including ap-
5 propriate minimum financial requirements)
6 for members of and participants in the or-
7 ganization; and

8 “(ii) appropriate standards for deter-
9 mining eligibility of agreements, contracts,
10 or transactions submitted to the applicant.

11 “(D) RISK MANAGEMENT.—The applicant
12 shall have the ability to manage the risks asso-
13 ciated with discharging the responsibilities of a
14 derivatives clearing organization through the
15 use of appropriate tools and procedures.

16 “(E) SETTLEMENT PROCEDURES.—The
17 applicant shall have the ability to—

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

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

23 “(iii) comply with the terms and con-
24 ditions of any permitted netting or offset

1 arrangements with other clearing organiza-
2 tions.

3 “(F) TREATMENT OF FUNDS.—The appli-
4 cant shall have standards and procedures de-
5 signed to protect and ensure the safety of mem-
6 ber and participant funds.

7 “(G) DEFAULT RULES AND PROCE-
8 DURES.—The applicant shall have rules and
9 procedures designed to allow for efficient, fair,
10 and safe management of events when members
11 or participants become insolvent or otherwise
12 default on their obligations to the derivatives
13 clearing organization.

14 “(H) RULE ENFORCEMENT.—The appli-
15 cant shall—

16 “(i) maintain adequate arrangements
17 and resources for the effective monitoring
18 and enforcement of compliance with rules
19 of the applicant and for resolution of dis-
20 putes; and

21 “(ii) have the authority and ability to
22 discipline, limit, suspend, or terminate a
23 member’s or participant’s activities for vio-
24 lations of rules of the applicant.

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

3 “(i) has established and will maintain
4 a program of oversight and risk analysis to
5 ensure that the automated systems of the
6 applicant function properly and have ade-
7 quate capacity and security; and

8 “(ii) has established and will maintain
9 emergency procedures and a plan for dis-
10 aster recovery, and will periodically test
11 backup facilities sufficient to ensure daily
12 processing, clearing, and settlement of
13 transactions.

14 “(J) REPORTING.—The applicant shall
15 provide to the Commission all information nec-
16 essary for the Commission to conduct the over-
17 sight function of the applicant with respect to
18 the activities of the derivatives clearing organi-
19 zation.

20 “(K) RECORDKEEPING.—The applicant
21 shall—

22 “(i) maintain full records of all activi-
23 ties related to the business of the applicant
24 as a derivatives clearing organization in a

1 form and manner acceptable to the Com-
2 mission for a period of at least 5 years;

3 “(ii) make the records readily avail-
4 able during at least the first 2 years of the
5 5-year period and provide the records to
6 the Commission at the expense of the per-
7 son required to maintain the records; and

8 “(iii) keep the records open to inspec-
9 tion by any representative of the Commis-
10 sion or the Department of Justice.

11 “(L) PUBLIC INFORMATION.—The appli-
12 cant shall make information concerning the
13 rules and operating procedures governing the
14 clearing and settlement systems (including de-
15 fault procedures) available to market partici-
16 pants.

17 “(M) INFORMATION SHARING.—The appli-
18 cant shall—

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

23 “(ii) use relevant information obtained
24 from the agreements in carrying out the

1 clearing organization's risk management
2 program.

3 “(N) ANTITRUST CONSIDERATIONS.—Un-
4 less appropriate to achieve the purposes of this
5 Act, the derivatives clearing organization shall
6 avoid—

7 “(i) adopting any rule or taking any
8 action that results in any unreasonable re-
9 straint of trade; or

10 “(ii) imposing any material anti-
11 competitive burden on trading on the con-
12 tract market.

13 “(3) ORDERS CONCERNING COMPETITION.—A
14 derivatives clearing organization may request the
15 Commission to issue an order concerning whether a
16 rule or practice of the applicant is the least anti-
17 competitive means of achieving the objectives, pur-
18 poses, and policies of this Act.

19 “(e) EXISTING DERIVATIVES CLEARING ORGANIZA-
20 TIONS.—A derivatives clearing organization shall be
21 deemed to be registered under this section to the extent
22 that—

23 “(1) the derivatives clearing organization clears
24 agreements, contracts, or transactions for a board of
25 trade that has been designated by the Commission

1 as a contract market for such agreements, contracts,
2 or transactions before the date of enactment of this
3 section; and

4 “(2) the Commission has reviewed and ap-
5 proved the rules of the derivatives clearing organiza-
6 tion before that date.

