

September 14, 2000

The Honorable James A. Leach  
Chairman  
Committee on Banking and Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

In November 1999, the President's Working Group on Financial Markets forwarded to the Congress its report entitled *Over-the-Counter Derivatives Markets and the Commodity Exchange Act*. The report sets forth a series of unanimous recommendations designed to reform the legal and regulatory framework affecting the OTC derivatives market and create much-needed legal certainty for OTC derivatives.

Along with legal certainty, each of the commodity futures modernization bills currently before the Congress addresses two additional topics: regulatory relief for exchange-traded futures and repeal of the prohibition on the trading of single stock futures. The Working Group recognized the need for the CFTC, consistent with the public interest, to be able to provide appropriate regulatory relief for products traded on futures exchanges.

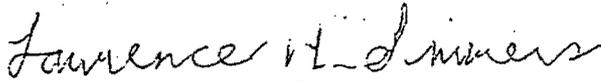
The Working Group also recommended that the Commodity Futures Trading Commission and the Securities and Exchange Commission work together to determine whether the trading of single stock futures should be permitted and, if so, under what conditions. We are pleased to enclose the agreement reached between the CFTC and SEC to permit the trading of single-stock futures and narrow-based stock indices.

Now that the CFTC and SEC have proffered a plan for the introduction of single stock futures, we urge the Congress to incorporate this plan and to move expeditiously to pass legislation implementing the Working Group's carefully considered recommendations on OTC derivatives during this legislative session.

Given the short legislative schedule, it is now important to focus on achieving legal certainty for OTC derivatives under the Commodity Exchange Act consistent with the unanimous recommendations of the Working Group. Unless our laws and regulations relating to OTC derivatives are modernized, we run the risk that innovation will be stifled, depriving the American economy of the benefits that the derivatives markets can provide, and hampering the efforts of our financial markets and businesses to compete globally.

We look forward to continuing to work with you to ensure the enactment of this important legislation during this Congress.

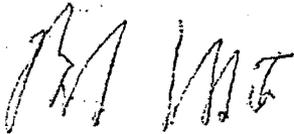
Sincerely,



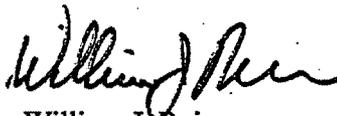
Lawrence H. Summers  
Secretary  
Department of the Treasury



Alan Greenspan  
Chairman  
Board of Governors of the Federal Reserve



Arthur Levitt  
Chairman  
Securities and Exchange Commission



William J. Rainer  
Chairman  
Commodity Futures Trading Commission

The Honorable James A. Leach  
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2129

The Honorable John J. LaFalce  
Ranking Democrat  
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U.S. House of Representatives  
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2310

The Honorable Tom Bliley  
Chairman  
Committee on Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

2125R

The Honorable John D. Dingell  
Ranking Democrat  
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2328

The Honorable Michael G. Oxley  
Chairman  
Subcommittee on Finance and Hazardous Materials  
Committee on Commerce  
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2125R

The Honorable Edolphus Towns  
Ranking Democrat  
Subcommittee on Finance and Hazardous Materials  
Committee on Commerce  
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Washington, D.C. 20515

2232

The Honorable Larry Combest  
Chairman  
Committee on Agriculture  
U.S. House of Representatives  
Washington, D.C. 20515

1301L

The Honorable Charles W. Stenholm  
Ranking Democrat  
Committee on Agriculture  
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1211

The Honorable Thomas W. Ewing  
Chairman  
Subcommittee on Risk Management, Research  
and Specialty Crops  
Committee on Agriculture  
U.S. House of Representatives  
Washington, D.C. 20515

1301L

The Honorable Gary A. Condit  
Ranking Democrat  
Subcommittee on Risk Management, Research  
and Specialty Crops  
Committee on Agriculture  
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2234

The Honorable Phil Gramm  
Chairman  
Committee on Banking, Housing, and  
Urban Affairs  
United States Senate  
Washington, D.C. 20510

SD-534

The Honorable Paul S. Sarbanes  
Ranking Democrat  
Committee on Banking, Housing, and  
Urban Affairs  
United States Senate  
Washington, D.C. 20510

SH-309

The Honorable Richard G. Lugar  
Chairman  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
Washington, D.C. 20510

SR-328A

The Honorable Tom Harkin  
Ranking Democrat  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
Washington, D.C. 20510

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## Summary of SEC/CFTC Agreement

- Under the framework, the SEC and the CFTC would jointly regulate the market for single stock futures and narrow-based stock index futures. Products would be free to trade on existing and yet to be established commodities and securities exchanges. Moreover, broker-dealers and futures commission merchants could both trade these products.
- Trading of security futures would not be permitted until one year from enactment. Options on futures could be permitted three years after enactment following the SEC and CFTC jointly determining whether to permit such trading, and jointly studying the framework needed for such options.

### Joint Regulation

- *Define "Security Futures" as Securities Under the Securities Laws:* The legislative changes proposed under this framework start with a simple premise: single stock futures and narrow-based stock index futures (*i.e.*, security futures) would be statutorily defined as securities. Which indexes are "narrow-based" would be determined by an objective test. From the SEC's perspective, defining these products as securities would trigger the application of key provisions in the securities laws and the regulations thereunder. The proposed legislation then limits the applicability of any provisions that would be duplicative of provisions in the CEA.
- *Recognize "Security Futures" as Futures Covered by the CEA:* The CEA would be modified to make clear that the CFTC had jurisdiction, but not exclusive jurisdiction, over security futures. The legislation would also limit the application of provisions duplicative of those in the securities laws.
- *Require Markets and Intermediaries Trading "Security Futures" to Register:* Next, the framework would require markets and intermediaries effecting transactions in these securities to register with the SEC and the CFTC. However, expedited "notice" registration with the SEC would be available to futures markets and intermediaries whose sole securities business consists of these security futures. In addition, such individuals and entities would be exempted from securities law requirements that were duplicative of futures law requirements applicable to such registrants. For example, notice exchange registrants would be exempt from SEC review of exchange fees.
- Similar "notice" registration would be available for securities exchanges and broker-dealers whose only futures business was in security futures. The CEA would be amended to eliminate unnecessary, duplicative regulation of broker-dealers and securities exchanges.

- *Exemptions for Floor Brokers and Traders:* Certain exchange floor brokers and traders would only have to register with the SEC or CFTC and would not be required to file notice registrations with the other agency.
- While both agencies would have enforcement and examination authority, it would be clear that the CFTC is the lead regulator for futures exchanges and futures commission merchants and that the SEC is the lead regulator for securities broker-dealers and markets. Consultation generally would be required when examinations or enforcement actions were undertaken.

#### Promote Competition, Market Integrity, and Customer Protection

- The framework incorporates several provisions aimed at promoting competition in and among security futures markets, maintaining market integrity, and protecting customers.
- *Linked and Coordinated Clearing:* The framework requires linked and coordinated clearing that should encourage listing of the same security future on multiple markets. Implementation of this requirement is delayed until the later of: (i) two years; or (ii) the point in time (as measured by an objective test) when a substantial market exists for such products. This objective test is based on a comparison between the number of shares underlying transactions in single stock futures to the number of shares underlying transactions in equity options.
- *Margin:* Moreover, margin levels, listing standards, and other key trading practices would be jointly supervised by the SEC and CFTC.
- At the outset, margin levels for security futures products could not be lower than comparable options margin levels, although the levels may be higher than comparable options levels where the futures markets margin systems require it. The SEC and CFTC jointly could issue regulations to establish margin requirements, including the establishment of margin levels and use of collateral for security futures products. If an exchange chose to raise margin levels, such change could be filed pursuant to an expedited rule filing process. Other changes related to margin would be published for comment and reviewed by the SEC.
- *Customer Protection:* Dual registrants will be subject to the customer protection principles of the futures and securities worlds. A notice registrant's primary regulator and self-regulatory organization will provide initial supervision of its customer protection activities. For example, the National Futures Association and the futures exchanges would be responsible for ensuring compliance with the securities laws applicable to an FCM that is registered with the SEC pursuant to the "notice" registration process. The SEC would have jurisdiction over the NFA by designating the NFA as a special purpose national securities association under section 15A of the Exchange Act. Section 15A would list certain requirements for the NFA in conducting its new role, provide for limited review of NFA rules

for security futures, and require that appeals from NFA enforcement actions related to the securities laws be heard by the SEC. In its new role, the NFA would have to promulgate suitability rules.

#### Tax Treatment and Fees

- *Tax Treatment:* The bill requires that federal income tax treatment for equity options be equivalent to that for security futures products in order for security futures products to trade beyond a certain date. Absent tax equivalency by January 2003, security futures products could begin trading at such time. However, if equivalent treatment were still not achieved in the subsequent two years (by December 31, 2004), the market in such products would be wound down in an orderly fashion prescribed by the statute until tax parity is achieved. The Secretary of the Treasury will certify whether tax equivalency is achieved.
- *Transaction Fees:* Section 31 fees would not apply to transactions in security futures products.

#### Trading of Broad-Based Index Futures

- As noted above, the proposed legislation provides an objective test of whether an index is "narrow-based." The test is based on the number and weighting of the securities in the index rather than a subjective test that requires both the SEC and the CFTC to evaluate such factors as the index's reflection of a substantial segment of the market for all publicly traded equity or debt securities.
- More specifically, an index is generally narrow-based if:
  - It has 9 or fewer component securities;
  - One security comprises more than 30% of the index's weighting;
  - The 5 highest weighted component securities in the aggregate comprise more than 60% of the index's weighting; or
  - Any one or combination of securities, in the aggregate, has a dollar value of average daily trading volume of less than \$50 million (or in the case of an index with 15 or more component securities, \$30 million) and has an aggregate index weight in excess of 25%.
- However, an index that meets one of the above criteria will *not* be narrow-based, if:
  - It has at least 9 component securities;
  - No component security comprises more than 30% of the index's weighting; and
  - Each component security is registered pursuant to section 12 of the Exchange Act; is one of the 750 securities with the largest market capitalization; and is one of the 675 securities with the largest dollar value of average daily trading volume.

This test is meant to identify indexes that only include significant securities.

- In establishing an objective test for determining whether an index is “narrow-based,” the bill eliminates prior SEC authority to veto a CFTC determination that an index is “broad-based.” However, if the CFTC determines that an index might be a security surrogate, even if it is not “narrow-based” under the numerical test, the CFTC can designate a future on such an index for regulatory treatment as a security futures product subject to the securities laws and sections of the CEA applicable to such products.

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### **SECTION BY SECTION ANALYSIS**

#### **TITLE II – SECURITIES ACTS AMENDMENTS**

##### **SUBTITLE A – AMENDMENTS**

###### **Section 201. Definitions under the Securities Exchange Act of 1934.**

Section 201 would amend Section 3 of the Securities Exchange Act of 1934 (“Exchange Act”) to add definitions of the terms “security future,” “security futures product,” and “narrow-based security index.” An objective test based on the number and weighting of the securities in the index determines whether an index falls within the definition of “narrow-based security index.” Section 3 also would be amended to add definitions of the terms “margin,” “margin level,” “level of margin,” “higher margin level,” and “higher level of margin.” In addition, Section 3 would be amended to include the term “security future” in the definitions of the terms “security” and “equity security”. The definitions of “buy” and “sell” would also be amended to include transactions for future delivery for security futures products.

###### **Section 202. Regulatory Relief for Markets Trading Security Futures Products.**

Section 202 would amend Section 6 of the Exchange Act to provide for expedited SEC registration of CFTC designated contract markets that would fall within the statutory definition of the term “exchange” by trading security futures products. These “notice registrant” exchanges would become registered by filing a notice with the SEC. Because notice registrant exchanges would continue to be subject to the Commodity Exchange Act (“CEA”), they would be exempt from all but the core provisions of the federal securities laws applicable to exchanges. Amended Section 6 would include a list of specific Exchange Act provisions from which notice registrants are exempt, but no inference should be drawn that any other Exchange Act section not included on this list applies to a notice registrant with respect to the trading of security futures products if such section does not apply by its terms.

Section 202 would also amend Section 6 of the Exchange Act to permit notice registrant exchanges to increase margin levels above minimum levels established jointly by the SEC and the CFTC by submitting proposed rule changes through the expedited filing process described below. In addition, amended Section 6 would provide that notice registrant exchanges would be required to submit any other proposed rule changes relating to margin (except for changes resulting in higher margin levels) for SEC approval under Section 19(b)(2) of the Exchange Act.

Section 202 would further amend Section 6 of the Exchange Act to provide a waiting period before security futures products could be traded. Specifically, amended Section 6 would prohibit the trading of security futures products until the later of (1) one year after the statute is enacted, (2) the date on which the Secretary of the Treasury, in consultation with the SEC and the CFTC, certifies that federal income tax treatment is equivalent for security futures products and equity options, or (3) the date on which a futures

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association has met the requirements to become a limited purpose national securities association under amended Section 15A of the Exchange Act. However, security futures products will be able to begin trading on January 2, 2003 even without certification of equivalent federal income tax treatment, subject to a sunset provision. Specifically, trading in security futures products would have to stop after another two years (plus a wind down period) in the absence of certification of equivalent tax treatment. Additionally, Section 6 would prohibit trading in security futures products unless margin requirements are set at the higher of those required by the exchange's risk-based margining system or those required for comparable options traded on securities exchanges (exclusive of options premiums).

Section 202 would amend Section 19 of the Exchange Act to limit the types of proposed rule changes that notice registrant exchanges have to file and to provide for expedited treatment of such proposed rule changes. In particular, amended Section 19 would require notice registrant exchanges to file with the SEC under new Section 19(b)(7) only proposed rule changes that relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, decimal pricing, sales practices for persons who effect transactions in security futures products, and rules effectuating their obligations to enforce the federal securities laws. Notice registrant exchanges would be required to comply with the CFTC's procedures for proposed rule changes simultaneously. The SEC would be permitted to abrogate a proposed rule change filed by a notice registrant exchange after it took effect, but only if the SEC determined that the rule change unduly burdened competition or efficiency, conflicted with the federal securities laws, or was inconsistent with the public interest and the protection of investors.

Section 202 provides for SEC consultation with the CFTC, except for emergencies, for proposed rules changes that primarily concern conduct related to security futures product transactions submitted by national securities exchanges and national securities associations that are not notice registrants.

Section 202 also would amend Section 19 of the Exchange Act to provide that the SEC does not have the authority to review final disciplinary proceedings by notice registrant exchanges except to the extent that they relate to a violation of the federal securities laws or to violation of the exchange's rules with respect to a security futures product. Finally, Section 202 would amend Section 19 to require exchanges on which security futures products are traded to file proposed rule changes necessary to implement decimal pricing of security futures products nine months after the commencement of trading of security futures products.

### **Section 203. Regulatory Relief for Intermediaries Trading Security Futures Products.**

Section 203 would amend Section 15 of the Exchange Act to provide for expedited SEC registration of CFTC registered futures commission merchants and introducing brokers that would fall within the statutory definition of the term "broker" or "dealer" solely by effecting transactions in security futures products. These "notice registrant" broker-

## **SEC/CFTC AGREEMENT**

dealers would become registered by filing a notice with the SEC. Because notice registrant broker-dealers would continue to be subject to the CEA, they would be exempt from all but the core provisions of the federal securities laws applicable to broker-dealers. Amended Section 15 would include a list of specific Exchange Act provisions from which notice registrants are exempt, but no inference should be drawn that any other Exchange Act section not included on this list applies to a notice registrant with respect to the trading of security futures products if such section does not apply by its terms.

Section 203 also would amend Section 15 of the Exchange Act to provide an exemption from all broker-dealer registration and non-core requirements for floor brokers and floor traders on CFTC designated contract markets.

Section 203 would amend Section 15A of the Exchange Act to allow futures associations to become national securities associations for the limited purpose of regulating the activities of notice registrant broker-dealers. Amended Section 15A would also exempt futures associations from all but the core requirements of the federal securities laws applicable to national securities associations and would provide for limited review by the SEC of futures association rules relating to security futures products. A futures association, such as the National Futures Association ("NFA"), would become a national securities association automatically as long as it met certain conditions. The NFA (and other limited purpose national securities associations) would be expected to enforce securities laws applicable to security futures products. As a result, notice registrant broker-dealers that belong to the NFA would not have to join the National Association of Securities Dealers.

