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Commodity Futures Trading Commission
FUTURES TRADING ACT OF 1982

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Part 1

FUTURES TRADING ACT OF 1982

MAY 17, 1982. -- Ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

together with

ADDITIONAL VIEWS AND SEPARATE VIEWS

[To accompany H.R. 5447]

[Including Congressional Budget Office cost estimate]

The Committee on Agriculture, to whom was referred the bill (H.R. 5447), to extend the Commodity Exchange Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Page 1, line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Futures Trading Act of 1982".

TITLE I -- JURISDICTION

OPTIONS; FUTURES CONTRACTS

SEC. 101. (a) Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2) is amended by --

(1) redesignating paragraph (1) as paragraph (1)(A);

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(2) inserting in the third sentence of paragraph (1)(A), as so redesignated ", except to the extent otherwise provided in subparagraph (B) of this paragraph," after "exclusive jurisdiction";

(3) adding a new subparagraph (B) to read as follows:

"(B) Notwithstanding any other provision of law --

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

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

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

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

"(c) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.

"(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) hereof, and shall consult with the Securities and Exchange Commission with respect to such designation. If, within fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of clause (ii) hereof is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. In the event that such an oral hearing is held and the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a

board of trade as a contract market with respect to any such contract (or option on such contract), the

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Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(b) of this Act. In the event that, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

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

OPTIONS ON FOREIGN CURRENCIES

SEC. 102. Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by adding a new subsection (f) to read as follows:

"(f) Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange."

COMMODITY POOLS

SEC. 103. Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended by --

(1) designating the text of existing section 4m as subsection (1) of such section; and

(2) adding a new subsection (2) to read as follows:

"(2) Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

SHARING INFORMATION WITH CONTRACT MARKETS AND OTHER SELF-REGULATORY ORGANIZATIONS

SEC. 104. Section 8a(6) of the Commodity Exchange Act (7 U.S.C. 12a) is amended by --

(1) inserting "registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934," before "notwithstanding"; and

(2) striking out "and consumers" and inserting in lieu thereof a comma and immediately thereafter "consumers or investors, or which is necessary or appropriate to effectuate the purposes of this Act: *Provided, however,* That any information furnished by the Commission under this subsection shall not be disclosed by such contract market, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding".

TITLE II -- MISCELLANEOUS AMENDMENTS TO THE COMMODITY EXCHANGE ACT

DEFINITION OF COMMODITY TRADING ADVISOR; TECHNICAL AMENDMENT

SEC. 201. Section 2(a) of the Commodity Exchange Act is amended by --

(1) inserting in paragraph (1)(A) (7 U.S.C. 2), as redesignated, immediately after the sentence defining the term "futures commission merchant" a new sentence to read as follows: "The term 'introducing broker' shall mean any person, except any individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.";

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(2) amending the definition of the term "commodity trading advisor" in paragraph (1)(A), as redesignated, to read as follows: "The term 'commodity trading advisor' shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract for future delivery of a commodity made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, of this Act, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: *Provided further*, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.";

(3)(A) redesignating paragraph (7)(A) (7 U.S.C. 4a(f)(1)) as paragraph (7); and (B) striking out existing paragraphs (7)(B) (7 U.S.C. 4a(f)(2)).

LEGISLATIVE FINDINGS

SEC. 202. Section 3 of the Commodity Exchange Act (7 U.S.C. 5) is amended to read as follows:

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

UNLAWFUL FUTURES TRADING; FOREIGN FUTURES

SEC. 203. Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended to read as follows:

"SEC. 4. (a) It shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States or its territories or possessions for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange or market located outside the United States, its territories or possessions) unless: (1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity, (2) such contract is executed or consummated by or through a member of such contract market, and (3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each contract

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market member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the United States Department of Justice.

"(b) The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk and reporting requirements, the keeping of books and records, the safeguarding of customer funds, and registration with the Commission by any person located in the United States, its territories, or possessions who engages in the offer and sale of any contract of sale of a commodity for future delivery which is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions. Such rules and regulations may impose different requirements for such persons depending upon the particular foreign board of trade or market on which such contracts are made. No rule or regulation shall be adopted by the Commission under this subsection that (1) governs in any way any rule or contract term or action of any foreign, board of trade, exchange, or market, or clearinghouse for such market; or (2) requires Commission approval of any contract, rule, regulation, or action of any such market or its clearinghouse."

SPECULATIVE LIMITS

SEC. 204. Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) is amended by --

(1) adding in the fourth sentence of subsection (1) after "delivery months," the words "or for different number of days remaining until the last day of trading in a contract,";

(2) striking out in subsection (2) "order's promulgation" and inserting in lieu thereof "promulgation of the rule, regulation, or order";

(3) adding "rule, regulation, or" before "order" wherever it occurs in such section;

(4) amending subsection (3) to read as follows:

"(3) No rule, regulation, or order issued under subsection (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this Act: *Provided*, That such terms shall permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. For the purpose of determining the adequacy of this Act and the powers of the Commission

acting thereunder to diminish, eliminate or prevent unwarranted price pressures by very large hedgers operating under this subsection, the Commission shall monitor the trading activities of large hedgers selected by the Commission and shall report its findings and recommendations to the Senate Agriculture, Nutrition, and Forestry Committee and the House Committee on Agriculture in its annual report for each of the four years following the date of enactment of the Futures Trading Act of 1982.";

(5) inserting in the first sentence of subsection (4) ", an introducing broker" after "futures commission merchant", and striking out "as" before "a floor broker"; and

(6) adding a new subsection (5) to read as follows:

"(5) Nothing in this section shall prohibit or impair the adoption by any contract market or by any other board of trade licensed or designated by the Commission, of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market, or under options on such contracts or commodities, traded on or subject to the rules of such contract market or such board of trade: *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, the bylaws, rules, regulations, and resolutions adopted by such contract market or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this Act for any person to violate any bylaw, rule, regulation, or resolution of any contract market or other board of trade licensed or designated by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation or resolution

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has been approved by the Commission: *Provided*, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits."