7 “(f) APPOINTMENT OF TRUSTEE.—

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

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

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

24 “(B) if the court takes jurisdiction under
25 subparagraph (A), the court shall appoint the

1 Commission, or a person designated by the
2 Commission, as trustee with power to take pos-
3 session and continue to operate or terminate
4 the operations of the derivatives clearing orga-
5 nization in an orderly manner for the protection
6 of participants, subject to such terms and con-
7 ditions as the court may prescribe.

8 “(g) LINKING OF REGULATED CLEARING FACILI-
9 TIES.—

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

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

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

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

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

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

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

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

18 “(3) EFFECT OF INTERPRETATION.—An inter-
19 pretation issued under paragraph (1) shall not pro-
20 vide the exclusive means for complying with the core
21 principles.

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

24 “(1) IN GENERAL.—A registered entity may
25 comply with any applicable core principle through

1 delegation of any relevant function to a registered
2 futures association or another registered entity.

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

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

8 “(1) IN GENERAL.—Subject to paragraph (2), a
9 registered entity may elect to list for trading any
10 new contract or other instrument, or may elect to
11 approve and implement any new rule or rule amend-
12 ment, by providing to the Commission (and the Sec-
13 retary of the Treasury, in the case of a contract,
14 rule, or rule amendment that relates to or affects a
15 government security) a written certification that the
16 new contract, new rule, or rule amendment complies
17 with this Act (including regulations under this Act).

18 “(2) PRIOR APPROVAL.—

19 “(A) IN GENERAL.—A registered entity
20 may request that the Commission grant prior
21 approval to any new contract or other instru-
22 ment, new rule, or rule amendment.

23 “(B) DEADLINE.—If prior approval is re-
24 quested under subparagraph (A), the Commis-
25 sion shall take final action on the request not

1 later than 90 days after submission of the re-
2 quest, unless the person submitting the request
3 agrees to an extension of the time limitation es-
4 tablished under this subparagraph.

5 “(C) AGRICULTURAL CONTRACTS.—Not-
6 withstanding any other provision of this section,
7 a designated contract market shall submit for
8 prior approval by the Commission each rule
9 amendment that materially changes a term or
10 condition in any contract of sale of a com-
11 modity for future delivery or related option
12 traded through the facilities of the designated
13 contract market, if—

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

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

20 “(3) APPROVAL.—The Commission shall ap-
21 prove any such new contract or instrument, new
22 rule, or rule amendment unless the Commission
23 finds that the new contract or instrument, new rule,
24 or rule amendment would violate this Act.

25 “(d) VIOLATION OF CORE PRINCIPLES.—

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

6 “(A) notify the registered entity of the de-
7 termination; and

8 “(B) afford the registered entity an oppor-
9 tunity to make appropriate changes to bring the
10 registered entity into compliance with the core
11 principles.

12 “(2) FAILURE TO MAKE CHANGES.—If, not
13 later than 30 days after receiving a notification
14 under paragraph (1), a registered entity fails to
15 make changes that, in the opinion of the Commis-
16 sion, are necessary to accomplish the objectives of
17 the core principles, the Commission may take fur-
18 ther action in accordance with this Act.

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

1 “(f) CORE PRINCIPLES FOR INTERMEDIARIES.—The
2 Commission shall—

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

7 “(2) to the extent appropriate and consistent
8 with this Act, administer those provisions in a man-
9 ner that is consistent with core principles and inter-
10 pretations of acceptable business practices for inter-
11 mediaries as described in this section.

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

13 “(1) prohibits an exchange of—

14 “(A) futures in connection with a cash
15 commodity transaction;

16 “(B) futures for cash commodities;

17 “(C) transfer trades or office trades; or

18 “(D) futures for swaps; or

19 “(2) prohibits a futures commission merchant,
20 acting as a principal or agent, from entering into or
21 confirming the execution of a contract for the pur-
22 chase or sale of a commodity for future delivery if
23 the contract is reported, recorded, and cleared in ac-
24 cordance with the rules of the contract market.”.

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

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

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

6 “(a) IN GENERAL.—Except as otherwise provided in
7 this section, a contract of sale (or option on such a con-
8 tract) of a commodity for future delivery traded on or
9 through the facilities of an exempt board of trade shall
10 be exempt from all provisions of this Act, other than sec-
11 tion 2(g).

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

17 “(1) that have—

18 “(A) a nearly inexhaustible deliverable sup-
19 ply;

20 “(B) a deliverable supply that is suffi-
21 ciently large, and a cash market sufficiently liq-
22 uid, to render any contract traded on the com-
23 modity highly unlikely to be susceptible to ma-
24 nipulation; or

25 “(C) no cash market;

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

3 “(A) are eligible contract participants at
4 the time at which the persons enter into the
5 contract; or

6 “(B) enter into the contract or option for
7 the benefit only of eligible contract participants;
8 and

9 “(3) that are not contracts of sale (or options
10 on the contract) for future delivery of any security,
11 including any group or index of securities or any in-
12 terest in, or interest that is based on the value of,
13 any security.