Section 203 would amend the Securities Investor Protection Act of 1970 to exempt notice registrant broker-dealers from the requirement to join the Securities Investor Protection Corporation ("SIPC"). In addition, Section 203 would extend the protections of SIPC to customer positions in security futures products that are held by registered broker-dealers (other than notice registrant broker-dealers).

Finally, Section 203 would make a technical amendment to Section 15(i)(6)(A) of the Exchange Act to avoid extending the definition of "new hybrid product" to security futures products.

### **Section 204. Special Provisions for Interagency Cooperation.**

Section 204 would amend Section 17 of the Exchange Act to permit the SEC to examine limited purpose national securities associations as well as notice registrant broker-dealers and exchanges. Amended Section 17 would require the SEC to notify the CFTC of such examinations and to use the CFTC's examination reports to the fullest extent possible. In addition, limited purpose national securities associations and notice registrant broker-dealers and exchanges would not be subject to routine periodic examinations by the SEC and the SEC would only be permitted to apply recordkeeping rules to those entities with respect to security futures products.

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### **Section 205. Maintenance of Market Integrity for Security Futures Products.**

Section 205 is intended to ensure effective enforcement against unlawful practices with respect to the trading of security futures products. Specifically, Section 205 would amend Sections 9(b), 9(g), 20(d), and 21A(a)(1) of the Exchange Act, which relate to the trading of options and their underlying securities, so that they expressly apply to security futures products. In addition, Section 205 would amend Section 21 of the Exchange Act to require the SEC to provide the CFTC with notice of the commencement of any proceeding, and a copy of any order issued, against a notice registrant broker-dealer, exchange, or limited purpose national securities association.

### **Section 206. Special Provisions for the Trading of Security Futures Products.**

- **Listing Standards**

Section 206 would amend Section 6 of the Exchange Act to provide minimum requirements for the listing of security futures products, including requirements that trading in the security futures product not be readily susceptible to manipulation, that transactions in security futures products be effected only by broker-dealers subject to suitability requirements comparable to those of a registered national securities association, and that procedures for coordinated surveillance be in place to detect manipulation and insider trading between the market trading the security futures product and markets trading the underlying securities and other related securities. Physical settlement would be permitted if the exchange on which the security futures product is traded has arrangements for the payment or delivery of the underlying securities with a registered clearing agency.

Section 206 would allow the SEC and CFTC jointly to permit options on security futures after a period of three years.

- **Linked and Coordinated Clearing**

Section 206 would require linked and coordinated clearing of security futures products that would permit a security futures product to be purchased in one market and offset in another. However, Section 206 also would provide that linked and coordinated clearing would not have to be in place until the later of two years after trading in security futures products has commenced or at such point as the volume of trading in security futures products reaches a specific threshold that is designed to indicate that the market is viable. In addition, amended section 6 would permit the SEC and the CFTC to jointly exempt any person from the linked and coordinated clearing requirement if the exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

- **Transaction Fees**

Section 206 would amend Section 31 of the Exchange Act to exempt security futures products from transaction fees.

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- **Margin**

Section 206 would amend Section 7 of the Exchange Act to permit the SEC to establish margin requirements for security futures products jointly with the CFTC.

- **National Market System**

Section 206 would amend Section 11A of the Exchange Act to require the SEC to consult with the CFTC on national market system rulemaking relating to security futures products. In addition, amended Section 11A would provide that any national market system rules adopted by the SEC would not apply to trading on notice registrant exchanges unless the CFTC specifically orders that they should apply.

- **Clearance and Settlement**

Section 206 would amend Section 17A of the Exchange Act to provide that clearing agencies that are regulated by the CFTC do not have to register with the SEC in order to clear and settle transactions in security futures products. In addition, amended Section 17A would provide that payments and deliveries of underlying securities in connection with security futures products that are not cash settled would have to be carried out by a registered clearing agency. Amended Section 17A would also provide that all clearing agencies that clear security futures products (whether registered or exempted from registration) must coordinate with and develop links with each other, subject to the delayed start date described above.

- **Market Emergency Powers**

Section 206 would amend Section 12 of the Exchange Act to require the SEC to consult with the CFTC before suspending trading in a security futures product or taking emergency action with respect to a security futures product.

- **Short Sales**

Section 206 would amend Section 10(a) of the Exchange Act to exclude security futures products from that provision.

- **Trading Systems Operated By Broker-Dealers**

Section 206 would direct the SEC and CFTC to determine within three years whether a trading system operated by a broker-dealer should be permitted to trade security futures products and, if so, would permit the SEC to require such an entity to comply with those provisions of the Exchange Act applicable to national securities exchanges and associations trading security futures products (other than the registration provisions).

- **Duplicative Regulation**

Section 206 would direct the SEC, after consultation with the CFTC, to issue regulations to avoid duplicative or conflicting regulation of dual registered broker-dealers with

## **SEC/CFTC AGREEMENT**

respect to the financial responsibility provisions (other than margin rules) of the Exchange Act, the CEA, and the rules of both Commissions.

Section 206 would amend Sections 6 and 15A of the Exchange Act to require national securities exchanges and national securities associations to issue rules to avoid duplicative or conflicting rules related to financial responsibility with those of registered futures associations with respect to dual-registered broker-dealers.

### **Section 207. Amendments Relating to the Clearance and Settlement of Over-the-Counter Derivatives**

Section 207 would amend Section 17A of the Exchange Act to provide registered clearing agencies with the express authority to clear and settle over-the-counter derivatives.

### **Section 208. Amendments Relating to Registration and Disclosure Issues under the Securities Act of 1933 and the Securities Exchange Act of 1934.**

- **Securities Act Registration and Exemptions**

Section 208 would amend Section 2 of the Securities Act of 1933 ("Securities Act") to incorporate definitions of the terms "security future," "security futures product," and "narrow-based security index." In addition, Section 2 would be amended to include the term "security future" in the definition of the term "security."

Section 208 also would amend Section 2 of the Securities Act to provide that any offer or sale of a security futures product by or on behalf of an issuer of underlying securities, any affiliate of an issuer, or an underwriter would constitute a contract for sale of, sale of, offer for sale of, or offer to sell the underlying securities. This would ensure that issuers of the securities underlying security futures products, their affiliates, and underwriters could not use security futures products to avoid the registration requirements of the Securities Act. The amendment to Section 2 of the Securities Act is not intended to imply or create any presumption regarding whether the offer or sale of any contract, other than a security futures product, involving an exchange of payments based on the value of one or more securities is or is not a contract for sale of, sale or, offer for sale, or offer to sell any securities underlying the contract. In other words, this amendment does not change the present state of the law for over-the-counter derivative instruments.

Section 208 would amend Section 3 of the Securities Act to exempt from the registration requirements of Section 5 of the Securities Act any security futures product that is (1) cleared by a clearing agency registered under Section 17A of the Exchange Act or exempt from registration under Section 17A(b)(7) of the Exchange Act; and (2) traded on a registered exchange or a national securities association registered pursuant to Section 15A(a) of the Exchange Act.

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Further, Section 208 would amend Section 12(a)(2) of the Securities Act to exempt offers or sales of security futures products that are exempt from Section 5 by reason of Section 3(a) from the liability provisions of Section 12(a)(2) of the Securities Act.

- **Exchange Act Registration**

Section 208 would amend Section 12(a) of the Exchange Act to exempt security futures products listed on a national securities exchange from the registration requirements of that section. Because the security futures product would not be registered under Section 12, the provisions of Sections 13, 14 and 16 of the Exchange Act would not apply to the security futures product as a class of equity security registered under Section 12.

Sections 13(e), 14(d) and 14(e) of the Exchange Act would still apply to the securities underlying security futures products. Section 14(e), the tender offer anti-fraud section, applies to any security and would apply to security futures products. Sections 13(d) and 13(g) of the Exchange Act would apply with respect to beneficial ownership only of the security underlying the security futures product. Further, the anti-fraud and anti-manipulation provisions of the Exchange Act would apply if security futures products were used to manipulate the underlying security.

Section 208 also would amend Section 12(g)(5) of the Exchange Act to clarify that, for purposes of Section 12(g), a security futures product would not be considered a separate class of equity security of the issuer of the securities underlying the security futures product.

- **Ownership Reporting and Short Swing Profits**

Section 208 would amend Section 16 of the Exchange Act to provide that, for purposes of Section 16 of the Exchange Act, ownership of and transactions in security futures products would be considered ownership of and transactions in the underlying equity securities.

### **Section 209. Amendments to the Investment Company Act of 1940 and the Investment Advisers Act of 1940.**

Section 209 would amend Section 2 of the Investment Company Act of 1940 ("Investment Company Act") to incorporate definitions of the terms "security future" and "narrow-based security index." In addition, Section 2 of the Investment Company Act would be amended to include the term "security future" in the definition of the term "security."

Section 209 also would amend Section 202 of the Investment Advisers Act of 1940 ("Advisers Act") to add definitions of the terms "security future" and "narrow-based security index" and to include the term "security future" in the definition of the term "security." Section 209 also would add new Section 203(b)(6) to the Advisers Act, which would exempt from the registration provisions of the Advisers Act any investment adviser that is registered with the CFTC as a commodity trading advisor and whose business does not consist primarily of acting as an investment adviser and that does not

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act as an investment adviser to an investment company registered under the Investment Company Act or a business development company that has elected to be regulated under the Investment Company Act and has not withdrawn such election. The SEC and the CFTC would promulgate complementary rules or regulations to give effect to these provisions.

### **Section 210. Preemption**

Section 210 amends Section 28 of the Exchange Act to clarify the preemption of state laws related to gaming and bucket shops.

## **SUBTITLE B – CONFORMING AMENDMENTS TO THE COMMODITY EXCHANGE ACT**

### **Section 221. Amendments Relating to the Jurisdiction of the Securities and Exchange Commission**

Section 221 would amend Section 2 of the CEA to clarify that security futures products would be jointly regulated by the CFTC and the SEC, and that security futures products would not be subject to the exclusive jurisdiction of the CFTC.

Section 221 also would amend Section 2 of the CEA to provide criteria that security futures products would have to meet before they could be traded on a designated contract market. These criteria would include requirements that trading in the security futures product not be readily susceptible to manipulation, that transactions in the security futures product be effected only by futures commission merchants, introducing brokers, commodity trading advisers, commodity pool operators, or associated persons subject to suitability requirements comparable to those of a registered national securities association, and that procedures for coordinated surveillance be in place to detect manipulation and insider trading between the market trading the security futures product and markets trading the underlying securities and other related securities. Physical settlement would be permitted if the market on which the security futures product is traded has arrangements for the payment or delivery of the underlying securities with a registered clearing agency.

Section 221 would amend Section 2 of the CEA to permit the CFTC to examine contract markets, futures commission merchants, introducing brokers, commodity trading advisers, commodity pool operators, and associated persons that are designated or registered with the CFTC under the expedited processes described below. The CFTC would only be permitted to apply recordkeeping rules to those entities with respect to security futures products. Amended Section 2 would require the CFTC to notify the SEC of such examinations. In addition, amended Section 2 would require the CFTC to use the SEC's examination reports to the fullest extent possible.

Section 221 would allow the SEC and CFTC jointly to permit options on security futures after a period of three years.

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Section 221 also would amend Section 2 of the CEA to permit the CFTC and the SEC to establish margin requirements for security futures products by joint regulation.

Section 221 would amend Section 4m of the CEA to exempt from regulation as a commodity trading advisor any investment adviser registered with the SEC whose business does not consist primarily of acting as a commodity trading advisor and that do not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market.

Section 221 amends Section 16 of the CEA to clarify that it does not apply to investigations involving any security underlying a security futures product.

Section 221 would require linked and coordinated clearing of security futures products that would permit a security futures product to be purchased in one market and offset in another. However, Section 221 also would provide that linked and coordinated clearing would not have to be in place until the later of two years after trading in security futures products has commenced or at such point as the volume of trading in security futures products reaches a specific threshold that is designed to indicate that the market is viable. In addition, Section 221 would permit the SEC and the CFTC to jointly exempt any person from the linked and coordinated clearing requirement if the exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 221 would amend redesignated section 2(a)(1)(C) (current section 2(a)(1)(B)) of the CEA by amending the standards under which the CFTC can designate a contract market in contracts of sale for future delivery of certain broad-based securities indexes. An objective test contained in the new definition of "narrow-based security index" replaces the old requirement that the CFTC evaluate factors such as the index's reflection of a substantial segment of the market for all publicly traded equity or debt securities. Moreover, the SEC would no longer have veto authority over the decision to designate a contract market in contracts of sale for future delivery of certain broad-based securities indexes. Finally, the CFTC would be given authority to require that contracts of sale for future delivery (and options thereon) of certain broad-based securities indexes be treated as security futures products under the CEA and the federal securities laws.

Section 221 would amend Section 4j of the CEA to direct the CFTC to issue regulations to prohibit the privilege of dual trading only for security futures products.

Section 221 directs the SEC and CFTC, within three years of the commencement of trading in security futures products, to determine whether trading systems operated by broker-dealers should be permitted to trade security futures products. If so, Section 221 would provide that any such entity shall be deemed a national securities exchange for purposes of Section 5f of the CEA, and would permit the CFTC to exempt such entity from any provision of the CEA or the rules thereunder.

## **SEC/CFTC AGREEMENT**

Section 221 amends Section 4d of the CEA to direct the CFTC, after consultation with the SEC, to issue regulations to avoid duplicative or conflicting regulation of dual-registered futures commission merchants with respect to the financial responsibility provisions (other than margin rules) of the Exchange Act, the CEA, and the rules of both Commissions.

Section 221 would also amend Section 17 of the CEA to require national futures associations to issue rules to avoid duplicative or conflicting rules related to financial responsibility applicable to dual-registered futures commission merchants with those of national securities exchanges and associations.

### **Section 222. Regulatory Relief under the Commodity Exchange Act for Markets and Intermediaries Trading Security Futures Products.**

Section 222 would add Section 5f to the CEA to provide for expedited CFTC designation as contract markets of national securities exchanges and national securities associations that are registered with the SEC that would fall within the statutory definition of the term "board of trade" by trading security futures products. A "notice designated" contract market would be designated as a contract market with respect to a security futures product by providing to the CFTC a written certification that the specific contract with respect to which the application has been made, or the board of trade, meets the specified criteria. Because notice designated contract markets would continue to be subject to the federal securities laws, they would be exempt from all but the core provisions of the CEA applicable to designated contract markets.

Section 222 also would amend Section 4f of the CEA to provide for expedited CFTC registration of SEC registered broker-dealers that would fall within the statutory definition of the term "futures commission merchant" or "introducing broker" by effecting transactions in security futures products. These "notice registrants" would become registered by filing a notice with the CFTC. In addition, amended Section 4f would provide that SEC registered broker-dealers that fall within the definition of "floor broker" or "floor trader" by effecting transactions in security futures products are exempt from CFTC registration. Because these entities would continue to be subject to the federal securities laws, they would be exempt from all but the core provisions of the CEA that otherwise would apply to them.

In addition, Section 222 would amend Section 4k of the CEA to provide exemptions from relevant provisions of the CEA for associated persons of SEC registered broker-dealers.

### **Section 223. Amendments Relating to the Notification of Investigations and Enforcement Actions.**

Section 223 would amend Sections 6, 6c, and 8 of the CEA to require the CFTC to furnish the SEC with notice of the commencement of any proceeding, and a copy of any order issued, against a notice designated contract market, notice registered futures commission merchant or introducing broker, or exempt floor broker or floor trader.

**SEC/CFTC AGREEMENT**

**SUBTITLE C – EFFECTIVE DATE**

**Section 231. Effective Date.**

This section provides that the provisions of the Act shall become effective on the date of the enactment of the Act.