AGRICULTURAL OPTIONS

SEC. 205. Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by --

(1)(A) inserting "or" at the end of clause (A) of subsection (a); and (B) striking out clause (B) of subsection (a);

(2) redesignating clause (C) of subsection (a) as clause (B);

(3) amending subsection (b) to read as follows:

"(b) No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe: *Provided*, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: *And provided further*, That the Commission may set different terms and conditions for different markets."

(4) in subsection (c), inserting immediately after the first sentence the following: "With respect to any commodity regulated under this Act and specifically set forth in section 2(a) of this Act prior to the date of enactment of the Commodity Futures Trading Commission Act of 1974, the Commission may, pursuant to the procedures set forth in this subsection, authorize a pilot program for a period not to exceed three years to permit such commodity option transactions if such authorization does not apply to more than one such commodity at any contract market designated

therefor by the Commission, and beginning three years following the authorization of such pilot program, the Commission may authorize transactions in such commodities at contract markets designated therefor without regard to the restrictions in the pilot program after the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the documentation required under clause (1) of the first sentence of this subsection and the expiration of sixty calendar days of continuous session of Congress after the date of such transmittal."

INTRODUCING BROKER-REGISTRATION REQUIREMENT -- CUSTOMER FUNDS AND PROPERTY

SEC. 206. Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by --

- (a) inserting in the introductory clause "or introducing broker" after "futures commission merchant";
- (b) inserting in paragraph (1) "or introducing broker" after "futures commission merchant"; and
- (c) inserting in paragraph (2) "if a futures commission merchant," after "such person shall,".

REGISTRATION -- TECHNICAL AMENDMENTS

SEC. 207. Section 4f of the Commodity Exchange Act (7 U.S.C. 6f) is amended by --

- (1) amending subsection (1) to read as follows:

"(1) Any person desiring to register as a futures commission merchant, introducing broker or floor broker hereunder shall be registered upon application to the Commission, which application shall be made in form and manner to be prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged including, in the case of an application of a futures commission merchant and introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockholders, if a corporation, as the Commission may direct. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been

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suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this Act."; and

- (2) inserting in subsection (2) "or as introducing broker" after "futures commission merchant".

INTRODUCING BROKERS -- REPORTS, BOOKS, AND RECORDS

SEC. 208. Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended by --

- (1) inserting in subsection (1) ", introducing broker" after "futures commission merchant"; and
- (2) inserting in subsection (3) ", introducing brokers" after "Floor brokers".

MISREPRESENTATION -- TECHNICAL AMENDMENTS

SEC. 209. Section 4h of the Commodity Exchange Act (7 U.S.C. 6h) is amended to read as follows:

"SEC. 4h. It shall be unlawful for any person falsely to represent such person to be a member of a contract market,

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

RECORDKEEPING CONFORMED TO CURRENT SYSTEM -- LARGE TRADER REPORTS

SEC. 210. Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended to read as follows:

"SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market --

"(1) if such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

"(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless, such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions within the provisions of (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and purchase and sale commitments of, such commodity.

Such books and records shall show complete details concerning all such transactions, positions, inventories and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the United States Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person."

REGISTRATION, ASSOCIATED PERSON STATUS

SEC. 211. Section 4k of the Commodity Exchange Act (7 U.S.C. 6k) is amended to read as follows:

"SEC. 4k. (1) It shall be unlawful for any person to be associated with a futures commission merchant or with an introducing broker as a partner, officer, or employee (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked, and it shall be unlawful for a futures commission merchant or introducing broker to permit such a person to

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become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked: *Provided*, That any individual who is registered as a floor broker, futures commission merchant or introducing broker (and such registration is not suspended or revoked) need not also register under these provisions.

"(2) It shall be unlawful for any person to be associated with any commodity pool operator as a partner, officer,

employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered as an associated person of such commodity pool operator, under this Act, with the Commission and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked, and it shall be unlawful for any commodity pool operator to permit such a person to become or remain associated with him in any such capacity if such commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked: *Provided*, That any individual who is registered as a floor broker, futures commission merchant, introducing broker commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: *Provided further*, That the Commission may exempt any person or class of persons from having to register under this provision by rule, regulation, or order.

"(3) It shall be unlawful for any person to be associated with any commodity trading advisor as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered as an associated person of such commodity trading advisor, under this Act, with the Commission and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked, and it shall be unlawful for any commodity trading advisor to permit such a person to become or remain associated with him in any such capacity if such commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked: *Provided*, That any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: *Provided further*, That the Commission may exempt any person or class of persons from having to register under this provision by rule, regulation, or order.

"(4) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

"(5) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed."

CONFORMING AMENDMENT

SEC. 212. Section 4n of the Commodity Exchange Act (7 U.S.C. 6n) is amended by striking out subsections (5) and (6) in their entirety.