14 “(c) **ANTIMANIPULATION REQUIREMENTS.**—A party
15 to a futures contract or related option that is traded on
16 an exempt board of trade shall be subject to sections 4b,
17 4o, 6(c), and 9(a)(2), and the Commission shall enforce
18 those provisions with respect to any such trading.

19 “(d) **PRICE DISCOVERY.**—If the Commission finds
20 that an exempt board of trade is a significant source of
21 price discovery for any underlying commodity in any
22 transaction traded on or through the facilities of the board
23 of trade, the board of trade shall disseminate publicly on
24 a daily basis trading volume, opening and closing price

1 ranges, open interest, and other trading data as appro-
2 priate to the market.

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

9 “(f) SUBSIDIARIES.—A board of trade that is des-
10 igned as a contract market or registered as a derivatives
11 transaction execution facility may operate an exempt
12 board of trade by establishing a separate subsidiary or
13 other legal entity and otherwise satisfying the require-
14 ments of this section.”.

15 **SEC. 17. SUSPENSION OR REVOCATION OF DESIGNATION**
16 **AS CONTRACT MARKET.**

17 Section 5e of the Commodity Exchange Act (7 U.S.C.
18 7b) (as redesignated by section 11(1)) is amended to read
19 as follows:

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

22 “The failure of a registered entity to comply with any
23 provision of this Act, or any regulation or order of the
24 Commission under this Act, shall be cause for the suspen-
25 sion of the registered entity for a period not to exceed 180

1 days, or revocation of designation as a registered entity
2 in accordance with the procedures and subject to the judi-
3 cial review provided in section 6(b).”.

4 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

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

8 **SEC. 19. PREEMPTION.**

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

12 “(2) the application of any Federal or State law
13 (including any regulation) to an agreement, contract,
14 or transaction in or involving any commodity, prod-
15 uct, right, service, or interest, except that this Act
16 shall supersede and preempt—

17 “(A) any Federal or State law (including
18 any regulation), in the case of any such agree-
19 ment, contract, or transaction—

20 “(i) that is conducted on or subject to
21 the rules of a registered entity or exempt
22 board of trade;

23 “(ii) that is conducted on or subject
24 to the rules of any board of trade, ex-
25 change, or market located outside the

1 United States, or any territory or posses-
2 sion of the United States (in accordance
3 with any terms or conditions specified by
4 the Commission by regulation); and

5 “(iii) that is subject to regulation by
6 the Commission under section 4c or 19;
7 and

8 “(B) any State or local law that prohibits
9 or regulates gaming or the operation of bucket
10 shops (other than antifraud provisions of gen-
11 eral applicability) in the case of—

12 “(i) an excluded trading facility under
13 section 2(e); or

14 “(ii) an agreement, contract, or trans-
15 action that—

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

18 “(II) is covered by the terms of
19 an exemption granted by the Commis-
20 sion under section 4(c) (regardless of
21 whether any such agreement, con-
22 tract, or transaction is otherwise sub-
23 ject to this Act); or”.

1 **SEC. 20. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
2 **STITUTIONAL CUSTOMERS.**

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

6 “(g) PREDISPUTE RESOLUTION AGREEMENTS FOR
7 INSTITUTIONAL CUSTOMERS.—Nothing in this Act pro-
8 hibits a registered futures commission merchant from re-
9 quiring a customer that is an eligible contract participant,
10 as a condition to the commission merchant’s conducting
11 a transaction for the customer, to enter into an
12 agreement—

13 “(1) waiving the right to file a claim under this
14 section; and

15 “(2) otherwise agreeing to submit any claim the
16 customer may have against the futures commission
17 merchant to binding arbitration pursuant to the
18 rules and procedures of a registered entity or reg-
19 istered futures association or any other forum au-
20 thorized to hear such claims.”.

21 **SEC. 21. CONSIDERATION OF COSTS AND BENEFITS AND**
22 **ANTITRUST LAWS.**

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

1 **“SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND**
2 **ANTITRUST LAWS.**

3 “(a) COSTS AND BENEFITS.—

4 “(1) IN GENERAL.—Before promulgating a reg-
5 ulation under this Act or issuing an order (except as
6 provided in paragraph (3)), the Commission shall
7 consider the costs and benefits of the action of the
8 Commission.

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

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

14 “(B) considerations of the efficiency, com-
15 petitiveness, and financial integrity of futures
16 markets;

17 “(C) considerations of price discovery;

18 “(D) considerations of sound risk manage-
19 ment practices; and

20 “(E) other public interest considerations.