1 tures Trading Commission should, as part of its international  
2 activities, continue to coordinate with foreign regulatory  
3 authorities, to participate in international regulatory  
4 organizations and forums, and to provide technical assistance  
5 to foreign government authorities, in order to encourage—

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

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

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

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

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

17 **TITLE II—SECURITIES ACTS**  
18 **AMENDMENTS**

19 **Subtitle A—Amendments**

20 **SEC. 201. DEFINITIONS UNDER THE SECURITIES**

21 **EXCHANGE ACT OF 1934.**

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

1           (1) in paragraph (10), by inserting "security  
2 future," after "treasury stock,";

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

5           "(11) The term 'equity security' means any stock or  
6 similar security; or any security future; or any security  
7 convertible, with or without consideration, into such a security,  
8 or carrying any warrant or right to subscribe to or purchase  
9 such a security; or any such warrant or right; or any put, call,  
10 straddle, option, or privilege on any such security; or any other  
11 security which the Commission shall deem to be of similar  
12 nature and consider necessary or appropriate, by such rules  
13 and regulations as it may prescribe in the public interest or for  
14 the protection of investors, to treat as an equity security.";

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

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

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

1           "(55)(A) The term 'security future' means a contract of  
2 sale for future delivery of a single security or of a narrow-based  
3 security index, including any interest therein or based on the  
4 value thereof, except an exempted security under section  
5 3(a)(12) of the Securities Exchange Act of 1934 as in effect on  
6 the date of enactment of the Futures Trading Act of 1982 (other  
7 than any municipal security as defined in section 3(a)(29) as in  
8 effect on the date of enactment of the Futures Trading Act of  
9 1982). The term 'security future' does not include any  
10 agreement, contract, or transaction excluded under subsection  
11 (c), (d), or (f) of section 2 of the Commodity Exchange Act as in  
12 effect on the date of enactment of the Commodity Futures  
13 Modernization Act of 2000.

14           "(B)(1) The term "narrow-based security index" means  
15 an index—

16                       "(a) that has 9 or fewer component  
17 securities;

18                       "(b) in which a component security  
19 comprises more than 30% of the index's  
20 weighting;

21                       "(c) in which the 5 highest weighted  
22 component securities in the aggregate comprise  
23 more than 60% of the index's weighting; or

1                   "(d) in which any one or combination of  
2 securities, in the aggregate, has a dollar value of  
3 average daily trading volume of less than \$50  
4 million (or in the case of an index with 15 or more  
5 component securities, \$30 million) and has an  
6 aggregate index weight in excess of 25%.

7                   "(2) Notwithstanding clause (1) of this  
8 subparagraph, an index is not a narrow-based security  
9 index if:

10                   "(a)(i) it has at least 9 component  
11 securities;

12                   "(ii) no component security comprises  
13 more than 30% of the index's weighting; and

14                   "(iii) each component security is:

15                   " (I) registered pursuant to section 12  
16 of this title;

17                   " (II) one of 750 securities with the  
18 largest market capitalization; and

19                   " (III) one of 675 securities with the  
20 largest dollar value of average daily trading  
21 volume;

22                   "(b) it is a contract of sale for future  
23 delivery with respect to which a board of trade

1 was designated as a contract market by the  
2 Commodity Futures Trading Commission prior to  
3 the date of enactment of the Commodity Futures  
4 Modernization Act of 2000; or

5 "(c)(i) it traded on a designated contract  
6 market for at least 30 days as a contract of sale  
7 for future delivery that was not a narrow-based  
8 security index; and

9 "(ii) it has been a narrow-based security  
10 index for no more than 45 business days over  
11 three consecutive calendar months.

12 "(3) An index that is a narrow-based security  
13 index solely because it was a narrow-based security  
14 index for more than 45 business days over three  
15 consecutive calendar months pursuant to subclause (c)  
16 of clause (2) of this subparagraph shall not be a narrow-  
17 based security index for the 3 following calendar months.

18 "(4) For purposes of clauses (1) and (2) of this  
19 subparagraph, the dollar value of average daily trading  
20 volume and the market capitalization shall be calculated  
21 as of the preceding six full calendar months.

22 "(5) For purposes of clauses (1) and (2) of this  
23 subparagraph, the Commission and the Commodity

1 Futures Trading Commission shall, by rule, regulation or  
2 order, jointly specify the method to be used to determine  
3 market capitalization and dollar value of average daily  
4 trading volume.<sup>1</sup>

5 "(C) The term 'security futures product' means a security  
6 future or any put, call, straddle, option, or privilege on any  
7 security future.

8 "(56)(A) The term 'margin', when used with respect to a  
9 security futures product, means the amount, type, and form of  
10 collateral required to secure any extension or maintenance of  
11 credit, or the amount, type, and form of collateral required as a  
12 performance bond related to the purchase, sale, or carrying of  
13 a security futures product, and all other uses of collateral  
14 related to the purchasing, selling, or carrying of a security  
15 futures product.

16 "(B) The terms 'margin level' and 'level of margin', when  
17 used with respect to a security futures product, mean the  
18 amount of margin required to secure any extension or  
19 maintenance of credit, or the amount of margin required as a

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<sup>1</sup> Need to make conforming change to the CEA definition in Title I of  
the Commerce version of the bill.

1 performance bond related to the purchase, sale, or carrying of  
2 a security futures product.

3 "(C) The terms 'higher margin level' and 'higher level of  
4 margin', when used with respect to a security futures product,  
5 mean a margin level established by a national securities  
6 exchange registered pursuant to section 6(g) that is higher than  
7 the minimum amount jointly established by the Commission  
8 and the Commodity Futures Trading Commission pursuant to  
9 section 7(c)(2)(B)."<sup>2</sup>

10 **SEC. 202. REGULATORY RELIEF FOR MARKETS**

11 **TRADING SECURITY FUTURES PRODUCTS.**

12 (a) EXPEDITED REGISTRATION AND EXEMPTION.—

13 Section 6 of the Securities Exchange Act of 1934 (15 U.S.C.  
14 78f) is amended by adding at the end the following:

15 "(g) NOTICE REGISTRATION OF SECURITY  
16 FUTURES PRODUCT EXCHANGES.—

17 "(1) REGISTRATION REQUIRED.—An exchange  
18 that lists or trades security futures products may be  
19 registered as a national securities exchange solely for  
20 the purposes of trading security futures products if—

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<sup>2</sup> Need to make conforming change to the CEA definition in Title I of  
the Commerce version of the bill.

1                   "(A) the exchange is a board of trade, as  
2                   that term is defined by the Commodity Exchange  
3                   Act (7 U.S.C. 1a(1)), that has been designated a  
4                   contract market by the Commodity Futures  
5                   Trading Commission and such designation is not  
6                   suspended by order of the Commodity Futures  
7                   Trading Commission; and

8                   "(B) such exchange does not serve as a  
9                   market place for transactions in securities other  
10                  than—

11                                   "(i) security futures products; or

12                                   "(ii) futures on exempted securities  
13                   or groups or indexes of securities or  
14                   options thereon that have been authorized  
15                   under section 2(a)(1)(C) of the Commodity  
16                   Exchange Act by Commodity Futures  
17                   Trading Commission order.

18                  "(2) REGISTRATION BY NOTICE FILING.—

19                                   "(A) FORM AND CONTENT.—An  
20                   exchange required to register only because such  
21                   exchange lists or trades security futures products  
22                   may register for purposes of this section by filing  
23                   with the Commission a written notice in such form

1 as the Commission, by rule, may prescribe  
2 containing the rules of the exchange and such  
3 other information and documents concerning such  
4 exchange, required for national securities  
5 exchanges under section 6(a), as the  
6 Commission, by rule, may prescribe as necessary  
7 or appropriate in the public interest or for the  
8 protection of investors. If such exchange has filed  
9 documents with the Commodity Futures Trading  
10 Commission, to the extent that such documents  
11 contain information satisfying the Commission's  
12 informational requirements, copies of such  
13 documents may be filed with the Commission in  
14 lieu of the required written notice.

15 "(B) IMMEDIATE EFFECTIVENESS.—  
16 Such registration shall be effective immediately  
17 upon filing of the written notice with the  
18 Commission, except that such registration shall  
19 not be effective if such registration would be  
20 subject to suspension or revocation.

21 "(C) TERMINATION.—Such registration  
22 shall be terminated immediately if any of the

1 conditions for registration set forth in this  
2 subsection are no longer satisfied.

3 "(3) PUBLIC AVAILABILITY.—The Commission  
4 shall make available to the public all notices it receives  
5 under this subsection.

6 "(4) EXEMPTION OF EXCHANGES FROM  
7 SPECIFIED PROVISIONS.—

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

17 "(i) Subsections (b)(2), (b)(3), (b)(4),  
18 (b)(7), (b)(9), (c), (d), and (e) of this  
19 section.

20 "(ii) Section 8

21 "(iii) Section 11.

22 "(iv) Subsections (d), (f), and (k) of  
23 section 17.



1 obligation to enforce the securities laws  
2 pursuant to section 19(b)(7);

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

8 "(iii) such exchange shall file  
9 pursuant to section 19(b)(1) proposed rule  
10 changes that have been abrogated by the  
11 Commission pursuant to section  
12 19(b)(7)(C).

13 "(5) TRADING IN SECURITY FUTURES PROD-  
14 UCTS.—

15 "(A) It shall be unlawful for any person to  
16 execute or trade a security futures product until  
17 the later of—

18 "(i) one year after the date of  
19 enactment of the Commodity Futures  
20 Modernization Act of 2000;

21 "(ii) such date as the Secretary of  
22 the Treasury, in consultation with the  
23 Commission and the Commodity Futures

1 Trading Commission certifies that the  
2 Federal income tax treatment applicable to  
3 the security futures products permitted  
4 under this title is equivalent to the Federal  
5 income tax treatment of equity options  
6 traded on a national securities exchange;  
7 or

8 "(iii) such date that a futures  
9 association registered under section 17 of  
10 the Commodity Exchange Act has met the  
11 requirements set forth in section 15A(k)(2)  
12 of this title.

13 "(B) Notwithstanding clause (ii) of  
14 subparagraph (A), execution of or trading in a  
15 security futures product may commence on  
16 January 2, 2003, except that, unless the  
17 Secretary of the Treasury, in consultation with the  
18 Commission and the Commodity Futures Trading  
19 Commission certifies that the Federal income tax  
20 treatment applicable to the security futures  
21 products permitted under this title is equivalent to  
22 the Federal income tax treatment of equity

1 options traded on a national securities exchange,

2 it shall be unlawful to—

3 "(i) list new security futures products

4 or commence trading in new delivery

5 months or contract series of listed security

6 futures products after December 31, 2004;

7 or

8 "(ii) execute or trade security futures

9 products after March 4, 2005, except—

10 "(I) for security futures

11 products that have a delivery date or

12 an expiration date on or before July

13 1, 2005; and

14 "(II) to liquidate any open

15 interest in other security futures

16 products.

17 "(C) It shall be unlawful for a national

18 securities exchange registered pursuant to

19 section 6(g) of this title to begin trading security

20 futures products unless the margin required for

21 such products at the outset of trading are set at

22 the higher of—

1                   "(i) the amount required by the risk-  
2                   based portfolio margining system  
3                   employed by such exchange; and

4                   "(ii) the margin required for  
5                   comparable options contracts traded on a  
6                   national securities exchange registered  
7                   pursuant to section 6(a) of this title,  
8                   exclusive of premium."

9           (b) COMMISSION REVIEW OF PROPOSED RULE  
10        CHANGES.—

11           (1) EXPEDITED REVIEW.—Section 19(b) of the  
12        Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is  
13        amended by adding at the end the following:

14           "(7) SECURITY FUTURES PRODUCT RULE  
15        CHANGES.—

16           "(A) FILING REQUIRED.—A self-  
17        regulatory organization that is an exchange  
18        registered with the Commission pursuant to  
19        section 6(g) of this title or that is a national  
20        securities association registered pursuant to  
21        section 15A(k) of this title shall file with the  
22        Commission, in accordance with such rules as the  
23        Commission may prescribe, copies of any

1 proposed rule change or any proposed change in,  
2 addition to, or deletion from the rules of such self-  
3 regulatory organization (hereinafter in this  
4 paragraph collectively referred to as a 'proposed  
5 rule change') that relates to higher margin levels,  
6 fraud or manipulation, recordkeeping, reporting,  
7 listing standards, or decimal pricing for security  
8 futures products, sales practices for security  
9 futures products for persons who effect  
10 transactions in security futures products, or rules  
11 effectuating such self-regulatory organization's  
12 obligation to enforce the securities laws. Such  
13 proposed rule change shall be accompanied by a  
14 concise general statement of the basis and  
15 purpose of such proposed rule change. The  
16 Commission shall, upon the filing of any proposed  
17 rule change, publish notice thereof together with  
18 the terms of substance of the proposed rule  
19 change or a description of the subjects and issues  
20 involved. The Commission shall give interested  
21 persons an opportunity to submit written data,  
22 views, and arguments concerning such proposed  
23 rule change.

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"(B) FILING WITH CFTC.—A proposed rule change filed with the Commission pursuant to subparagraph (A) shall be filed concurrently with the Commodity Futures Trading Commission. Such proposed rule change may take effect upon filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act, upon a determination by the Commodity Futures Trading Commission that review of the proposed rule change is not necessary, or upon approval of the proposed rule change by the Commodity Futures Trading Commission.

"(C) ABROGATION OF RULE CHANGES.— Any proposed rule change of a self-regulatory organization that has taken effect pursuant to subparagraph (B) may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of the filing of a written certification with the Commodity Futures Trading

1 Commission under section 5c(c) of the  
2 Commodity Exchange Act, the date the  
3 Commodity Futures Trading Commission  
4 determines that review of such proposed rule  
5 change is not necessary, or the date the  
6 Commodity Futures Trading Commission  
7 approves such proposed rule change, the  
8 Commission, after consultation with the  
9 Commodity Futures Trading Commission,  
10 summarily may abrogate the proposed rule  
11 change and require that the proposed rule change  
12 be refiled in accordance with the provisions of  
13 paragraph (1), if it appears to the Commission  
14 that such proposed rule change unduly burdens  
15 competition or efficiency, conflicts with the  
16 securities laws, or is inconsistent with the public  
17 interest and the protection of investors.  
18 Commission action pursuant to the preceding  
19 sentence shall not affect the validity or force of  
20 the rule change during the period it was in effect  
21 and shall not be reviewable under section 25 nor  
22 deemed to be a final agency action for purposes  
23 of section 704 of title 5, United States Code.

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"(D) REVIEW OF RESUBMITTED ABROGATED RULES.—

"(i) PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change that is abrogated in accordance with subparagraph (C) and refiled in accordance with paragraph (1), or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

"(I) by order approve such proposed rule change; or

"(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved. Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded

1                   within 180 days after the date of  
2                   publication of notice of the filing of the  
3                   proposed rule change. At the conclusion of  
4                   such proceedings, the Commission, by  
5                   order, shall approve or disapprove such  
6                   proposed rule change. The Commission  
7                   may extend the time for conclusion of such  
8                   proceedings for up to 60 days if it finds  
9                   good cause for such extension and  
10                  publishes its reasons for so finding or for  
11                  such longer period as to which the self-  
12                  regulatory organization consents.

13                                   "(ii)            **GROUNDS            FOR**  
14                   **APPROVAL.**—The Commission shall  
15                   approve a proposed rule change of a self-  
16                   regulatory organization under this  
17                   subparagraph if it finds that such proposed  
18                   rule change does not unduly burden  
19                   competition or efficiency, does not conflict  
20                   with the securities laws, and is not  
21                   inconsistent with the public interest or the  
22                   protection of investors. The Commission  
23                   shall disapprove such a proposed rule

1 change of a self-regulatory organization if it  
2 does not make such finding. The  
3 Commission shall not approve any  
4 proposed rule change prior to the 30th day  
5 after the date of publication of notice of the  
6 filing thereof, unless the Commission finds  
7 good cause for so doing and publishes its  
8 reasons for so finding."

9 (2) DECIMAL PRICING PROVISIONS.—Section  
10 19(b) of the Securities Exchange Act of 1934 (15 U.S.C.  
11 78s(b)) is amended by inserting after paragraph (7), as  
12 added by paragraph (1), the following:

13 "(8) DECIMAL PRICING.—Not later than 9  
14 months after the date on which trading in any security  
15 futures product commences under this title, all self-  
16 regulatory organizations listing or trading security futures  
17 products shall file proposed rule changes necessary to  
18 implement decimal pricing of security futures products."