EXTENSION OF ANTIFRAUD PROVISION

SEC. 213. Section 4o of the Commodity Exchange Act (7 U.S.C. 6o) is amended to read as follows:

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"SEC. 4o. (1) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator or associated person of a commodity pool operator by use of the mails or any means

or instrumentality of interstate commerce, directly or indirectly --

"(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

"(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

"(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator or associated person of a commodity pool operator registered under this Act to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof: *Provided*, That this section shall not be construed to prohibit a statement that a person is registered under this Act as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented."

EXTENSION OF AUTHORITY REGARDING PROFICIENCY EXAMINATION

SEC. 214. Section 4p of the Commodity Exchange Act (7 U.S.C. 6p) is amended by --

(1) striking out in the first sentence "futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers" and inserting in lieu thereof "persons registered with the Commission";

(2) striking out in the second and third sentences "as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers"; and

(3) striking out in the last sentence "the customers of futures commission merchants and floor brokers" and inserting in lieu thereof "customers, clients, pool participants, or other members of the public with whom such persons deal".

REGISTRATION INFORMATION TO THE STATES

SEC. 215. The Commodity Exchange Act is amended by adding a new section 4q to read as follows:

"SEC. 4q. The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be helpful to any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request."

DESIGNATION OF CONTRACT MARKETS

SEC. 216. Section 5(g) of the Commodity Exchange Act (7 U.S.C. 7(g)) is amended by adding at the end thereof the following: "In determining whether designation of such board of trade as a contract market for any commodity would be contrary to the public interest, the Commission shall consider, among other things, the extent to which trading in the commodity for which such designation is sought is likely to divert investment capital away from the capital formation process, to cause price manipulation, and to cause price destabilization in that commodity."

CONTRACT MARKET RULES

SEC. 217. Section 5a of the Commodity Exchange Act (7 U.S.C. 7a) is amended by --

(1) amending subsection 5a(8) to read as follows:

"(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, which (1) have been approved by the Commission pursuant to paragraph (12) of this section, (2) have become effective under such paragraph, or (3) must be enforced pursuant to any Commission rule, regulation or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing

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board thereof or any committee, which has been disapproved by the Commission;"

(2) amending paragraph (12) to read as follows:

"(12) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions ('rules') made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may place such rules into effect unless, within ten days of receipt by the Commission of such submission, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review for approval such rules. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish in the Federal Register a notice of such rules. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific section or sections of this Act or the Commission's regulations which would be violated. At the conclusion of such proceedings, the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be placed into effect by the contract market until such time as the Commission disapproves such rule in accordance with this subsection. The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, make effective a rule on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under this paragraph, or during any period of review by the Commission. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may place into effect immediately a temporary rule dealing with such emergency if it notifies the Commission of such action with a complete explanation of the emergency involved."

ARBITRATION

SEC. 218. Section 5a(11) of the Commodity Exchange Act (7 U.S.C. 7a(11)) is amended to read as follows:

"(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary and (ii) the term 'customer' as used in this subsection shall not include another member of the contract market; and".

SEC. 219. Section 17(b)(10) of the Commodity Exchange Act (7 U.S.C. 21) is amended to read as follows:

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"(10) the rules of the association provide a fair and equitable expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary, and (ii) the term 'customer' as used in this subsection shall not include another member of the association.".

DESIGNATION PROCEDURES

SEC. 220. Section 6 of the Commodity Exchange Act (7 U.S.C. 8) is amended by inserting immediately after the first sentence the following: "The Commission shall approve or deny an application for designation as a contract market within one year of the filing of the application. If the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one-year period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial.".

APPEALS

SEC. 221. Section 6(b) of the Commodity Exchange Act (7 U.S.C. 9) is amended by --

(1) striking out in the first and ninth sentences "as futures commission merchant or any person associated therewith as described in section 4k of this Act, commodity trading advisor, commodity pool operator, or as floor broker hereunder" and inserting in lieu thereof "with the Commission in any capacity"; and

(2) inserting in the eleventh sentence after "doing business" the words ", or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located,".

RESTRAINING ORDERS

SEC. 222. Section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by adding in the proviso contained in the first sentence after "no restraining order" the following: "(other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating or disposing of any funds, assets or other property)".

CONFIDENTIALITY PROVISIONS -- DISCLOSURE

SEC. 223. Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by --

(1) adding at the end of subsection (a) the following:

"The Commission shall promulgate regulations, pursuant to notice and receipt of public comment, specifying

procedures by which --

"(1) the Commission shall, when requested by a submitter at the time of submission of information to the Commission, notify the submitter, within five days of receipt of a request, that such a request for records containing such information has been made under the Freedom of Information Act;

"(2) a submitter or requester may submit to the Commission written argument regarding a request made for disclosure of records; and

"(3) the Commission is not required to notify a submitter of the receipt of a request under clause (1) of this subsection if --

"(A) the Commission determines, prior to giving such notice, that the request for disclosure should be denied;

"(B) the disclosure is pursuant to law or Commission rule which requires disclosure of specific records in such a manner as to leave no discretion on the issue; or

"(C) the information has been published or otherwise made available to the public.";

(2) amending subsection (b) by --

(A) striking out "or" before "in an administrative or judicial proceeding"; and

(B) inserting immediately before the period at the end thereof ", in any receivership proceeding involving a receiver appointed in a judicial proceeding

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brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code";

(3) amending subsection (e) by --

(A) striking out "of the Executive Branch"; and

(B) adding at the end thereof the following: "Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with any adjudicatory action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision, or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such department or agency except in connection with any adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party."; and

(4) adding a new subsection (h) at the end thereof as follows:

"(h) The Commission shall disclose information in its possession pursuant to a subpoena or summons only if --

"(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person

who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, and

"(2) fourteen days have expired from the date of mailing of the subpoena or summons."