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

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

26 “(B) An emergency action.

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

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

4 **SEC. 22. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
5 **COUNTERPARTIES.**

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

9 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
10 GIBLE COUNTERPARTIES.—No agreement, contract,
11 or transaction between eligible contract participants
12 shall be void, voidable, or unenforceable, and no
13 such eligible contract participant shall be entitled to
14 rescind, or recover any payment made with respect
15 to, such an agreement, contract, or transaction,
16 under this section based solely on the failure of the
17 agreement, contract, or transaction to comply with
18 the terms or conditions of an exemption or exclusion
19 from any provision of this Act or regulations of the
20 Commission.”.

21 **SEC. 23. LEGAL CERTAINTY FOR SWAP AGREEMENTS.**

22 (a) LEGAL CERTAINTY.—

23 (1) IN GENERAL.—Nothing in this Act or any
24 amendment made by this Act authorizes the Securi-
25 ties and Exchange Commission to regulate, super-

1 vise, or otherwise subject to oversight any activity,
2 agreement, instrument, transaction, or product over
3 which the Securities and Exchange Commission is
4 not granted specific jurisdiction under this Act, any
5 amendment made by this Act, or any other law.

6 (2) SWAP AGREEMENTS.—Nothing in this Act
7 or any amendment made by this Act grants the
8 Commodity Futures Trading Commission or the Se-
9 curities and Exchange Commission any jurisdiction
10 over any swap agreement, except that a registered
11 entity may voluntarily submit to the jurisdiction of
12 the Commodities Futures Trading Commission
13 under section 12 or 13 of the Commodities Ex-
14 change Act (7 U.S.C. 16, 13c).

15 (b) REPORT ON SWAP AGREEMENTS.—Not later than
16 the date that is 1 year after the date of enactment of this
17 Act, the Federal banking agencies (as defined in section
18 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)),
19 the Department of the Treasury, the Commodity Futures
20 Trading Commission, and the Securities and Exchange
21 Commission shall submit to the Committee on Agriculture,
22 Nutrition, and Forestry and the Committee on Banking,
23 Housing, and Urban Affairs of the Senate, and the Com-
24 mittee on Agriculture and the Committee on Banking and

1 Financial Services of the House of Representatives a re-
2 port on—

3 (1) potential issues of legal uncertainty under
4 the securities laws that affect swap agreements; and

5 (2) the extent to which exclusions or exemptions
6 from the Federal securities laws are warranted to
7 enhance legal certainty for swap agreements.

8 **SEC. 24. COMMISSION OVERSIGHT; DEFICIENCY ORDERS.**

9 Section 8e of the Commodity Exchange Act (7 U.S.C.
10 12e) is repealed.

11 **SEC. 25. TECHNICAL AND CONFORMING AMENDMENTS.**

12 (a) COMMODITY EXCHANGE ACT.—

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

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

20 (B) in paragraph (25)—

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

1 (ii) by striking “contract market”
2 each place it appears and inserting “reg-
3 istered entity”.

4 (2) Section 2 of the Commodity Exchange Act
5 (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

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

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

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

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

15 **“(A) IN GENERAL.—The”;** and

16 **(B) in subsection (a)—**

17 **(i) in paragraph (1) (as amended by**
18 **subparagraph (A))—**

19 **(I) by striking subparagraph (B);**

20 **(II) by striking “subparagraph**

21 **(B) of this subparagraph” and insert-**
22 **ing “subsection (g)”;**

23 **(III) by striking “contract mar-**
24 **ket designated pursuant to section 5**
25 **of this Act” and inserting “contract**

1 market designated or derivatives
2 transaction execution facility reg-
3 istered pursuant to section 5 or 5a”;
4 (IV) by striking clause (ii); and
5 (V) in clause (iii), by striking
6 “(iii) The” and inserting the fol-
7 lowing:
8 “(B) LIABILITY OF PRINCIPAL FOR ACT OF
9 AGENT.—The”;
10 (ii) in paragraph (7), by striking
11 “contract market” and inserting “reg-
12 istered entity”; and
13 (iii) in paragraph (8)(B)(ii)—
14 (I) in the first sentence, by strik-
15 ing “designation as a contract mar-
16 ket” and inserting “designation or
17 registration as a contract market or
18 derivatives transaction execution facil-
19 ity”;
20 (II) in the second sentence, by
21 striking “designate a board of trade
22 as a contract market” and inserting
23 “designate or register a board of
24 trade as a contract market or deriva-
25 tives transaction execution facility”;