19 (3) CONSULTATION PROVISIONS.—Section  
20 19(b) of the Securities Exchange Act of 1934 (15 U.S.C.  
21 78s(b)) is amended by inserting after paragraph (8), as  
22 added by paragraph (2), the following:

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"(9) CONSULTATION WITH CFTC.—

"(A) CONSULTATION REQUIRED.—The Commission shall consult with and consider the views of the Commodity Futures Trading Commission prior to approving a proposed rule change filed by a national securities association registered pursuant to section 15A(a) or a national securities exchange subject to the provisions of subsection (a) that primarily concerns conduct related to transactions in security futures products, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

"(B) RESPONSES TO CFTC COMMENTS AND FINDINGS.—If the Commodity Futures Trading Commission comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule. If the Commodity Futures Trading Commission determines, and

1 notifies the Commission, that such rule, if  
2 implemented or as applied, would—

3 "(i) adversely affect the liquidity or  
4 efficiency of the market for security futures  
5 products; or

6 "(ii) impose any burden on  
7 competition not necessary or appropriate in  
8 furtherance of the purposes of this section,  
9 the Commission shall, prior to approving  
10 the proposed rule, find that such rule is  
11 necessary and appropriate in furtherance  
12 of the purposes of this section  
13 notwithstanding the Commodity Futures  
14 Trading Commission's determination."

15 (c) REVIEW OF DISCIPLINARY PROCEEDINGS.—

16 Section 19(d) of the Securities Exchange Act of 1934 (15  
17 U.S.C. 78s(d)) is amended by adding at the end the following:

18 "(3) The provisions of this subsection shall apply to an  
19 exchange registered pursuant to section 6(g) of this title or a  
20 national securities association registered pursuant to section  
21 15A(k) of this title only to the extent that such exchange or  
22 association imposes any final disciplinary sanction for—

1           "(A) a violation of the federal securities laws or  
2           the rules and regulations thereunder; or

3           "(B) a violation of a rule of such exchange or  
4           association, as to which a proposed change would be  
5           required to be filed under section 19 of this title, except  
6           that, to the extent that the exchange or association rule  
7           violation relates to any account, agreement, or  
8           transaction, this subsection shall apply only to the extent  
9           such violation involves a security futures product."

10   **SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES**  
11   **TRADING SECURITY FUTURES PRODUCTS.**

12       (a)       EXPEDITED       REGISTRATION       AND  
13   EXEMPTIONS.—

14               (1) AMENDMENT.—Section 15(b) of the  
15               Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is  
16               amended by adding at the end the following:

17               "(11) BROKER/DEALER REGISTRATION WITH  
18               RESPECT TO TRANSACTIONS IN SECURITY FUTURES  
19               PRODUCTS.—

20               "(A) NOTICE REGISTRATION.—

21               "(i) CONTENTS OF NOTICE.—Notwithstanding  
22               paragraphs (1) and (2), a broker or dealer required to  
23               register only because it effects transactions in security

1 futures products on an exchange registered pursuant to  
2 section 6(g) may register for purposes of this section by  
3 filing with the Commission a written notice in such form  
4 and containing such information concerning such broker  
5 or dealer and any persons associated with such broker  
6 or dealer as the Commission, by rule, may prescribe as  
7 necessary or appropriate in the public interest or for the  
8 protection of investors. A broker or dealer may not  
9 register under this paragraph unless that broker or  
10 dealer is a member of a national securities association  
11 registered under section 15A(k).

12 "(ii) IMMEDIATE EFFECTIVENESS.—

13 Such registration shall be effective immediately upon  
14 filing of the written notice with the Commission, except  
15 that such registration shall not be effective if the  
16 registration would be subject to suspension or revocation  
17 under paragraph (4).

18 "(iii) SUSPENSION.—Such registration shall be  
19 suspended immediately if a national securities  
20 association registered pursuant to section 15A(k) of this  
21 title suspends the membership of that broker or dealer.

22 "(iv) TERMINATION.—Such registration shall be  
23 terminated immediately if any of the above stated

1 conditions for registration set forth in this paragraph are  
2 no longer satisfied.

3 "(B) EXEMPTIONS FOR REGISTERED BRO-  
4 KERS AND DEALERS.—A broker or dealer registered  
5 pursuant to the requirements of subparagraph (A) shall  
6 be exempt from the following provisions of this title and  
7 the rules thereunder with respect to transactions in  
8 security futures products:

9 "(i) Section 8.

10 "(ii) Section 11.

11 "(iii) Subsections (c)(3) and (c)(5) of this  
12 section.

13 "(iv) Section 15B.

14 "(v) Section 15C.

15 "(vi) Subsections (d), (e), (f), (g), (h), and  
16 (i) of section 17.

17 "RULE OF CONSTRUCTION.—No inference should be  
18 drawn that any section that is not enumerated on this list  
19 applies to a broker or dealer registered pursuant to  
20 section 15(b)(11) of this title with respect to the trading of  
21 security futures products if such section does not apply  
22 by its terms."

1           (2) CONFORMING AMENDMENT.—Section  
2           28(e) of the Securities Exchange Act of 1934 (15 U.S.C.  
3           78bb(e)) is amended by adding at the end the following:

4           "(4) The provisions of this subsection shall not apply with  
5           regard to securities that are security futures products."

6           (b) FLOOR BROKERS AND FLOOR TRADERS.—  
7           Section 15(b) of the Securities Exchange Act of 1934 (15  
8           U.S.C. 78o(b)) is amended by inserting after paragraph (11), as  
9           added by subsection (a), the following:

10           "(12) EXEMPTION FOR SECURITY FUTURES  
11           PRODUCT EXCHANGE MEMBERS.—

12           "(A) REGISTRATION EXEMPTION.—A  
13           natural person shall be exempt from the  
14           registration requirements of this section if such  
15           person—

16           "(i) is a member of a designated  
17           contract market registered with the  
18           Commission as an exchange pursuant to  
19           section 6(g);

20           "(ii) effects transactions only in  
21           securities on the exchange of which such  
22           person is a member; and



1 of 1934 (15 U.S.C. 78o-3) is amended by adding at the end the  
2 following:

3 "(k) LIMITED PURPOSE NATIONAL SECURITIES AS-  
4 SOCIATION.—

5 "(1) REGULATION OF MEMBERS WITH  
6 RESPECT TO SECURITY FUTURES PRODUCTS.—A  
7 futures association registered under section 17 of the  
8 Commodity Exchange Act shall be a registered national  
9 securities association for the limited purpose of  
10 regulating the activities of members who are registered  
11 as brokers or dealers in security futures products  
12 pursuant to section 15(b)(11).

13 "(2) REQUIREMENTS FOR REGISTRATION.—  
14 Such a securities association shall—

15 "(A) be so organized and have the capacity  
16 to carry out the purposes of the securities laws  
17 applicable to security futures products and to  
18 comply, and (subject to any rule or order of the  
19 Commission pursuant to section 19(g)(2)) to  
20 enforce compliance by its members and persons  
21 associated with its members, with the provisions  
22 of the securities laws applicable to security

1 futures products; the rules and regulations  
2 thereunder, and its rules;

3 "(B) have rules that—

4 "(i) are designed to prevent  
5 fraudulent and manipulative acts and  
6 practices, to promote just and equitable  
7 principles of trade, and, in general, to  
8 protect investors and the public interest,  
9 including rules governing sales practices  
10 and the advertising of security futures  
11 products comparable to those of other  
12 national securities associations registered  
13 pursuant to subsection (a); and

14 "(ii) are not designed to regulate by  
15 virtue of any authority conferred by this title  
16 matters not related to the purposes of this  
17 title or the administration of the  
18 association;

19 "(C) have rules that provide that (subject to  
20 any rule or order of the Commission pursuant to  
21 section 19(g)(2)) its members and persons  
22 associated with its members shall be  
23 appropriately disciplined for violation of any

1 provision of the securities laws applicable to  
2 security futures products, the rules or regulations  
3 thereunder, or the rules of the association, by  
4 expulsion, suspension, limitation of activities,  
5 functions, and operations, fine, censure, being  
6 suspended or barred from being associated with a  
7 member, or any other fitting sanction; and

8 "(D) have rules that ensure that members  
9 and natural persons associated with members  
10 meet such standards of training, experience, and  
11 competence necessary to effect transactions in  
12 security futures products and are tested for their  
13 knowledge of securities and security futures  
14 products.

15 "(3) EXEMPTION FROM RULE CHANGE  
16 SUBMISSION.—Such a securities association shall be  
17 exempt from submitting proposed rule changes pursuant  
18 to section 19(b) of this title, except that—

19 "(A) the association shall file proposed rule  
20 changes related to higher margin levels, fraud or  
21 manipulation, recordkeeping, reporting, listing  
22 standards, or decimal pricing for security futures  
23 products, sales practices for, advertising of, or

1 standards of training, experience, competence, or  
2 other qualifications for security futures products  
3 for persons who effect transactions in security  
4 futures products, or rules effectuating the  
5 association's obligation to enforce the securities  
6 laws pursuant to section 19(b)(7);

7 "(B) the association shall file pursuant to  
8 sections 19(b)(1) and 19(b)(2) proposed rule  
9 changes related to margin, except for changes  
10 resulting in higher margin levels; and

11 "(C) the association shall file pursuant to  
12 section 19(b)(1) proposed rule changes that have  
13 been abrogated by the Commission pursuant to  
14 section 19(b)(7)(C).

15 "(4) OTHER EXEMPTIONS.—Such a securities  
16 association shall be exempt from and shall not be  
17 required to enforce compliance by its members, and its  
18 members shall not, solely with respect to their  
19 transactions effected in security futures products, be  
20 required to comply, with the following provisions of this  
21 title and the rules thereunder:

22 "(A) Section 8

1                   "(B) Subsections (b)(1), (b)(3), (b)(4),  
2                   (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c),  
3                   (d), (e), (f), (g), (h), and (i) of this section.

4                   "(C) Subsections (d), (f), and (k) of section  
5                   17.

6                   "(D) Subsections (a), (f), and (h) of section  
7                   19.

8                   "RULE OF CONSTRUCTION.—No inference should be  
9                   drawn that any section that is not enumerated on this list  
10                  applies to an association that is a registered national  
11                  securities association pursuant to section 15A(k) of this  
12                  title with respect to the trading of security futures  
13                  products if such section does not apply by its terms."

14                  (d) EXEMPTION UNDER THE SECURITIES INVESTOR  
15                  PROTECTION ACT OF 1970.—

16                  (1) Section 16(14) of the Securities Investor  
17                  Protection Act of 1970 (15 U.S.C. 78lll(14)) is amended  
18                  by inserting "or any security future as that term is  
19                  defined in section 3(a)(55)(A) of the Securities Exchange  
20                  Act of 1934," after "certificate of deposit for a security,".

21                  (2) Section 3(a)(2)(A) of the Securities Investor  
22                  Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A)) is  
23                  amended—

1 (A) in clause (i), by striking "and" after the  
2 semicolon;

3 (B) in clause (ii), by striking the period and  
4 inserting "; and";

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

6 "(iii) persons who are registered as  
7 a broker or dealer pursuant to section  
8 15(b)(11)(A) of the Securities Exchange  
9 Act of 1934."

10 (e) OTHER PROVISION.—Section 15(i)(6)(A) of the  
11 Securities Exchange Act of 1934 (15 U.S.C. 78o(i)(6)(A)) is  
12 amended—

13 (1) in clause (ii), by striking "and" after the  
14 semicolon;

15 (2) in clause (iii), by striking the period and  
16 inserting "; and"; and

17 (3) by adding at the end the following: "(iv) is not  
18 a security futures product."

19 **SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY CO-**  
20 **OPERATION.**

21 Section 17 of the Securities Exchange Act of 1934 (15  
22 U.S.C. 78q) is amended by striking subsection (b) and inserting  
23 the following:

1           "(b) RECORDS SUBJECT TO EXAMINATION.—

2                       "(1) PROCEDURES FOR COOPERATION WITH  
3           OTHER AGENCIES.—All records of persons described  
4           in subsection (a) are subject at any time, or from time to  
5           time, to such reasonable periodic, special, or other  
6           examinations by representatives of the Commission and  
7           the appropriate regulatory agency for such persons as  
8           the Commission or the appropriate regulatory agency for  
9           such persons deems necessary or appropriate in the  
10          public interest, for the protection of investors, or  
11          otherwise in furtherance of the purposes of this title if the  
12          Commission, prior to conducting any such examination  
13          of a—

14                       "(A) registered clearing agency, registered  
15           transfer agent, or registered municipal securities  
16           dealer for which it is not the appropriate  
17           regulatory agency, gives notice to the appropriate  
18           regulatory agency for such clearing agency,  
19           transfer agent, or municipal securities dealer, of  
20           such proposed examination and consults with the  
21           appropriate regulatory agency concerning the  
22           feasibility and desirability of coordinating such  
23           examinations conducted by the appropriate

1 regulatory agency with a view to avoiding  
2 unnecessary regulatory duplication or undue  
3 regulatory burdens for such clearing agency,  
4 transfer agent, or municipal securities dealer; or

5 "(B) broker or dealer registered pursuant to  
6 section 15(b)(11), exchange registered pursuant  
7 to section 6(g), or national securities association  
8 registered pursuant to section 15A(k) gives notice  
9 to the Commodity Futures Trading Commission of  
10 such proposed examination and consults with the  
11 Commodity Futures Trading Commission  
12 concerning the feasibility and desirability of  
13 coordinating such examination with examinations  
14 conducted by the Commodity Futures Trading  
15 Commission with a view to avoiding unnecessary  
16 regulatory duplication or undue regulatory  
17 burdens for such broker or dealer or exchange.

18 "(2) FURNISHING DATA AND REPORTS TO  
19 CFTC.—The Commission shall notify the Commodity  
20 Futures Trading Commission of any examination  
21 conducted of any broker or dealer registered pursuant to  
22 section 15(b)(11), exchange registered pursuant to  
23 section 6(g), or national securities association registered

1           pursuant to section 15A(k) and, upon request, furnish to  
2           the Commodity Futures Trading Commission any  
3           examination report and data supplied to the Commission  
4           in connection with such examination.

5           "(3) USE OF CFTC REPORTS.—The  
6           Commission shall, to the fullest extent possible, use the  
7           reports of examinations of any broker or dealer  
8           registered pursuant to section 15(b)(11), exchange  
9           registered pursuant to section 6(g), or national securities  
10          association registered pursuant to section 15A(k) made  
11          by the Commodity Futures Trading Commission, a  
12          national securities association registered pursuant to  
13          section 15A(k), or an exchange registered pursuant to  
14          section 6(g).

15          "(4) RULES OF CONSTRUCTION.—

16                 "(A) Notwithstanding any other provision of  
17                 this subsection, the records of a broker or dealer  
18                 registered pursuant to section 15(b)(11), an  
19                 exchange registered pursuant to section 6(g), or a  
20                 national securities association registered pursuant  
21                 to section 15A(k) described in this subparagraph  
22                 shall not be subject to routine periodic  
23                 examinations by the Commission.

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"(B) Any recordkeeping rules adopted under this subsection for a broker or dealer registered pursuant to section 15(b)(11), an exchange registered pursuant to section 6(g), or a national securities association registered pursuant to section 15A(k) shall be limited to records with respect to persons, accounts, agreements, and transactions involving security futures products.

"(C) Nothing in this subsection shall be construed to impair or limit (other than by the requirement of prior consultation and the requirement in subparagraph (A)) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer, broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k), or to affect in any way the power of the Commission under any other provision of this title or otherwise to inspect, examine, or investigate any clearing agency, transfer agent, or municipal securities dealer, broker or dealer

1 registered pursuant to section 15(b)(11),  
2 exchange registered pursuant to section 6(g), or  
3 national securities association registered pursuant  
4 to section 15A(k)."