REGISTRATION AUTHORITY; TEMPORARY LICENSE

SEC. 224. Section 8a(1) of the Commodity Exchange Act (7 U.S.C. 12a(1)) is amended to read as follows:

"(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, and floor brokers upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registration and renewals thereof: *Provided*, That notwithstanding any provision of this Act, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt: *Provided further*, That the term of any such temporary license shall not exceed six months from the date of its issuance;"

STATUTORY DISQUALIFICATION FROM REGISTRATION; DELEGATION OF REGISTRATION FUNCTIONS

SEC. 225. Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended by --

(1) amending paragraph (2) to read as follows:

"(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, to suspend, or to place restrictions upon the registration of, any person and with such a hearing as may be appropriate, to revoke the registration of any person --

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"(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

"(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

"(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, or concerning activity subject to Commission regulation under section 4c or 19 of this Act or concerning securities;

"(D) if such person has been convicted within ten years preceding the filing of any application for registration or at

any time thereafter of any felony which (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 4c or 19 of this Act, or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343, or chapter 25, 47, 95, or 96 of title 18, United States Code;

"(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

"(F) if such person is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, denying, suspending, or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a contract market or with a member of a registered futures association;

"(G) if, as to any of the matters set forth in subparagraphs (A) through (F) of this paragraph, such person willfully made any material false or misleading statement or omitted to state any material fact in his application; or

"(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification

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listed in this paragraph: *Provided*, That for the purposes of paragraphs (2) and (3) of this section, principal shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission: *Provided*, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in paragraph (b) of section 6 of this Act;";

(2) striking out existing paragraph (4) and redesignating existing paragraph (3) as paragraph (4);

(3) adding a new paragraph (3) to read as follows:

"(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that --

"(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated or has consented to findings of a violation of any provision of this Act, or any rule, regulation, or order thereunder (other

than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

"(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board; or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

"(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: *Provided*, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this paragraph if (i) there have been established procedures, and a system for applying such procedures which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

"(D) such person was convicted of a felony other than a felony of the type specified in section 8a(2)(D) of this Act within ten years preceding the filing of the application or at any time thereafter, or was convicted of a felony, including a felony of the type specified in paragraph (2)(D) of this section, more than ten years preceding the filing of the application;

"(E) such person was convicted within ten years preceding the filing of any application for registration or at any time thereafter of any misdemeanor which (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 4c or 19 of this Act or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or

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gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, United States Code;

"(F) such person was debarred by any agency of the United States from contracting with the United States;

"(G) such person willfully made any material false or misleading statement or willfully omitted to state any material fact in such person's application or in any report required to be filed with the Commission by this Act or the regulations thereunder, or in any proceeding before the Commission;

"(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

"(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this Act or under the rules or regulations of the Commission, such person has not established that he meets such minimum financial requirements;

"(J) such person is subject to an outstanding order denying, suspending, or expelling him from membership in a contract market, a registered futures association, or in any other self-regulatory organization, or barring or suspending him from being associated with any member or members of such contract market, association, or self-regulatory organization;

"(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities, or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

"(L) such person has associated with him any other person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

"(M) there is other good cause; or

"(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration:

Provided, That pending final determination under this paragraph (3), registration shall not be granted: *Provided further*, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to the provisions of this paragraph in the manner provided in paragraph (b) of section 6 of this Act;";

(4) amending paragraph (4), as redesignated, to read as follows:

"(4) in accordance with the procedure provided for in paragraph (b) of section 6 of this Act, to suspend, revoke, or to place restrictions upon the registration of any person registered under this Act if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or any introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Commission under the provisions of paragraph (b) of section 6 of this Act and the period of denial specified in such order shall not have expired: *Provided*, That such person may appeal from a decision to suspend, revoke, or to place restrictions upon registration made pursuant to the provisions of this subsection in the manner provided in paragraph (b) of section 6 of this Act;";

(5) striking out "and" at the end of each of paragraphs (6), (7), and (8); and

(6) adding a new paragraph (10) to read as follows:

"(10) to authorize any person to perform any portion of the registration functions under this Act, in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission.".

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EMERGENCY POWERS -- JUDICIAL REVIEW

SEC. 226. Section 8a(9) of the Commodity Exchange Act (7 U.S.C. 12a(9)) is amended to read as follows:

"(9) to direct the contract market, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including the setting of temporary emergency margin levels on any futures contract, and the fixing of position limits that may apply to a position acquired in good faith prior to the effective date of the Commission's action. The term 'emergency' as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States court of appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the court of appeals for the District of Columbia circuit. Such review shall be based upon an examination of all of the information before the Commission at the time the determination is made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a contract market to the terms 'market emergency', 'emergency', or equivalent language in its own bylaws, rules, regulations, or resolutions; and".