1 (III) in the fourth sentence—
2 (aa) by striking “desig-
3 nating, or refusing, suspending,
4 or revoking the designation of, a
5 board of trade as a contract mar-
6 ket involving transactions for fu-
7 ture delivery referred to in this
8 clause or in considering possible
9 emergency action under section
10 8a(9) of this Act” and inserting
11 “designating, registering, or re-
12 fusing, suspending, or revoking
13 the designation or registration of,
14 a board of trade as a contract
15 market or derivatives transaction
16 execution facility involving trans-
17 actions for future delivery re-
18 ferred to in this clause or in con-
19 sidering any action under this
20 Act (including emergency action
21 under section 8a(9))”; and
22 (bb) by striking “designa-
23 tion, suspension, revocation, or
24 emergency action” and inserting
25 “designation, registration, sus-

1 pension, revocation, or other ac-
2 tion”.

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

5 (A) in subsection (a)—

6 (i) by inserting “exempted by oper-
7 ation of section 5d or unless” after “Un-
8 less”;

9 (ii) in paragraph (1), by striking
10 “designated by the Commission as a ‘con-
11 tract market’ for” and inserting “des-
12 ignated or registered by the Commission as
13 a contract market or derivatives trans-
14 action execution facility for”;

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

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

20 (B) in subsection (c)—

21 (i) in paragraph (1)—

22 (I) by striking “designated as a
23 contract market” and inserting “des-
24 ignated or registered as a contract

1 market or derivatives transaction exe-
2 cution facility”; and

3 (II) by striking “section
4 2(a)(1)(B)” and inserting “section
5 2(g)”;

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

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

11 (A) in subsection (a)—

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

15 (ii) in the second sentence, by insert-
16 ing “or derivatives transaction execution
17 facility” after “contract market”;

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

21 (C) in subsection (e)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (13) The Commodity Exchange Act (as amend-
25 ed by paragraphs (10), (11), and (12)) is amended

1 by redesignating sections 4k through 4p (7 U.S.C.
2 6k through 6p) as sections 4j through 4o, respec-
3 tively.

4 (14) Section 6 of the Commodity Exchange Act
5 (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

6 (A) in subsection (a)—

7 (i) in the first sentence—

8 (I) by striking “board of trade
9 desiring to be designated a ‘contract
10 market’ shall make application to the
11 Commission for such designation” and
12 inserting “person desiring to be des-
13 igned or registered as a registered
14 entity shall make application to the
15 Commission for such designation or
16 registration”;

17 (II) by striking “above condi-
18 tions” and inserting “conditions set
19 forth in this Act”; and

20 (III) by striking “above require-
21 ments” and inserting “the require-
22 ments of this Act”;

23 (ii) in the second sentence, by striking
24 “designation as a contract market within
25 one year” and inserting “designation or

1 registration as a registered entity within
2 180 days”;

3 (iii) in the third sentence—

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

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

8 (iv) in the last sentence, by striking
9 “designate as a ‘contract market’ any
10 board of trade that has made application
11 therefor, such board of trade” and insert-
12 ing “designate or register as a registered
13 entity any person that has made applica-
14 tion therefore, such person”;

15 (B) in subsection (b)—

16 (i) in the first sentence—

17 (I) by striking “designation of
18 any board of trade as a ‘contract mar-
19 ket’ upon” and inserting “designation
20 or registration of any registered entity
21 on”;

22 (II) by striking “board of trade”
23 each place it appears and inserting
24 “registered entity”; and

1 (III) by striking “designation as
2 set forth in section 5 of this Act” and
3 inserting “designation or registration
4 as set forth in sections 5 through 5c”;
5 (ii) in the second sentence—

6 (I) by striking “board of trade”
7 the first place it appears and inserting
8 “registered entity”; and

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

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

15 (C) in subsection (c)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (A) in the first sentence—

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

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

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

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

1 (B) in the second sentence—

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

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

8 (C) in the last sentence—

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

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

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

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

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

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

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

5 (23) Section 9 of the Commodity Exchange Act
6 (7 U.S.C. 13) is amended—

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

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

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

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

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

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

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

25 (A) in subsection (a)—

1 (i) in paragraph (1)—

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

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

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

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

15 (B) in subsection (b)—

16 (i) in paragraph (1)—

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

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

24 (III) by striking “contract mar-
25 ket, clearing organization of a con-

1 tract market, or licensed board of
2 trade” and inserting “registered enti-
3 ty”; and

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

7 (ii) in paragraph (3)—

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

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

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

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

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

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

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

6 **SEC. 26. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Except as provided in subsection
8 (b), this Act takes effect on the date of enactment of this
9 Act.

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