5 **SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR**  
6 **SECURITY FUTURES PRODUCTS.**

7 (a) ADDITION OF SECURITY FUTURES PRODUCTS  
8 TO OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—

9 (1) PROHIBITION AGAINST MANIPULATION.—

10 Section 9(b) of the Securities Exchange Act of 1934

11 (15 U.S.C. 78i(b)) is amended—

12 (A) in paragraph (1)—

13 (i) by inserting "(A)" after "acquires"; and

14 (ii) by striking "; or" and inserting ", or (B)

15 any security futures product on the security; or";

16 (B) in paragraph (2)—

17 (i) by inserting "(A)" after "interest in any";

18 and

19 (ii) by striking "; or" and inserting ", or (B)

20 such security futures product; or"; and

21 (C) in paragraph (3)—

22 (i) by inserting "(A)" after "interest in any";

23 and

1 (ii) by inserting ", or (B) such security  
2 futures product" after "privilege".

3 (2) MANIPULATION IN OPTIONS AND OTHER  
4 DERIVATIVE PRODUCTS.—Section 9(g) of the  
5 Securities Exchange Act of 1934 (15 U.S.C. 78i(g)) is  
6 amended—

7 (A) by inserting "(1)" after "(g)";

8 (B) by inserting "other than a security  
9 futures product" after "future delivery"; and

10 (C) by adding at the end following:

11 "(2) Notwithstanding the Commodity Exchange Act, the  
12 Commission shall have the authority to regulate the  
13 trading of any security futures product to the extent provided in  
14 the securities laws."

15 (3) LIABILITY OF CONTROLLING PERSONS  
16 AND PERSONS WHO AID AND ABET VIOLATIONS.—  
17 Section 20(d) of the Securities Exchange Act of 1934 (15  
18 U.S.C. 78t(d)) is amended by striking "or privilege" and  
19 inserting ", privilege, or security futures product".

20 (4) LIABILITY TO CONTEMPORANEOUS  
21 TRADERS FOR INSIDER TRADING.—Section  
22 21A(a)(1) of the Securities Exchange Act of 1934 (15  
23 U.S.C. 78u- 1(a)(1)) is amended by striking

1 "standardized options, the Commission—" and inserting  
2 "standardized options or security futures products, the  
3 Commission—".

4 (5) ENFORCEMENT CONSULTATION.—Section  
5 21. of the Securities Exchange Act of 1934 (15 U.S.C.  
6 78u) is amended by adding at the end the following:

7 "(i) INFORMATION TO CFTC.—The Commission shall  
8 provide the Commodity Futures Trading Commission with  
9 notice of the commencement of any proceeding and a copy of  
10 any order entered by the Commission against any broker or  
11 dealer registered pursuant to section 15(b)(11), any exchange  
12 registered pursuant to section 6(g), or any national securities  
13 association registered pursuant to section 15A(k)."

14 **SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF**  
15 **SECURITY FUTURES PRODUCTS.**

16 (a) LISTING STANDARDS AND CONDITIONS FOR  
17 TRADING.—Section 6 of the Securities Exchange Act of 1934  
18 (15 U.S.C. 78f) is amended by inserting after subsection (g), as  
19 added by section 202, the following:

20 "(h) TRADING IN SECURITY FUTURES PRODUCTS.—

21 "(1) TRADING ON EXCHANGE OR  
22 ASSOCIATION REQUIRED.—It shall be unlawful for  
23 any person to effect transactions in security futures

1 products that are not traded on a national securities  
2 exchange or a national securities association registered  
3 pursuant to section 15A(a).

4 "(2) LISTING STANDARDS REQUIRED.—Except  
5 as otherwise provided in paragraph (6), a national  
6 securities exchange or a national securities association  
7 registered pursuant to section 15A(a) may trade only  
8 security futures products that (A) conform with listing  
9 standards that such exchange or association files with  
10 the Commission under section 19(b) and (B) meet the  
11 criteria specified in section 2(a)(1)(D)(i) of the  
12 Commodity Exchange Act.

13 "(3) REQUIREMENTS FOR LISTING STAND-  
14 ARDS AND CONDITIONS FOR TRADING.—Such  
15 listing standards shall—

16 "(A) except as otherwise provided in a rule,  
17 regulation, or order issued pursuant to paragraph  
18 (4), require that any security underlying the  
19 security future, including each component security  
20 of a narrow-based security index, be registered  
21 pursuant to section 12 of this title;

22 "(B) require that if the security futures  
23 product is not cash settled, the market on which

1 the security futures product is traded have  
2 arrangements in place with a registered clearing  
3 agency for the payment and delivery of the  
4 securities underlying the security futures product;

5 "(C) be no less restrictive than comparable  
6 listing standards for options traded on a national  
7 securities exchange or national securities  
8 association registered pursuant to section 15A(a)  
9 of this title;

10 "(D) except as otherwise provided in a rule,  
11 regulation, or order issued pursuant to paragraph  
12 (4), require that the security future be based upon  
13 common stock and such other equity securities as  
14 the Commission and the Commodity Futures  
15 Trading Commission jointly determine  
16 appropriate;

17 "(E) require that the security futures  
18 product is cleared by a clearing agency that has  
19 in place provisions for linked and coordinated  
20 clearing with other clearing agencies that clear  
21 security futures products, which permits the  
22 security futures product to be purchased on a  
23 national securities exchange or national securities

1 association registered pursuant to section 15A(a)  
2 and offset on another national securities  
3 exchange or national securities association  
4 registered pursuant to section 15A(a);

5 "(F) require that only a broker or dealer  
6 subject to suitability rules comparable to those of  
7 a national securities association registered  
8 pursuant to section 15A(a) effect transactions in  
9 the security futures product;

10 "(G) require that the security futures  
11 product be subject to the prohibition against dual  
12 trading in section 4j of the Commodity Exchange  
13 Act (7 U.S.C. 6j) and the rules and regulations  
14 thereunder or the provisions of section 11(a) of  
15 this title and the rules and regulations thereunder,  
16 except to the extent otherwise permitted under  
17 this title and the rules and regulations thereunder;

18 "(H) require that trading in the security  
19 futures product not be readily susceptible to  
20 manipulation of the price of such security futures  
21 product, nor to causing or being used in the  
22 manipulation of the price of any underlying

1 security, option on such security, or option on a  
2 group or index including such securities;

3 "(I) require that procedures be in place for  
4 coordinated surveillance among the market on  
5 which the security futures product is traded, any  
6 market on which any security underlying the  
7 security futures product is traded, and other  
8 markets on which any related security is traded to  
9 detect manipulation and insider trading;

10 "(J) require that the market on which the  
11 security futures product is traded has in place  
12 audit trails necessary or appropriate to facilitate  
13 the coordinated surveillance required in  
14 subparagraph (I);

15 "(K) require that the market on which the  
16 security futures product is traded has in place  
17 procedures to coordinate trading halts between  
18 such market and any market on which any  
19 security underlying the security futures product is  
20 traded and other markets on which any related  
21 security is traded; and

22 "(L) require that the margin requirements  
23 for a security futures product be consistent with

1 the margin requirements for comparable option  
2 contracts traded on an exchange registered  
3 pursuant to section 6(a) of this title, except that  
4 nothing in this subparagraph shall be construed to  
5 prevent a national securities exchange or national  
6 securities association from requiring higher  
7 margin levels for a security futures product when  
8 it deems such action to be necessary or  
9 appropriate.

10 "(4) AUTHORITY TO MODIFY CERTAIN  
11 LISTING STANDARD REQUIREMENTS.—

12 "(A) The Commission and the Commodity  
13 Futures Trading Commission, by rule, regulation,  
14 or order, may jointly modify the listing standard  
15 requirements specified in subparagraph (A) or (D)  
16 of paragraph (3) to the extent such modification  
17 fosters the development of fair and orderly  
18 markets in security futures products, is necessary  
19 or appropriate in the public interest, and is  
20 consistent with the protection of investors.

21 "(B) AUTHORITY TO GRANT  
22 EXEMPTIONS.—The Commission and the  
23 Commodity Futures Trading Commission, by

1           order, may jointly exempt any person from  
2           compliance with the listing standard requirement  
3           specified in subparagraph (E) of paragraph (3) to  
4           the extent such exemption fosters the  
5           development of fair and orderly markets in  
6           security futures products, is necessary or  
7           appropriate in the public interest, and is  
8           consistent with the protection of investors.

9           "(5) DEFERRAL OF OPTIONS ON SECURITY  
10          FUTURES TRADING.—No person shall offer to enter  
11          into, enter into, or confirm the execution of any put, call,  
12          straddle, option, or privilege on a security future, except  
13          that, after 3 years after the date of enactment of this  
14          subsection, the Commission and the Commodity Futures  
15          Trading Commission may by order jointly determine to  
16          permit trading of puts, calls, straddles, options, or  
17          privileges on any security future authorized to be traded  
18          under the provisions of this Act and the Commodity  
19          Exchange Act. Before any such determination, the  
20          Commission and the Commodity Futures Trading  
21          Commission shall conduct a study of the effect of the  
22          trading of security futures on the markets for futures

1 contracts, securities, and options and the adequacy of  
2 protections for investors and other market participants.

3 "(6) DEFERRAL OF LINKED AND  
4 COORDINATED CLEARING.—

5 "(A) Notwithstanding paragraph (2), until  
6 the compliance date, a national securities  
7 exchange or national securities association  
8 registered pursuant to section 15A(a) may trade a  
9 security futures product that does not—

10 "(i) conform with any listing standard  
11 promulgated to meet the requirement  
12 specified in subparagraph (E) of paragraph  
13 (3); or

14 "(ii) meet the criterion specified in  
15 section 2(a)(1)(D)(i)(V) of the Commodity  
16 Exchange Act.

17 "(B) The Commission and the Commodity  
18 Futures Trading Commission shall jointly publish  
19 in the Federal Register a notice of the compliance  
20 date no later than 165 days before the  
21 compliance date.

22 "(C) For purposes of this paragraph, the  
23 term "compliance date" means the later of—

1                   "(i) 180 days after the end of the first  
2                   full calendar month period in which the  
3                   average aggregate comparable share  
4                   volume for all security futures products  
5                   based on single equity securities traded on  
6                   all national securities exchanges and any  
7                   national securities associations registered  
8                   pursuant to section 15A(a) equals or  
9                   exceeds 10% of the average aggregate  
10                  comparable share volume of options on  
11                  single equity securities traded on all  
12                  national securities exchanges and any  
13                  national securities associations registered  
14                  pursuant to section 15A(a); or

15                  "(ii) two years after the date on  
16                  which trading in any security futures  
17                  product commences under this title."

18                  "(7) TRADING OF SECURITY FUTURES  
19                  PRODUCTS ON TRADING SYSTEMS OPERATED BY  
20                  BROKERS OR DEALERS.—

21                  "(A) Three years after the date on which  
22                  trading in any security futures product  
23                  commences under this title, the Commission and

1 the Commodity Futures Trading Commission shall  
2 jointly determine whether, based on their  
3 experience in overseeing the trading of such  
4 products, it is necessary or appropriate in the  
5 public interest or to remove unnecessary burdens  
6 on competition, and consistent with the protection  
7 of investors, to permit any organization,  
8 association, or group of persons that is registered  
9 as a broker or dealer pursuant to section 15(b) of  
10 this title (except paragraph (11) thereof) and that  
11 performs the functions commonly performed by  
12 an exchange, to trade security futures products.

13 "(B) If, pursuant to subparagraph (A), the  
14 Commission and the Commodity Futures Trading  
15 Commission determine to permit any  
16 organization, association, or group of persons that  
17 is registered as a broker or dealer pursuant to  
18 section 15(b) of this title (except paragraph (11)  
19 thereof) and that performs the functions  
20 commonly performed by an exchange, to trade  
21 security futures products, the Commission, by  
22 rule, as it deems necessary or appropriate in the  
23 public interest and for the protection of investors

1 or to maintain fair and orderly markets, may  
2 require any organization, association, or group of  
3 persons not otherwise required to register under  
4 section 6(a) of this title to comply with any  
5 provision of this title (other than section 6(a)) or  
6 the rules or regulations thereunder which by its  
7 terms regulates or prohibits any act, practice, or  
8 course of business by a national securities  
9 exchange or a national securities association  
10 trading security futures products."

11 (b) MARGIN.—Section 7 of the Securities Exchange Act  
12 of 1934 (15 U.S.C. 78g) is amended—

13 (1) in subsection (a), by inserting "or a security  
14 futures product" after "exempted security";

15 (2) in subsection (c)(1)(A), by inserting "except as  
16 provided in paragraph (2)," after "security),";

17 (3) by redesignating paragraph (2) of subsection  
18 (c) as paragraph (3) of such subsection; and

19 (4) by inserting after paragraph (1) of such  
20 subsection the following:

21 "(2) MARGIN REGULATIONS.—

22 "(A) COMPLIANCE WITH MARGIN  
23 RULES REQUIRED.—It shall be unlawful for any

1 broker, dealer, or member of a national securities  
2 exchange to, directly or indirectly, extend or  
3 maintain credit to or for, or collect margin from  
4 any customer on, any security futures product  
5 unless such activities comply with the rules and  
6 regulations which the Commission and the  
7 Commodity Futures Trading Commission shall  
8 jointly prescribe pursuant to subparagraph (B).

9 "(B) CRITERIA FOR ISSUANCE OF  
10 RULES.—The Commission and the Commodity  
11 Futures Trading Commission shall jointly issue  
12 such regulations to establish margin  
13 requirements, including the establishment of  
14 levels of margin (initial and maintenance) and use  
15 of collateral for security futures products under  
16 such terms, and at such levels, as the  
17 Commission and the Commodity Futures Trading  
18 Commission jointly deem appropriate—

19 "(i) to preserve the financial integrity of  
20 markets trading security futures products;

21 "(ii) to prevent systemic risk;

22 "(iii) to make consistent the margin levels  
23 (initial and maintenance) and other margin

1 requirements between security futures products  
2 and comparable options contracts traded on a  
3 national securities exchange; and

4 "(iv) to ensure that the margin  
5 requirements (other than levels of margin),  
6 including the type, form, and use of collateral for  
7 security futures products, are and remain  
8 consistent with the requirements established by  
9 the Federal Reserve Board, pursuant to  
10 subparagraphs (A) and (B) of paragraph (1)."

11 (c) INCORPORATION OF SECURITY FUTURES  
12 PRODUCTS INTO THE NATIONAL MARKET SYSTEM.—

13 Section 11A of the Securities Exchange Act of 1934 (15 U.S.C.  
14 78k-1) is amended by adding at the end the following:

15 "(e) NATIONAL MARKETS SYSTEM FOR SECURITY  
16 FUTURES PRODUCTS.—

17 "(1) CONSULTATION AND COOPERATION  
18 REQUIRED.—With respect to security futures products,  
19 the Commission and the Commodity Futures Trading  
20 Commission shall consult and cooperate so that, to the  
21 maximum extent practicable, their respective regulatory  
22 responsibilities may be fulfilled and the rules and  
23 regulations applicable to security futures products may

1 foster a national market system for security futures  
2 products if the Commission and the Commodity Futures  
3 Trading Commission jointly determine that such a  
4 system would be consistent with the congressional  
5 findings in subsection (a)(1). In accordance with this  
6 objective, the Commission shall, at least 15 days prior to  
7 the issuance for public comment of any proposed rule or  
8 regulation under this section concerning security futures  
9 products, consult and request the views of the  
10 Commodity Futures Trading Commission.

11 "(2) APPLICATION OF RULES BY ORDER OF  
12 CFTC.—No rule adopted pursuant to this section shall  
13 be applied to any person with respect to the trading of  
14 security futures products on an exchange that is  
15 registered under section 6(g) unless the Commodity  
16 Futures Trading Commission has issued an order  
17 directing that such rule is applicable to such persons."

18 (d) INCORPORATION OF SECURITY FUTURES  
19 PROD- UCTS INTO THE NATIONAL SYSTEM FOR  
20 CLEARANCE AND SETTLEMENT.—Section 17A(b) of the  
21 Securities Exchange Act of 1934 (15 U.S.C. 78q-1(b)) is  
22 amended by adding at the end the following:

1           "(7)(A) A clearing agency that is regulated directly or  
2 indirectly by the Commodity Futures Trading Commission  
3 through its association with a designated contract market for  
4 security futures products that is a national securities exchange  
5 registered pursuant to section 6(g), and that would be required  
6 to register pursuant to paragraph (1) of this subsection only  
7 because it performs the functions of a clearing agency with  
8 respect to security futures products effected pursuant to the  
9 rules of the designated contract market with which such agency  
10 is associated, is exempted from the provisions of this section  
11 and the rules and regulations thereunder, except that if such a  
12 clearing agency performs the functions of a clearing agency  
13 with respect to a security futures product that is not cash  
14 settled, it must have arrangements in place with a registered  
15 clearing agency to effect the payment and delivery of the  
16 securities underlying the security futures product.