CERTAIN PROHIBITED TRANSACTIONS

SEC. 227. Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by --

(1) amending subsection (a) to read as follows:

"(a) It shall be a felony punishable by a fine of not more than \$ 500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person registered or required to be registered under this Act, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of \$ 100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts, or which otherwise was received from any customer, client or pool participant in connection with the business of such person. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than \$ 100,000, together with the costs of prosecution. The word 'value' as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. Other provisions of this subsection notwithstanding, a person convicted of a felony under this subsection shall be suspended from registration under this Act and shall be denied reregistration for five years or such longer period as the Commission shall determine, unless the Commission determines that the imposition of such suspension or denial of reregistration is not required to protect the public interest.";

(2) amending subsection (b) by adding at the end thereof the following: "Other provisions of this subsection notwithstanding, a person convicted of a felony under this subsection shall be suspended from any registration under this Act, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest.";

(3) amending subsection (c) by adding at the end thereof the following: "Other provisions of this subsection notwithstanding, a person convicted under this subsection of knowingly violating the provisions of section 4a shall be suspended from any registration under this Act, denied registration or reregistration for a period to two years or such

longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall

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determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest.";

(4) amending subsection (d) to read as follows:

"(d) It shall be a felony punishable by a fine of not more than \$ 100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'put,' 'call,' 'advance guaranty,' or 'decline guaranty,' or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity. Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person's own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person's own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, and (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit or similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public."; and

(5) inserting after the words "'decline guaranty'," in each place they appear in section 9(e) the following: ", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

REAUTHORIZATION

SEC. 228. Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by amending subsection (d) to read as follows:

"(d) There are hereby authorized to be appropriated to carry out the provisions of this Act such sums as may be required for each of the fiscal years beginning October 1, 1982 and ending September 30, 1986."

OFF-EXCHANGE JURISDICTION -- ROLE OF STATES

SEC. 229. Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding a new subsection (e) to read as follows:

"(e) Nothing in this Act shall supersede or preempt --

"(1) criminal prosecution under any Federal criminal statute;

"(2) any Federal or State statute, including any rule or regulation thereunder, that is applicable to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 4c or 19 of this Act; or

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"(3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation. The Commission is authorized to refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action or proceedings as the department or agency shall deem appropriate.".

AIDING AND ABETTING -- CONTROLLING PERSON

SEC. 230. Section 13 of the Commodity Exchange Act (7 U.S.C. 13c) is amended by --

- (1) striking out "in administrative proceedings under this Act" in subsection (a);
- (2) redesignating existing subsection (b) as subsection (c); and
- (3) adding a new subsection (b) to read as follows:

"(b) Any person who, directly or indirectly, controls any person who has violated any provision of this Act or any of the rules, regulations, or orders issued pursuant thereto may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person: *Provided*, That the Commission has the burden of proving that the controlling person did not act in good faith or directly or indirectly induced the act or acts constituting the violation.".

REPARATIONS PROCEDURE

SEC. 231. Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended by --

- (1) amending subsection (a) to read as follows:

"(a) Any person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding actual damages proximately caused by such violation.";

- (2) striking out existing subsections (b), (c), and (e);
- (3) redesignating subsections (d), (f), (g), (h), and (i) as (c), (d), (e), (f), and (g), respectively;
- (4) adding a new subsection (b) to read as follows:

"(b) The Commission may promulgate such rules, regulations and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing and service of

pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.";

(5) changing the reference in subsection (d), as so redesignated, from "(g)" to "(e)"; and

(6) amending subsection (f), as so redesignated, to read as follows:

"(f) Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all contract markets and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.".

TECHNICAL AMENDMENT

SEC. 232. Section 16 of the Commodity Exchange Act (7 U.S.C. 20) is amended by inserting "or market positions" after "transactions" in subsection (d).

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REGISTERED FUTURES ASSOCIATIONS

SEC. 233. Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by --

(1) amending subsection (b)(4)(E) by inserting before the period at the end thereof the following: ", which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing";

(2) changing the reference in subsection (h) from "(k)" to "(i)";

(3) striking out the last sentence in subsection (j) and inserting in lieu thereof the following: "A registered futures association shall submit to the Commission any change in or addition to its rules and may place such rules into effect unless, within ten days of receipt by the Commission of such submission, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review for approval such rules. The Commission shall approve such rules, within thirty days of their receipt if Commission approval is requested hereunder or within thirty days after the Commission determines to review for approval any other rules, unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of the provisions of the Act or the regulations of the Commission.";

(4) adding new subsections (o), (p), and (q) at the end thereof to read as follows:

"(o) The Commission is authorized to require any futures association registered pursuant to this section to perform any portion of the registration functions under this Act with respect to each member of the association other than a contract market and with respect to each associated person of such member, in accordance with the rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission."

"(p) Notwithstanding any other provision of this section, each futures association registered under this section on the date of enactment of the Futures Trading Act of 1982, shall adopt and submit for Commission approval not later than ninety days after such date of enactment, and each futures association that applies for registration after such date shall adopt and include with its application for registration, rules of the association that require the association to --

"(1) establish training standards and proficiency testing for personnel of members involved in the solicitation of transactions subject to the provisions of this Act, supervisory officials of such personnel, and all individuals for which it has registration responsibilities, and a program to audit and enforce compliance with such standards;

"(2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission and implement a program to audit and enforce compliance with such requirements. Such requirements may not be less stringent than those imposed on such firms by this Act or by Commission regulation; and

"(3) establish minimum standards governing the sales practices of its members and persons associated therewith as to transactions subject to the provisions of this Act.

"(q) Each futures association registered under this section shall develop a comprehensive program that fully implements the rules approved by the Commission under this section as soon as practicable but not later than two years after the date of enactment of the Futures Trading Act of 1982, in the case of any futures association registered on such date, and not later than two years after the date of registration in the case of any other futures association registered under this section."