17           "(B) Any clearing agency that performs the functions of a  
18 clearing agency with respect to security futures products must  
19 coordinate with and develop fair and reasonable links with any  
20 and all other clearing agencies that perform the functions of a  
21 clearing agency with respect to security futures products, in  
22 order to permit, as of the compliance date (as defined in section  
23 6(h)(6)(C)), security futures products to be purchased on a

1 national securities exchange or national securities association  
2 registered pursuant to section 15A(a) and offset on another  
3 national securities exchange or national securities association  
4 registered pursuant to section 15A(a)."

5 (e) MARKET EMERGENCY POWERS AND CIRCUIT  
6 BREAKERS.—Section 12(k) of the Securities Exchange Act of  
7 1934 (15 U.S.C. 78l(k)) is amended—

8 (1) in paragraph (1), by adding at the end the  
9 following: "If the actions described in subparagraph (A)  
10 or (B) involve a security futures product, the Commission  
11 shall consult with and consider the views of the  
12 Commodity Futures Trading Commission."; and

13 (2) in paragraph (2)(B), by inserting after the first  
14 sentence the following: "If the actions described in  
15 subparagraph (A) involve a security futures product, the  
16 Commission shall consult with and consider the views of  
17 the Commodity Futures Trading Commission."

18 (f) EXEMPTION FROM TRANSACTION FEES.—  
19 Section 31 of the Securities Exchange Act of 1934 (15 U.S.C.  
20 \_\_\_\_ ) is amended—

21 (1) in subsection (b), by striking "and other  
22 evidences of indebtedness" and inserting "other

1 evidences of indebtedness, and security futures  
2 products";

3 (2) in subsection (c), by striking "and other  
4 evidences of indebtedness" and inserting "other  
5 evidences of indebtedness, and security futures  
6 products"; and

7 (3) in paragraph (1) of subsection (d), by striking  
8 "and other evidences of indebtedness" and inserting  
9 "other evidences of indebtedness, and security futures  
10 products".

11 (g) EXEMPTION FROM SHORT SALE PROVISIONS.—

12 Section 10(a) of the Securities Exchange Act of 1934 (15  
13 U.S.C. \_\_\_(a)) is amended—

14 (1) by inserting "(1)" after "(a)"; and

15 (2) by adding at the end the following:

16 "(2) Paragraph (1) of this subsection shall not apply to  
17 security futures products."

18 (h) RULEMAKING AUTHORITY TO ADDRESS  
19 DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—

20 Section 15(c)(3) of the Securities Exchange Act of 1934 (15  
21 U.S.C. \_\_\_(c)(3)) is amended—

22 (1) by inserting "(A)" after "(3)"; and

23 (2) by adding at the end the following:

1           "(B) To the extent necessary or appropriate in the public  
2 interest, to remove unnecessary burdens on competition, and  
3 consistent with the protection of investors, the Commission, in  
4 consultation with the Commodity Futures Trading Commission,  
5 shall issue such rules, regulations, or orders as are necessary  
6 to avoid duplicative or conflicting regulations applicable to any  
7 broker or dealer registered with the Commission pursuant to  
8 section 15(b) (except paragraph (11) thereof), that is also  
9 registered with the Commodity Futures Trading Commission  
10 pursuant to section 4f(a) of the Commodity Exchange Act  
11 (except paragraph (2) thereof), with respect to the application of  
12 (i) the provisions of section 8, section 15(c)(3), and section 17  
13 of this title and the rules and regulations thereunder related to  
14 the treatment of customer funds, securities, or property,  
15 maintenance of books and records, financial reporting, or other  
16 financial responsibility rules, involving security futures products  
17 and (ii) similar provisions of the Commodity Exchange Act and  
18 rules and regulations thereunder involving security futures  
19 products."

20           (i) OBLIGATION TO ADDRESS DUPLICATIVE  
21 REGULATION OF DUAL REGISTRANTS.—Section 6 of the  
22 Securities Exchange Act of 1934 (15 U.S.C. \_\_\_\_ ) is amended

1 by inserting after subsection (h), as added by subsection (a),  
2 the following—

3       "(i) To the extent necessary or appropriate in the public  
4 interest, to remove unnecessary burdens on competition, and  
5 consistent with the protection of investors, each national  
6 securities exchange registered pursuant to subsection (a) of  
7 this section shall issue such rules as are necessary to avoid  
8 duplicative or conflicting rules applicable to any broker or dealer  
9 registered with the Commission pursuant to section 15(b)  
10 (except paragraph (11) thereof), that is also registered with the  
11 Commodity Futures Trading Commission pursuant to section  
12 4f(a) of the Commodity Exchange Act (except paragraph (2)  
13 thereof), with respect to the application of (1) rules of such  
14 national securities exchange of the type specified in section  
15 15(c)(3)(B) involving security futures products and (2) similar  
16 rules of national securities associations registered pursuant to  
17 section 15A(k) involving security futures products."

18       (j) OBLIGATION TO ADDRESS DUPLICATIVE  
19 REGULATION OF DUAL REGISTRANTS.—Section 15A of the  
20 Securities Exchange Act of 1934 (15 U.S.C. \_\_\_\_ ) is amended  
21 by inserting after subsection (k), as added by section 203, the  
22 following:



1           “(E) The clearance and settlement of transactions  
2           in over-the-counter derivatives through clearing agencies  
3           registered with the Commission will reduce systemic risk  
4           and provide stability to financial markets during times of  
5           market disorder.”; and

6           (B) in paragraph (2)(A)(ii), by striking “and  
7           commodity options” and inserting “commodity options,  
8           and over-the-counter derivatives”; and

9           (2) in subsection (b)—

10           (A) in paragraph (3)(A), by inserting “and  
11           derivative agreements, contracts, and  
12           transactions” after “prompt and accurate  
13           clearance and settlement of securities  
14           transactions”;

15           (B) in paragraph (3)(F), by inserting “and,  
16           to the extent applicable, derivative agreements,  
17           contracts, and transactions” after “designed to  
18           promote the prompt and accurate clearance and  
19           settlement of securities transactions”; and

20           (C) by inserting after paragraph (7), as  
21           added by section 206(d), the following:

22           “(8) A registered clearing agency shall be permitted to  
23           provide facilities for the clearance and settlement of any

1 derivative agreements, contracts, or transactions that are  
2 excluded from the Commodity Exchange Act, subject to the  
3 requirements of this section and to such rules and regulations  
4 as the Commission may prescribe as necessary or appropriate  
5 in the public interest, for the protection of investors, or  
6 otherwise in furtherance of the purposes of this title."

7 **SEC. 208. AMENDMENTS RELATING TO REGISTRATION**

8 **AND DISCLOSURE ISSUES UNDER THE**  
9 **SECURITIES ACT OF 1933 AND THE**  
10 **SECURITIES EXCHANGE ACT OF 1934.**

11 (a) AMENDMENTS TO THE SECURITIES ACT OF  
12 1933.—

13 (1) TREATMENT OF SECURITY FUTURES PROD-  
14 UCTS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C.  
15 77b(a)) is amended—

16 (A) in paragraph (1), by inserting "security future,"  
17 after "treasury stock,";

18 (B) in paragraph (3), by adding at the end the  
19 following: "Any offer or sale of a security futures product  
20 by or on behalf of the issuer of the securities underlying  
21 the security futures product, an affiliate of the issuer, or  
22 an underwriter, shall constitute a contract for sale of,

1 sale of, offer for sale, or offer to sell the underlying  
2 securities.";

3 (C) by adding at the end the following:

4 "(16) The terms 'security future', 'narrow-based security  
5 index', and 'security futures product' have the same  
6 meanings as provided in section 3(a)(55) of the  
7 Securities Exchange Act of 1934."

8 (2) EXEMPTION FROM REGISTRATION.—

9 Section 3(a) of the Securities Act of 1933 (15 U.S.C.  
10 77c(a)) is amended by adding at the end the following:

11 "(14) Any security futures product that is—

12 "(A) cleared by a clearing agency  
13 registered under section 17A of the Securities  
14 Exchange Act of 1934 or exempt from registration  
15 under subsection (b)(7) of such section 17A; and

16 "(B) traded on a national securities  
17 exchange or a national securities association  
18 registered pursuant to section 15A(a) of the  
19 Securities Exchange Act of 1934."

20 (3) CONFORMING AMENDMENT.—Section

21 12(a)(2) of the Securities Act of 1933 (15 U.S.C.  
22 771(a)(2)) is amended by striking "paragraph (2)" and  
23 inserting "paragraphs (2) and (14)".

1 (b) AMENDMENTS TO THE SECURITIES EXCHANGE  
2 ACT OF 1934.—

3 (1) EXEMPTION FROM REGISTRATION.—

4 Section 12(a) of the Securities Exchange Act of 1934 (15  
5 U.S.C. 78l(a)) is amended by adding at the end the  
6 following: "The provisions of this subsection shall not  
7 apply in respect of a security futures product traded on a  
8 national securities exchange."

9 (2) EXEMPTIONS FROM REPORTING  
10 REQUIREMENT.—Section 12(g)(5) of the Securities  
11 Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended  
12 by adding at the end the following: "For purposes of this  
13 subsection, a security futures product shall not be  
14 considered a class of equity security of the issuer of the  
15 securities underlying the security futures product."

16 (3) TRANSACTIONS BY CORPORATE  
17 INSIDERS.— Section 16 of the Securities Exchange Act  
18 of 1934 (15 U.S.C. 78p) is amended by adding at the  
19 end the following:

20 "(f) TREATMENT OF TRANSACTIONS IN SECURITY  
21 FUTURES PRODUCTS.—The provisions of this section shall  
22 apply to ownership of and transactions in security futures  
23 products as if they were ownership of and transactions in the

1 underlying equity security. The Commission may adopt such  
2 rules and regulations as it deems necessary or appropriate in  
3 the public interest to carry out the purposes of this section."

4 **SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY**  
5 **ACT OF 1940 AND THE INVESTMENT ADVIS-**  
6 **ERS ACT OF 1940.**

7 (a) DEFINITIONS UNDER THE INVESTMENT COM-  
8 PANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT  
9 OF 1940.—

10 (1) Section 2(a)(36) of the Investment Company  
11 Act of 1940 (15 U.S.C. 80a-2(a)(36)) is amended by  
12 inserting "security future," after "treasury stock,".

13 (2) Section 202(a)(18) of the Investment Advisers  
14 Act of 1940 (15 U.S.C. 80b-2(a)(18)) is amended by  
15 inserting "security future," after "treasury stock,".

16 (3) Section 2(a) of the Investment Company Act  
17 of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at  
18 the end the following:

19 "(52) The terms 'security future' and 'narrow-  
20 based security index' have the same meanings as  
21 provided in section 3(a)(55) of the Securities Exchange  
22 Act of 1934."

1                   (4) Section 202(a) of the Investment Advisers Act  
2                   of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at  
3                   the end the following:

4                   "(27) The terms 'security future' and 'narrow-  
5                   based security index' have the same meanings as  
6                   provided in section 3(a)(55) of the Securities Exchange  
7                   Act of 1934."

8                   (b) OTHER PROVISION.—Section 203(b) of the  
9                   Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is  
10                  amended—

11                   (1) by striking "or" at the end of paragraph  
12                   (4);

13                   (2) by striking the period at the end of  
14                   paragraph (5) and inserting "; or"; and

15                   (3) by adding at the end the following:

16                   "(6) any investment adviser that is registered with the  
17                   Commodity Futures Trading Commission as a commodity  
18                   trading advisor whose business does not consist primarily of  
19                   acting as an investment adviser, as defined in section  
20                   202(a)(11) of this title, and that does not act as an investment  
21                   adviser to (A) an investment company registered under title I of  
22                   this Act, or (B) a company which has elected to be a business

1 development company pursuant to section 54 of title I of this  
2 Act and has not withdrawn its election."

3 **SEC. 210. PREEMPTION OF STATE GAMING AND BUCKET**  
4 **SHOP LAWS**

5 The last sentence of section 28(a) of the Securities  
6 Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended—

7 (1) by inserting "subject to this title" after  
8 "privilege, or other security"; and

9 (2) by striking "any such instrument, if such  
10 instrument is traded pursuant to rules and regulations of  
11 a self-regulatory organization that are filed with the  
12 Commission pursuant to section 19(b) of this Act" and  
13 inserting "any such security".

14 **Subtitle B—Conforming Amendments**  
15 **to the Commodity Exchange Act**

16 **SEC. 221. JURISDICTION OF SECURITIES AND**  
17 **EXCHANGE COMMISSION; OTHER**  
18 **PROVISIONS.**

19 (a) JURISDICTION OF SECURITIES AND EXCHANGE  
20 COMMISSION.—

1 (1) Section 2(a)(1)(C) of the Commodity  
2 Exchange Act (7 U.S.C. \_\_\_) (as redesignated by  
3 section 122(a)(2)(C)) is amended—

4 (A) by striking subclause (III) of clause (ii)  
5 and inserting the following:

6 "(III) Such group or index of securities shall  
7 not constitute a narrow-based security index."<sup>3</sup>  
8 and

9 (B) by striking clause (iv) and inserting the  
10 following:

11 "(iv) If, in its discretion, the Commission  
12 determines that a stock index futures contract,  
13 notwithstanding its conformance with the  
14 requirements in clause (ii) of subparagraph (C),  
15 can reasonably be used as a surrogate for trading  
16 a security (including a security futures product), it  
17 may, by order, require such contract and any  
18 option thereon be traded and regulated as

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<sup>3</sup> The CEA definition of "narrow-based security index" appears in Title I of the Commerce version of the bill and will be conformed to the definition in section 3(a)(55)(B) of the Exchange Act as it appears in this document (see n. 1).

1 security futures products as defined in section  
2 3(a)(55) of the Securities Exchange Act of 1934  
3 and section 1a(32)<sup>4</sup> of this Act subject to all rules  
4 and regulations applicable to security futures  
5 products under this Act and the securities laws as  
6 defined in section 3(a)(47) of the Securities  
7 Exchange Act of 1934."<sup>5</sup> and

8 (2) Section 2(a)(1) of the Commodity Exchange  
9 Act (7 U.S.C. 2, 2a, 4) is amended by adding at the end  
10 the following:

11 "(D)(i) Notwithstanding any other provision of this  
12 Act, the Securities and Exchange Commission shall  
13 have jurisdiction and authority over security futures as  
14 defined in section 3(a)(55) of the Securities Exchange  
15 Act of 1934, section 2(a)(16) of the Securities Act of  
16 1933, section 2(a)(52) of the Investment Company Act of  
17 1940, and section 202(a)(27) of the Investment Advisers

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<sup>4</sup> The reference to section 1a of the CEA is based on the Commerce version of the bill (assuming deletion of new "ATS" definition).

<sup>5</sup> Need to amend section 122(a)(2) of Title I of the Commerce version of the bill (Technical and Conforming Amendments) to strike amendment to clause (iv).

1 Act of 1940, options on security futures, and persons  
2 effecting transactions in security futures and options  
3 thereon, and this Act shall apply to and the Commission  
4 shall have jurisdiction with respect to accounts,  
5 agreements (including any transaction which is of the  
6 character of, or is commonly known to the trade as, an  
7 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call',  
8 'advance guaranty', or 'decline guaranty') and  
9 transactions involving, and may designate a board of  
10 trade as a contract market in, a security futures product  
11 as defined in section 1a(32)<sup>6</sup> of this Act: *Provided,*  
12 *however,* That, except as provided in clauses (v) and  
13 (vii) of this subparagraph, no board of trade shall be  
14 designated as a contract market with respect to any  
15 such contracts of sale for future delivery unless the  
16 board of trade making such application demonstrates  
17 and the Commission expressly finds that the specific  
18 contract with respect to which the application has been  
19 made, or the board of trade, meets the following criteria:

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<sup>6</sup> The reference to section 1a of the CEA is based on the Commerce version of the bill (assuming deletion of new "ATS" definition).

1                   "(I) Except as otherwise provided in a rule,  
2                   regulation, or order issued pursuant to clause (vi)  
3                   of this subparagraph, any security underlying the  
4                   security future, including each component security  
5                   of a narrow-based security index, is registered  
6                   pursuant to section 12 of the Securities Exchange  
7                   Act of 1934.

8                   "(II) If the security futures product is not  
9                   cash settled, the board of trade on which the  
10                  security futures product is traded has  
11                  arrangements in place with a clearing agency  
12                  registered pursuant to section 17A of the  
13                  Securities Exchange Act of 1934 for the payment  
14                  and delivery of the securities underlying the  
15                  security futures product.

16                  "(III) The security futures product is not  
17                  traded on an exempt board of trade or a  
18                  designated transaction execution facility.

19                  "(IV) Except as otherwise provided in a  
20                  rule, regulation, or order issued pursuant to  
21                  clause (vi) of this subparagraph, the security  
22                  future is based upon common stock and such  
23                  other equity securities as the Commission and the

1 Securities and Exchange Commission jointly  
2 determine appropriate.

3 "(V) The security futures product is cleared  
4 by a clearing agency that has in place provisions  
5 for linked and coordinated clearing with other  
6 clearing agencies that clear security futures  
7 products, which permits the security futures  
8 product to be purchased on a designated contract  
9 market, national securities exchange registered  
10 under section 6(a) of the Securities Exchange Act  
11 of 1934, or national securities association  
12 registered pursuant to section 15A(a) of the  
13 Securities Exchange Act of 1934 and offset on  
14 another designated contract market, national  
15 securities exchange registered under section 6(a)  
16 of the Securities Exchange Act of 1934, or  
17 national securities association registered pursuant  
18 to section 15A(a) of the Securities Exchange Act  
19 of 1934.

20 "(VI) Only futures commission merchants,  
21 introducing brokers, commodity trading advisors,  
22 commodity pool operators or associated persons  
23 subject to suitability rules comparable to those of

1 a national securities association registered  
2 pursuant to section 15A(a) of the Securities  
3 Exchange Act of 1934 solicit, accept any order  
4 for, or otherwise deal in any transaction in or in  
5 connection with a security futures product.

6 "(VII) The security futures product is  
7 subject to a prohibition against dual trading in  
8 section 4j of this Act and the rules and regulations  
9 thereunder or the provisions of section 11(a) of  
10 the Securities Exchange Act of 1934 and the rules  
11 and regulations thereunder, except to the extent  
12 otherwise permitted under the Securities  
13 Exchange Act of 1934 and the rules and  
14 regulations thereunder.

15 "(VIII) Trading in the security futures  
16 product is not readily susceptible to manipulation  
17 of the price of such security futures product, nor  
18 to causing or being used in the manipulation of  
19 the price of any underlying security, option on  
20 such security, or option on a group or index  
21 including such securities;

22 "(IX) The board of trade on which the  
23 security futures product is traded has procedures

1 in place for coordinated surveillance among such  
2 board of trade, any market on which any security  
3 underlying the security futures product is traded,  
4 and other markets on which any related security  
5 is traded to detect manipulation and insider  
6 trading.

7 "(X) The board of trade on which the  
8 security futures product is traded has in place  
9 audit trails necessary or appropriate to facilitate  
10 the coordinated surveillance required in  
11 subclause (IX).

12 "(XI) The board of trade on which the  
13 security futures product is traded has in place  
14 procedures to coordinate trading halts between  
15 such board of trade and markets on which any  
16 security underlying the security futures product is  
17 traded and other markets on which any related  
18 security is traded.

19 "(XII) The margin requirements for a  
20 security futures product are consistent with the  
21 margin requirements for comparable option  
22 contracts traded on an exchange registered  
23 pursuant to section 6(a) of the Securities

1 Exchange Act of 1934, except that nothing in this  
2 subclause shall be construed to prevent a board  
3 of trade from requiring higher margin levels for a  
4 security futures product when it deems such  
5 action to be necessary or appropriate.

6 "(ii) It shall be unlawful for any person to offer, to  
7 enter into, to execute, to confirm the execution of, or to  
8 conduct any office or business anywhere in the United  
9 States, its territories or possessions, for the purpose of  
10 soliciting, or accepting any order for, or otherwise  
11 dealing in, any transaction in, or in connection with, a  
12 security futures product unless—

13 "(I) such transaction is conducted on or  
14 subject to the rules of a board of trade which has  
15 been designated by the Commission as a contract  
16 market in such security futures product;

17 "(II) such contract is executed or  
18 consummated by, through, or with a member of  
19 such contract market; and

20 "(III) such security futures product is  
21 evidenced by a record in writing which shows the  
22 date, the parties to such security futures product  
23 and their addresses, the property covered and its

1 price: *Provided*, That each contract market  
2 member shall keep such record for a period of 3  
3 years from the date thereof, or for a longer period  
4 if the Commission so directs, which record shall at  
5 all times be open to the inspection of any  
6 representative of the Commission, the Securities  
7 and Exchange Commission or the Department of  
8 Justice.

9 "(iii)(I) Except as provided in subclause (II) but  
10 notwithstanding any other provision of this Act, no  
11 person shall offer to enter into, enter into, or confirm the  
12 execution of any option on a security future.

13 "(II) After 3 years after the date of enactment of  
14 the Commodity Futures Modernization Act of 2000, the  
15 Commission and the Securities and Exchange  
16 Commission may by order jointly determine to permit  
17 trading of options on any security future authorized to be  
18 traded under the provisions of this Act and the Securities  
19 Exchange Act of 1934. Before any such determination,  
20 the Commission and the Securities and Exchange  
21 Commission shall conduct a study of the effect of the  
22 trading of security futures on the markets for futures

1 contracts, securities, and options and the adequacy of  
2 protections for investors and other market participants.

3 "(iv)(I) All records of a futures commission  
4 merchant or introducing broker registered pursuant to  
5 section 4f(a)(2), floor broker or floor trader exempt from  
6 registration pursuant to section 4f(a)(3), associated  
7 person exempt from registration pursuant to section  
8 4k(6), or board of trade designated as a contract market  
9 in a security futures product pursuant to section 5f shall  
10 be subject at any time, or from time to time, to such  
11 reasonable special or other examinations by  
12 representatives of the Commission as the Commission  
13 deems necessary or appropriate in the public interest,  
14 for the protection of investors, or otherwise in  
15 furtherance of the purposes of this title: *Provided*, That  
16 the Commission, prior to conducting any such  
17 examination, gives notice to the Securities and  
18 Exchange Commission of such proposed examination  
19 and consults with the Securities and Exchange  
20 Commission concerning the feasibility and desirability of  
21 coordinating such examination with examinations  
22 conducted by the Securities and Exchange Commission  
23 with a view to avoiding unnecessary regulatory

1 duplication or undue regulatory burdens for such  
2 registrant or board of trade.

3 "(II) The Commission shall notify the Securities  
4 and Exchange Commission of any examination  
5 conducted of any futures commission merchant or  
6 introducing broker registered pursuant to section  
7 4f(a)(2), floor broker or floor trader exempt from  
8 registration pursuant to section 4f(a)(3), associated  
9 person exempt from registration pursuant to section  
10 4k(6), or board of trade designated as a contract market  
11 in a security futures product pursuant to section 5f, and,  
12 upon request, furnish to the Securities and Exchange  
13 Commission any examination report and data supplied  
14 to the Commission in connection with such examination.

15 "(III) The Commission shall, to the fullest extent  
16 possible, use the reports of examinations of any futures  
17 commission merchant or introducing broker registered  
18 pursuant to section 4f(a)(2), floor broker or floor trader  
19 exempt from registration pursuant to section 4f(a)(3),  
20 associated person exempt from registration pursuant to  
21 section 4k(6), or board of trade designated as a contract  
22 market in a security futures product pursuant to section  
23 5f made by the Securities and Exchange Commission, a

1 national securities association registered pursuant to  
2 section 15A(a) of the Securities Exchange Act of 1934  
3 (15 U.S.C. 78o-3(a)), or a national securities exchange  
4 registered pursuant to section 6(a) of the Securities  
5 Exchange Act of 1934 (15 U.S.C. 78f(a)).

6 "(IV) RULES OF CONSTRUCTION.—

7 "(A) Any records required under this  
8 subsection for a futures commission merchant or  
9 introducing broker registered pursuant to section  
10 4f(a)(2), floor broker or floor trader exempt from  
11 registration pursuant to section 4f(a)(3),  
12 associated person exempt from registration  
13 pursuant to section 4k(6), or board of trade  
14 designated as a contract market in a security  
15 futures product pursuant to section 5f, shall be  
16 limited to records with respect to accounts,  
17 agreements, and transactions involving security  
18 futures products.

19 "(B) Nothing in this subsection shall be  
20 construed to impair or limit (other than by the  
21 requirement of prior consultation) the power of the  
22 Commission under this subsection to examine  
23 any futures commission merchant or introducing

1 broker registered pursuant to section 4f(a)(2),  
2 floor broker or floor trader exempt from  
3 registration pursuant to section 4f(a)(3),  
4 associated person exempt from registration  
5 pursuant to section 4k(6), or board of trade  
6 designated as a contract market in a security  
7 futures product pursuant to section 5f, or to affect  
8 in any way the power of the Commission under  
9 any other provision of this Act.

10 "(v) A board of trade designated as a contract  
11 market pursuant to section 5f shall be designated as a  
12 contract market with respect to a security futures product  
13 by providing to the Commission a written certification  
14 that the specific contract with respect to which the  
15 application has been made, or the board of trade, meets  
16 the criteria specified in subclauses (I) through (XII) of  
17 clause (i) of this subparagraph, except as otherwise  
18 provided in clause (vii) of this subparagraph.

19 "(vi)(I) The Commission and the Securities and  
20 Exchange Commission, by rule, regulation, or order,  
21 may jointly modify the criteria specified in subclause (I)  
22 or (IV) of clause (i) of this subparagraph to the extent  
23 such modification fosters the development of fair and

1 orderly markets in security futures products, is  
2 necessary or appropriate in the public interest, and is  
3 consistent with the protection of investors.

4 "(II) The Commission and the Securities and  
5 Exchange Commission, by order, may jointly exempt any  
6 person from compliance with the criterion specified in  
7 subclause (V) of clause (i) of this subparagraph to the  
8 extent such exemption fosters the development of fair  
9 and orderly markets in security futures products, is  
10 necessary or appropriate in the public interest, and is  
11 consistent with the protection of investors.

12 "(vii)(I) Notwithstanding clauses (i) and (v) of this  
13 subparagraph, until the compliance date, a board of  
14 trade shall not be required to meet the criterion specified  
15 in subclause (V) of clause (i) of this subparagraph to be  
16 designated as a contract market in a security futures  
17 product.

18 "(II) The Commission and the Securities and  
19 Exchange Commission shall jointly publish in the  
20 Federal Register a notice of the compliance date no later  
21 than 165 days before the compliance date.

22 "(III) For purposes of this clause, the term  
23 "compliance date" means the later of—

1                   "(A) 180 days after the end of the first full  
2                   calendar month period in which the average  
3                   aggregate comparable share volume for all  
4                   security futures products based on single equity  
5                   securities traded on all designated contract  
6                   markets equals or exceeds 10% of the average  
7                   aggregate comparable share volume of options  
8                   on single equity securities traded on all national  
9                   securities exchanges registered pursuant to  
10                  section 6(a) of the Securities Exchange Act of  
11                  1934 and any national securities associations  
12                  registered pursuant to section 15A(a) of the  
13                  Securities Exchange Act of 1934; or

14                  "(B) two years after the date on which  
15                  trading in any security futures product  
16                  commences under this Act."

17                  "(viii)(I) Three years after the date on which  
18                  trading in any security futures product commences under  
19                  this title, the Commission and the Securities and  
20                  Exchange Commission shall jointly determine whether,  
21                  based on their experience in overseeing the trading of  
22                  such products, it is necessary or appropriate in the  
23                  public interest or to remove unnecessary burdens on

1 competition, and consistent with the protection of  
2 investors, to permit any organization, association, or  
3 group of persons that is registered as a broker or dealer  
4 pursuant to section 15(b) of the Securities Exchange Act  
5 of 1934 (except paragraph (11) thereof) and that  
6 performs the functions commonly performed by an  
7 exchange (as defined in section 3(a)(1) of such Act), to  
8 trade security futures products.

9 "(II) If, pursuant to subclause (I), the Commission  
10 and the Securities and Exchange Commission determine  
11 to permit any organization, association, or group of  
12 persons that is registered as a broker or dealer pursuant  
13 to section 15(b) of the Securities Exchange Act of 1934  
14 (except paragraph (11) thereof) and that performs the  
15 functions commonly performed by an exchange (as  
16 defined in section 3(a)(1) of such Act), to trade security  
17 futures products, any such organization, association, or  
18 group of persons shall be deemed a national securities  
19 exchange for purposes of section 5f of this Act (and such  
20 other provisions of this Act as the Commission, by rule,  
21 deems necessary or appropriate in the public interest  
22 and for the protection of investors or to maintain fair and  
23 orderly markets), and the Commission, by rule, as it

1       deems necessary or appropriate in the public interest  
2       and for the protection of investors or to maintain fair and  
3       orderly markets, may exempt any such organization,  
4       association, or group of persons from any provision of  
5       this Act or rule or regulation thereunder."

6       (b) MARGIN ON SECURITY FUTURES.—Section  
7       2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C. 2a(vi))  
8       (as redesignated by section 122) is amended—

9               (1) by redesignating subclause (V) as subclause  
10       (VI); and

11               (2) by striking "(vi)(I)" and all that follows through  
12       subclause (IV) and inserting the following:

13               "(vi)(I) Notwithstanding any other provision  
14       of this Act, any contract market in a stock index  
15       futures contract (or option thereon), other than a  
16       security futures product, shall file with the Board  
17       of Governors of the Federal Reserve System any  
18       rule establishing or changing the levels of margin  
19       (initial and maintenance) for such stock index  
20       futures contract (or option thereon), other than  
21       security futures products.

22               "(II) The Board may at any time request  
23       any contract market to set the margin for any

1 stock index futures contract (or option thereon),  
2 other than for any security futures product, at  
3 such levels as the Board in its judgment  
4 determines are appropriate to preserve the  
5 financial integrity of the contract market or its  
6 clearing system or to prevent systemic risk. If the  
7 contract market fails to do so within the time  
8 specified by the Board in its request, the Board  
9 may direct the contract market to alter or  
10 supplement the rules of the contract market as  
11 specified in the request.

12 "(III) Subject to such conditions as the  
13 Board may determine, the Board may delegate  
14 any or all of its authority, relating to margin for any  
15 stock index futures contract (or option thereon),  
16 other than security futures products, under this  
17 clause to the Commission.

18 "(IV) REGULATIONS.—It shall be unlawful  
19 for any futures commission merchant to, directly  
20 or indirectly, extend or maintain credit to or for, or  
21 collect margin from any customer on any security  
22 futures product unless such activities comply with  
23 the rules and regulations which the Commission

1 and the Securities and Exchange Commission  
2 shall jointly prescribe pursuant to section  
3 7(c)(2)(B) of the Securities Exchange Act of 1934.

4 "(V) Nothing in this clause shall supersede  
5 or limit the authority granted to the Commission in  
6 section 8a(9) to direct a contract market, on  
7 finding an emergency to exist, to raise temporary  
8 margin levels on any futures contract, or option on  
9 the contract covered by this clause, or on any  
10 security futures product."

11 (c) DUAL TRADING.—The Commodity Exchange Act (7  
12 U.S.C. \_\_\_ ) is amended by striking section 4j and inserting the  
13 following:

14 "SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY  
15 FUTURES PRODUCTS ON DESIGNATED CONTRACT  
16 MARKETS.