LEVERAGE TRANSACTIONS

SEC. 234. Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is amended by --

(1) amending subsection (c) to read as follows:

"(c) The Commission shall regulate any transactions under a standardized contract described in subsection (a) of this section involving commodities described in

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subsection (b) of this section or any other commodities (except those commodities described in subsection (a) of this section) under such terms and conditions as the Commission shall prescribe by January 31, 1983: *Provided*, That any such order, rule, or regulation may be made only after notice and opportunity for hearing; *Provided further*, That the Commission may set different terms and conditions for such transactions involving different commodities."; and

(2) striking out subsection (d).

TECHNICAL AMENDMENT

SEC. 235. Section 19 of the Commodity Exchange Act (7 U.S.C. 24), as added by section 302 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2673), is redesignated as section 20.

PRIVATE RIGHTS OF ACTION

SEC. 236. The Commodity Exchange Act is amended by adding a new section 22 at the end thereof to read as follows:

"SEC. 22. (a)(1) Any person (other than a contract market, clearing organization of a contract market, licensed board of trade, or registered futures association) who violates this Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act shall be liable for actual damages resulting from one or more of the transactions referred to in clauses (A) through (D) of this paragraph and caused by such violation to any other person:

"(A) who received trading advice from such person for a fee;

"(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity) on or subject to the rules of any contract market or other board of trade; or who deposited with such person money, securities or property (or incurred debt in lieu thereof) in connection with any order to make such contract;

"(C) who purchased or sold or placed an order for the purchase or sale of:

"(i) an option subject to section 4c(d) of this Act;

"(ii) an option subject to section 4c(b) of this Act (other than an option purchased or sold on a contract market or other board of trade);

"(iii) a contract subject to section 19 of this Act;

"(iv) an interest or participation in a commodity pool; or

"(D) who purchased or sold a contract referred to in clause (B) hereof if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

"(2) The rights of action authorized by this subsection and by section 14 of this Act shall be the exclusive remedies under this Act available to any person that sustains loss as a result of any alleged violation of this Act. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon the forum for resolving claims under this section, including arbitration.

"(b)(1)(A) A contract market or clearing organization of a contract market that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of the designation of such contract market under section 5 of this Act or any amendment to such bylaw, rule, regulation or resolution, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of its license or any amendment to such bylaw, rule, regulation or resolution, or (C) any contract market, clearing organization of a contract market or licensed board of trade that in enforcing any such bylaw, rule, regulation or resolution violates this Act or any Commission rule, regulation or order, shall be liable for actual damages sustained by a person that engaged in transactions on or subject to the rules of such contract market or licensed board of trade to the extent of such person's actual losses that resulted from such transactions and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations or resolutions.

"(2) A registered futures association that fails to enforce any bylaw or rule that is required under section 17 of this Act or in enforcing any such bylaw or rule violates this Act or any Commission rule, regulation or order shall be liable for actual damages sustained by a person that engaged in transactions specified in subsection (a) of this section to the extent of such person's actual losses resulting from such transactions caused by such failure to enforce or enforcement of such bylaw or rule.

"(3) Any individual who, in the capacity as an officer, director, governor, committee member or employee of a

contract market, licensed board of trade, or a registered futures association willfully aids, abets, counsels, induces or procures any failure by such contract market, clearing organization, or registered futures association to enforce (or any violation of the Act in enforcing) any bylaw, rule, regulation or

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resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person that engaged in transactions specified in subsection (a) of this section on, or subject to the rules of, such contract market, licensed board of trade or, in the case of an officer, director, governor, committee member or employee of a registered futures association, transactions specified in subsection (a) of this section, in either case to the extent of such person's actual losses resulting from such transactions caused by such failure or violation.

"(4) A person seeking to enforce liability under this section must establish that the contract market, licensed board of trade, clearing organization, registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

"(5) The rights of action authorized by this subsection shall be the exclusive remedy under this Act available to any person that sustains a loss as a result of (A) the alleged failure by a contract market, licensed board of trade, clearing organization, or registered futures association or by any officer, director, governor, committee member or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action that is alleged to have violated this Act, or any Commission rule, regulation or order.

"(c) The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action must be brought within two years after the date the cause of action accrued."

"(d) The provisions of this section shall become effective with respect to causes of action accruing on or after the date of enactment of the Futures Trading Act of 1982: *Provided*, That the enactment of the Futures Trading Act of 1982 does not affect any right of any parties which may exist with respect to causes of action accruing prior to such date.

SPECIAL STUDY OF THE COMMODITY FUTURES INDUSTRY

SEC. 237. The Commodity Exchange Act is amended by adding a new section 23 at the end thereof as follows:

"SEC. 23. (a) The Commission shall organize and lead, with the assistance of the Securities and Exchange Commission, the Federal Reserve, and the Department of the Treasury, a study and investigation of the structure, participation, uses and effects of trading of futures and related instruments, such as options, on the economy. Among those areas to be studied are (i) the number, types, and characteristics of futures market speculators, arbitrageurs, and hedgers, the purposes for which these participants utilize futures markets, and the financial resources devoted to each of these activities; (ii) the impact of futures market speculation on the accuracy, liquidity, and stability of cash and futures prices and the conditions under which speculation may have adverse effects on these objectives, particularly with respect to the increased volume of financial futures and other nontraditional futures; (iii) the consequences that present and anticipated volumes of trading in futures have, if any, on formation of real capital in the economy, particularly that of a long-term nature, the structure of liquidity in credit markets, interest rates and inflation; and (iv) the sufficiency of the public policy tools available to the Commission or other agencies to limit or curtail any activity which is found likely to have a harmful effect on national economic goals. The report of this study shall be transmitted to Congress not later than September 30, 1984, and shall include an assessment of the impacts of these activities and recommendations for any legislative and regulatory changes. There are authorized to be appropriated such funds as may be necessary to carry out the study.