17 "(a) The Commission shall issue regulations to prohibit  
18 the privilege of dual trading in security futures products on each  
19 contract market. The regulations issued by the Commission  
20 under this section—

21 "(1) shall provide that the prohibition of dual  
22 trading thereunder shall take effect upon issuance of the  
23 regulations; and

1                   "(2) shall provide exceptions, as the Commission  
2                   determines appropriate, to ensure fairness and orderly  
3                   trading in security futures product markets, including—

4                               "(A) exceptions for spread transactions and  
5                               the correction of trading errors;

6                               "(B) allowance for a customer to designate  
7                               in writing not less than once annually a named  
8                               floor broker to execute orders for such customer,  
9                               notwithstanding the regulations to prohibit the  
10                              privilege of dual trading required under this  
11                              section; and

12                             "(C) other measures to address emergency  
13                             or unusual market conditions that further the  
14                             public interest consistent with the purposes of this  
15                             section.

16                   "(b) As used in this section, the term 'dual trading'  
17                   means the execution of customer orders by a floor broker  
18                   during the same trading session in which the floor broker  
19                   executes any trade in the same contract market for—

20                             "(1) the account of such floor broker;

21                             "(2) an account for which such floor broker has  
22                   trading discretion; or

1                   "(3) an account controlled by a person with whom  
2                   such floor broker has a relationship through membership  
3                   in a broker association.

4                   "(c) As used in this section, the term 'broker association'  
5                   shall include two or more contract market members with floor  
6                   trading privileges of whom at least one is acting as a floor  
7                   broker, who—

8                   "(1) engage in floor brokerage activity on behalf of  
9                   the same employer,

10                   "(2) have an employer and employee relationship  
11                   which relates to floor brokerage activity,

12                   "(3) share profits and losses associated with their  
13                   brokerage or trading activity, or

14                   "(4) regularly share a deck of orders."<sup>7</sup>

15                   (d) EXEMPTION FROM REGISTRATION FOR  
16                   INVESTMENT ADVISERS.—Section 4m of the Commodity  
17                   Exchange Act (7 U.S.C. \_\_\_) is amended by adding at the end  
18                   the following:

19                   "(3) The provisions of subsection (1) of this section shall  
20                   not apply to any commodity trading advisor that is registered

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<sup>7</sup> Need to strike technical changes to section 4j in Title I of the  
Commerce version of the bill.

1 with the Securities and Exchange Commission as an  
2 investment adviser whose business does not consist primarily  
3 of acting as a commodity trading advisor, as defined in section  
4 1a(5)<sup>8</sup> of this Act, and that does not act as a commodity trading  
5 advisor to any investment trust, syndicate, or similar form of  
6 enterprise that is engaged primarily in trading in any commodity  
7 for future delivery on or subject to the rules of any contract  
8 market."

9 (e) EXEMPTION FROM INVESTIGATIONS OF  
10 MARKETS IN UNDERLYING SECURITIES.—Section 16 of the  
11 Commodity Exchange Act (7 U.S.C. \_\_\_) is amended by  
12 adding at the end the following:

13 "(e) The provisions of this section shall not apply to  
14 investigations involving any security underlying a security  
15 futures product."

16 (f) RULEMAKING AUTHORITY TO ADDRESS  
17 DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—  
18 Section 4d of the Commodity Exchange Act (7 U.S.C. \_\_\_) is  
19 amended by adding at the end the following:

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<sup>8</sup> The reference to section 1a of the CEA is based on the Commerce version of the bill (assuming deletion of new "ATS" definition).

1           "(3) To the extent necessary or appropriate in the public  
2 interest, to remove unnecessary burdens on competition, and  
3 consistent with the protection of investors, the Commission, in  
4 consultation with the Securities and Exchange Commission,  
5 shall issue such rules, regulations, or orders as are necessary  
6 to avoid duplicative or conflicting regulations applicable to any  
7 futures commission merchant registered with the Commission  
8 pursuant to section 4f(a) (except paragraph (2) thereof), that is  
9 also registered with the Securities and Exchange Commission  
10 pursuant to section 15(b) of the Securities Exchange Act  
11 (except paragraph (11) thereof), involving the application of (A)  
12 section 8, section 15(c)(3), and section 17 of the Securities  
13 Exchange Act of 1934 and the rules and regulations thereunder  
14 related to the treatment of customer funds, securities, or  
15 property, maintenance of books and records, financial reporting  
16 or other financial responsibility rules (as defined in section  
17 3(a)(40) of the Securities Exchange Act of 1934), involving  
18 security futures products and (B) similar provisions of this Act  
19 and the rules and regulations thereunder involving security  
20 futures products."

1 (g) OBLIGATION TO ADDRESS DUPLICATIVE  
2 REGULATION OF DUAL REGISTRANTS.—Section 17 of the  
3 Commodity Exchange Act (7 U.S.C. \_\_\_) is amended by  
4 adding at the end the following—

5 "(r) To the extent necessary or appropriate in the public  
6 interest, to remove unnecessary burdens on competition, and  
7 consistent with the protection of investors, each futures  
8 association registered under this section shall issue such rules  
9 as are necessary to avoid duplicative or conflicting rules  
10 applicable to any futures commission merchant registered with  
11 the Commission pursuant to section 4f(a) (except paragraph (2)  
12 thereof), that is also registered with the Securities and  
13 Exchange Commission pursuant to section 15(b) of the  
14 Securities Exchange Act (except paragraph (11) thereof), with  
15 respect to the application of (1) rules of such futures  
16 association of the type specified in section 4d(3) involving  
17 security futures products and (2) similar rules of national  
18 securities associations registered pursuant to section 15A(a) of  
19 the Securities and Exchange Act of 1934 involving security  
20 futures products."

1 **SEC. 222. APPLICATION OF THE COMMODITY EXCHANGE**  
2 **ACT TO NATIONAL SECURITIES EXCHANGES**  
3 **AND NATIONAL SECURITIES ASSOCIATIONS**  
4 **THAT TRADE SECURITY FUTURES.**

5 (a) NOTICE DESIGNATION OF NATIONAL  
6 SECURITIES EXCHANGES AND NATIONAL SECURITIES  
7 ASSOCIATIONS.—The Commodity Exchange Act is amended  
8 by inserting after section 5e (7 U.S.C. 7b), as amended by  
9 section 115, the following:

10 **"SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES**  
11 **AND ASSOCIATIONS AS CONTRACT**  
12 **MARKETS.**

13 "(a) Any board of trade that is registered with the  
14 Securities and Exchange Commission as a national securities  
15 exchange or is a national securities association registered  
16 pursuant to section 15A(a) of the Securities Exchange Act of  
17 1934 shall be a designated contract market in security futures  
18 products if—

19 "(1) such national securities exchange or national  
20 securities association lists or trades no other contracts of  
21 sale for future delivery, except for security futures  
22 products;

1           "(2) such national securities exchange or national  
2 securities association files written notice with the  
3 Commission in such form as the Commission, by rule,  
4 may prescribe containing such information as the  
5 Commission, by rule, may prescribe as necessary or  
6 appropriate in the public interest or for the protection of  
7 customers; and

8           "(3) the registration of such national securities  
9 exchange or national securities association is not  
10 suspended pursuant to an order by the Securities and  
11 Exchange Commission.

12 Such designation shall be effective immediately upon filing of  
13 the written notice with the Commission.

14           "(b)(1) A national securities exchange or national  
15 securities association that is designated as a contract market  
16 pursuant to section 5f of this Act shall be exempt from the  
17 following provisions of this Act and the rules thereunder:

18           "(A) Subsections (c), (e), and (g) of section 4c.

19           "(B) Section 4j.

20           "(C) Section 5.

21           "(D) Section 5c.

22           "(E) Section 6a.

23           "(F) Section 8(d).



1 (2) by adding at the end the following:

2 "(2) Notwithstanding paragraph (1), and except as  
3 provided in paragraph (3), any broker or dealer that is  
4 registered with the Securities and Exchange Commission shall  
5 be registered as a futures commission merchant or introducing  
6 broker, as applicable, if—

7 "(A) such broker or dealer limits its solicitation of  
8 orders, acceptance of orders, or execution of orders, or  
9 placing of orders on behalf of others involving any  
10 contracts of sale of any commodity for future delivery, on  
11 or subject to the rules of any contract market to security  
12 futures products;

13 "(B) such broker or dealer files written notice with  
14 the Commission in such form as the Commission, by  
15 rule, may prescribe containing such information as the  
16 Commission, by rule, may prescribe as necessary or  
17 appropriate in the public interest or for the protection of  
18 investors;

19 "(C) the registration of such broker or dealer is not  
20 suspended pursuant to an order of the Securities and  
21 Exchange Commission; and

1           "(D) such broker or dealer is a member of a  
2           national securities association registered pursuant to  
3           section 15A(a) of the Securities Exchange Act of 1934.

4           Such registration shall be effective immediately upon filing of  
5           the written notice with the Commission.

6           "(3) A floor broker or floor trader shall be exempt from  
7           the registration requirements of section 4e and paragraph (1) of  
8           this subsection if—

9           "(A) such floor broker or floor trader is a broker or  
10           dealer registered with the Securities and Exchange  
11           Commission;

12           "(B) such floor broker or floor trader limits its  
13           solicitation of orders, acceptance of orders, or execution  
14           of orders, or placing of orders on behalf of others  
15           involving any contracts of sale of any commodity for  
16           future delivery, on or subject to the rules of any contract  
17           market to security futures products; and

18           "(C) the registration of such floor broker or floor  
19           trader is not suspended pursuant to an order of the  
20           Securities and Exchange Commission."

21           (c) EXEMPTION FOR SECURITIES BROKER-  
22           DEALERS FROM CERTAIN PROVISIONS OF THE  
23           COMMODITY EXCHANGE ACT.—Section 4f(a) of the

1 Commodity Exchange Act (7 U.S.C. 6f(a)) is amended by  
2 inserting after paragraph (3), as added by subsection (b), the  
3 following:

4 "(4)(A) A broker or dealer that is registered as a futures  
5 commission merchant or introducing broker pursuant to  
6 paragraph (2), or that is a floor broker or floor trader exempt  
7 from registration pursuant to paragraph (3), shall be exempt  
8 from the following provisions of this Act and the rules  
9 thereunder:

10 "(i) Subsections (b), (d), (e), and (g) of section 4c.

11 "(ii) Sections 4d, 4e, and 4h.

12 "(iii) Subsections (b) and (c) of this section.

13 "(iv) Section 4j.

14 "(v) Section 4k(1).

15 "(vi) Section 4p.

16 "(vii) Section 6d.

17 "(viii) Subsections (d) and (g) of section 8.

18 "(ix) Section 16.

19 "(B)(i) Except as provided in clause (ii), but  
20 notwithstanding any other provision of this Act, the  
21 Commission, by rule, regulation, or order, may conditionally or  
22 unconditionally exempt any broker or dealer subject to the  
23 registration requirement of paragraph (2) of this subsection, or

1 any broker or dealer exempt from registration pursuant to  
2 paragraph (3) of this subsection, from any provision of this Act  
3 or of any rule or regulation thereunder, to the extent such  
4 exemption is necessary or appropriate in the public interest and  
5 is consistent with the protection of investors.

6 "(ii) The Commission shall, by rule or regulation,  
7 determine the procedures under which an exemptive order  
8 under this section shall be granted and may, in its sole  
9 discretion, decline to entertain any application for an order of  
10 exemption under this section.

11 "(C)(i) A broker or dealer that is registered as a futures  
12 commission merchant or introducing broker pursuant to  
13 paragraph (2) or an associated person thereof, or that is a floor  
14 broker or floor trader exempt from registration pursuant to  
15 paragraph (3), shall not be required to become a member of  
16 any futures association registered under section 17 of this Act.

17 "(ii) No futures association registered under section 17 of  
18 this Act shall limit its members from carrying an account,  
19 accepting an order, or transacting business with a broker or  
20 dealer that is registered as a futures commission merchant or  
21 introducing broker pursuant to paragraph (2) or an associated  
22 person thereof, or that is a floor broker or floor trader exempt  
23 from registration pursuant to paragraph (3)."

1 (d) EXEMPTIONS FOR ASSOCIATED PERSONS OF  
2 SECURITIES BROKER-DEALERS.—Section 4k of the  
3 Commodity Exchange Act (7 U.S.C. 6k), is amended by  
4 inserting after paragraph (4), as added by subsection (c), the  
5 following:

6 "(5) Any associated person of a broker or dealer that is  
7 registered with the Securities and Exchange Commission, and  
8 who limits its solicitation of orders, acceptance of orders, or  
9 execution of orders, or placing of orders on behalf of others  
10 involving any contracts of sale of any commodity for future  
11 delivery, on or subject to the rules of any contract market to  
12 security futures products, shall be exempt from the following  
13 provisions of this Act and the rules thereunder:

14 "(A) Subsections (b), (d), (e), and (g) of section  
15 4c.

16 "(B) Sections 4d, 4e, and 4h.

17 "(C) Subsections (b) and (c) of section 4f.

18 "(D) Section 4j.

19 "(E) Paragraph (1) of this section.

20 "(F) Section 4p.

21 "(G) Section 6d.

22 "(G) Subsections (d) and (g) of section 8.

23 "(H) Section 16."

1 **SEC. 223. NOTIFICATION OF INVESTIGATIONS AND EN-**  
2 **FORCEMENT ACTIONS.**

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

5 "(3) The Commission shall provide the Securities and  
6 Exchange Commission with notice of the commencement of  
7 any proceeding and a copy of any order entered by the  
8 Commission against any futures commission merchant or  
9 introducing broker registered pursuant to section 4f(a)(2), any  
10 floor broker or floor trader exempt from registration pursuant to  
11 section 4f(a)(3), any associated person exempt from  
12 registration pursuant to section 4k(6), or any board of trade  
13 designated as a contract market pursuant to section 5f."

14 (b) Section 6 of the Commodity Exchange Act (7 U.S.C.  
15 8, 9, 9a, 9b, 13b, 15) is amended by adding at the end the  
16 following:

17 "(g) The Commission shall provide the Securities and  
18 Exchange Commission with notice of the commencement of  
19 any proceeding and a copy of any order entered by the  
20 Commission pursuant to subsections (c) and (d) of this section  
21 against any futures commission merchant or introducing broker  
22 registered pursuant to section 4f(a)(2), any floor broker or floor  
23 trader exempt from registration pursuant to section 4f(a)(3), any

1 associated person exempt from registration pursuant to section  
2 4k(6), or any board of trade designated as a contract market  
3 pursuant to section 5f."

4 (c) Section 6c of the Commodity Exchange Act (7 U.S.C.  
5 13a-1) is amended by adding at the end the following:

6 "(h) The Commission shall provide the Securities and  
7 Exchange Commission with notice of the commencement of  
8 any proceeding and a copy of any order entered by the  
9 Commission against any futures commission merchant or  
10 introducing broker registered pursuant to section 4f(a)(2), any  
11 floor broker or floor trader exempt from registration pursuant to  
12 section 4f(a)(3), any associated person exempt from  
13 registration pursuant to section 4k(6), or any board of trade  
14 designated as a contract market pursuant to section 5f."

15 **Subtitle C—Effective Date**

16 **SEC. 231. EFFECTIVE DATE.**

17 This title and the amendments made by this title take  
18 effect on the date of enactment of this Act.

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\*\*\* TX REPORT \*\*\*  
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*Comstock*

TRANSMISSION OK

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PGS.	4
RESULT	OK

*#1172*

UNCLASSIFIED  
CLASSIFICATION

DATE 9/14/00

**DEPARTMENT OF THE TREASURY  
WATCH OFFICE  
FAX COVERSHEET**

- If received INCOMPLETE, call (202)622-1825

TO: SECRETARY SUMMERS  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FROM: ENFC SEC

OFFICE PHONE NUMBER: \_\_\_\_\_

FAX NUMBER: (202)622-1829 (unsecure) (202)622-1851 (secure)

HANDLE AS: ROUTINE \_\_\_ PRIORITY \_\_\_ URGENT \_\_\_

Page 1 of 4 Pages

COMMENTS: \_\_\_\_\_

UNCLASSIFIED  
CLASSIFICATION

Please log and file

Prepared by Lee Sachs  
and Gary Gensler

cleared by Neal Wolin  
per PA

cleared by Mark Thomas  
per Larry Decker

LS ok to autopen per  
NCC

TR autopenned and delivered  
to Leg. Affairs (Larry Decker)  
for other signatures and  
delivery

NCC faxed to LS

NCC cc to SE (reading)

9/14/00

SS  
TB  
CK