"(b) For the period beginning with the date of enactment of the Futures Trading Act of 1982 and ending September 30, 1984, all stock index futures contracts approved by the Commission either prior or subsequent to the date of

enactment of the Futures Trading Act of 1982 shall be subject to a pilot program for such contracts to be established by the Commission by rule, regulation or order. Such pilot program shall, at a minimum, include close monitoring by the Commission of the contracts, including the assessment of the impact if any of such contracts on the markets in the underlying securities and the effect if any of the contracts on the capital formation process. Not later than 120 days following the expiration of the pilot program, the Commission shall report to the Committee on Agriculture of the House of Representatives and Committee on Agriculture, Nutrition, and Forestry of the United States Senate its findings and conclusions with respect to the economic purposes being served by the contracts and any effect of such contracts on underlying markets in securities or capital formation. If such report concludes that the adverse

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effects on the underlying markets in securities or capital formation resulting from trading in the stock index futures contracts outweigh any benefits provided by the contracts' hedging or risk-management function, the Commission shall include in the report its plans for the orderly withdrawal of approval for all stock index futures contracts."

NATIONAL FUTURES ASSOCIATION STUDY AND TRANSACTION FEES

SEC. 238. Section 26 of the Futures Trading Act of 1978 (92 Stat. 877) is amended by --

(1) redesignating the text of existing section 26 as subsection (a); and

(2) adding at the end thereof the following new subsections:

"(b) The Commodity Futures Trading Commission shall submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association during the period beginning January 1, 1983 and ending December 31, 1984. The report shall be submitted not later than March 1, 1985. The report shall include (but not be limited to) the following --

"(1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission under section 17 (p) and (q) of this Act and the effectiveness of the operation of such program;

"(2) the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;

"(3) the actual and projected costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;

"(4) problem areas, if any, encountered by the Association;

"(5) the nature of the working relationship between the Association and the Commission;

"(6) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Association; and

"(7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

"(c) Notwithstanding any provision of this Act or other law, no user fee, user tax, transaction tax or transaction fee on or involving a contract for the purchase or sale of a commodity for future delivery, commodity option traded on a contract market, other option pursuant to 4c(d) of this Act, or leverage contract pursuant to section 19 of this Act, shall be recommended pursuant to this section or implemented pursuant to any law until after the end of the session in which the Commission has submitted to Congress the study described in subsection (b) of this section. If the Commission

should recommend at any time thereafter the imposition of a user fee, user tax, transaction fee, or transaction tax, such recommendation at a minimum shall be accompanied by data and studies measuring the relative benefit to commodity professionals as well as to the general public of the functions of the nation's commodity markets and of Federal commodity regulation, and the effect of the proposed fee or tax on United States contract market liquidity.

"(d) Nothing in this section shall limit the ability of the Commission to continue to charge appropriate fees for services currently rendered by the Commission in conjunction with its registration, reparations, adjudication, or informational services and activities."

SUMMARY OF H.R. 5447 -- FUTURES TRADING ACT OF 1982

TITLE I -- JURISDICTION

(CFTC/SEC Accord on Jurisdiction)

Futures and options on futures contracts -- General. -- Continues Commodity Futures Trading Commission (CFTC) exclusive jurisdiction over commodity futures contracts (including options on futures) except as provided below. This includes futures and options on futures involving exempted securities (such as Treasury bills, notes and bonds) but not municipal securities.

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Prohibits futures (or options on futures) on individual corporate bonds or securities, or municipal securities. (No such futures are presently traded, and none would be permitted until the appropriate allocation of regulatory authority is determined.)

Options on commodities. -- Continues CFTC exclusive jurisdiction over options on commodities but provides that there would be no CFTC jurisdiction over options on securities including any group or index thereon or interest therein. Also, specifically provides that nothing in the Act applies to options on foreign currency traded on a national securities exchange. (The effect of the proposal is to permit trading of options on foreign currency on both commodity exchanges and stock exchanges.)

Stock index futures. -- Continues CFTC exclusive jurisdiction over futures contracts (and options on such contracts) on a group or index of securities (or any interest therein or based on the value thereof). Sets forth specific standards applicable to such contracts which must be met before designation of a board of trade as a contract market in such contracts:

Settlement must be by cash or by means other than a security (except an exempted security);

Trading shall not be readily susceptible to price manipulation;

Index must be on a broad based group of securities of unaffiliated issuers.

Provides for public comment and Securities and Exchange Commission (SEC) consultation on such contract applications. If the SEC objects to designation, provides for SEC oral hearing before CFTC, and upon CFTC designation over SEC objection, gives SEC the right to seek judicial review.

Commodity pools. -- Makes explicit that the Act does not affect the applicability of the pertinent provisions of the Federal securities laws governing the issuance, offer, purchase or sale of securities of a commodity pool.

Sharing information with contract markets and other self-regulatory organizations. -- Broadens section 8a(6) of the Act which currently authorizes disclosure by the CFTC, to contract markets of information concerning any transaction or market operation that may be disruptive so as (1) to authorize disclosure to a registered futures association or to a

self-regulatory organization recognized under Federal securities laws (such as the National Association of Securities Dealers (NASD)) as well as to contract markets, and (2) to authorize disclosure of any information "necessary or appropriate to effectuate the purposes" of the Act. Restricts disclosure of such information in turn to a self-regulatory action or proceeding.

TITLE II -- MISCELLANEOUS AMENDMENTS TO THE COMMODITY EXCHANGE ACT

Reauthorization. -- Extends the authorization for appropriations for the Commodity Exchange Act 4 years through September 30, 1986.

Definition of commodity trading advisor. -- Amends the definition of a commodity trading advisor so that it would apply to any person who for compensation provides advice on trading in commodity

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options and leverage contracts as well as on futures contracts.

Extends the current exclusions from the definition of a commodity trading advisor to cover employees of banks or trust companies, the electronic media, and trustees of certain pension plans subject to the Employee Retirement Income Security Act of 1974 if the furnishing of trading advice by such persons is solely incidental to the conduct of their business or profession. Also excludes from the definition any person who gives advice or issues reports or analyses only with respect to cash commodities or their value. However, the CFTC may include any person providing advice or analyses on commodities within the definition of a commodity trading advisor as necessary to effectuate the provisions of the Act.

Legislative findings. -- Amends findings to apply them to commodity options transactions as well as to futures contracts. The effect is to state that these have an impact on the national economy and interstate commerce.

Sale of foreign futures. -- Expressly authorizes CFTC to promulgate regulations relating to fraud, minimum financial standards, disclosure of risk and reporting requirements, keeping of books and records, safeguarding of customer funds, and registration by any person located in the United States who is engaged in the offer and sale of foreign futures.

The CFTC may adopt different rules for such persons for futures traded on different foreign boards of trade and markets but is precluded from adopting rules which govern foreign exchanges or clearinghouses or requiring approval of contracts, rules or actions of foreign markets and clearinghouses.

Speculative limits. -- (1) Specifically authorizes the Commission to establish different speculative limits that may apply to different number of days remaining until the last day of trading of a contract.

(2) Authorizes CFTC to establish speculative limits by rulemaking, as well as by order, after notice and hearing. Expressly permits contract markets and other licensed exchanges to set speculative limits for futures or option transactions. If the CFTC has established such limits, exchange limits may not be higher. Makes a violation of speculative limits set by an exchange a violation of the Act if exchange limit has been approved by CFTC. Makes the criminal provisions of the Act applicable to those who knowingly violate such limits.

(3) Specifically authorizes the fixing of retroactive position limits in emergency situations.

(4) Prohibits the Commission from applying speculative limits on bona fide hedging transactions by producers, purchasers, sellers, middlemen and users of commodities. Requires the CFTC to report to the Agriculture Committees of Congress in its annual report on the results of monitoring trading activities of large hedgers and on any unwarranted price pressures by them.

Agricultural options. -- Repeals the ban on the trading of options on agricultural commodities (that is, commodities specifically enumerated in section 2(a)(1) of the Act prior to 1974) and gives the CFTC authority to approve trading of such options under a pilot program for a period up to 3 years under which no more than one

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such commodity may be authorized on any contract market. Beginning 3 years after authorization of the pilot program, the CFTC may authorize trading in options without regard to restrictions in the pilot program under the same conditions as apply to Commission approval of trading in options in other commodities.

Large trader reports. -- Clarifies provision in existing law that even if CFTC eliminates routine reporting requirements for large traders, any person, whose trades or positions in any cash commodity or future equals or exceeds levels set by CFTC, must keep books and records relating to futures and related cash transactions and allow inspection of these books and records.

Registration. -- (1) *Associated persons of commodity pool operators and commodity trading advisors.* -- Requires registration of principals, employees and consultants of commodity pool operators and commodity trading advisors as associated persons of such entities when such persons are involved in solicitation or the supervision of persons engaged in solicitation of customer orders.

(2) *Term of registration.* -- Authorizes the CFTC to prescribe the effective period of the registration of associated persons of futures commission merchants, commodity pool operators, and commodity trading advisors.

(3) *Introducing broker.* -- Provides for registration as an "introducing broker" of any person who solicits or accepts orders for futures contracts on or subject to the rules of a contract market but who does not accept any customer funds. Requires registration of any employee of an introducing broker as an associated person when the employee solicits or accepts customer orders or supervises any person so engaged. Provides for regulation of introducing brokers in a manner similar to that of futures commission merchants and for introducing broker membership in, and regulation by, a registered futures association.

(4) *Extension of testing authority.* -- Extends CFTC authority to require proficiency or fitness testing to all persons who are required to register with CFTC.

(5) *Delegation of registration functions.* -- Provides authority to delegate to any person of any portion of CFTC's registration functions subject to the Act.

(6) *Responsibility for associated person of registrants.* -- Prohibits a registrant from permitting a person to be an associated person of the registrant if he knows or should have known that the person is subject to a statutory disqualification unless the registrant notifies the Commission of these facts and the Commission determines that the person should be registered or temporarily licensed.

(7) *Registration information to the States.* -- Requires the CFTC to provide registration information on any registrant upon reasonable request made by any State or any political subdivision thereof and to provide such information without request whenever the CFTC determines that it may be helpful to them.

(8) *Registration authority; temporary license.* -- Authorizes the Commission to grant a six-month provisional license to applicants for registration in order to permit such applicants to begin work or to conduct business prior to completion of the fitness checks required for registration. Specifically, authorizes the Commission to

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register associated persons of introducing brokers, commodity trading advisors and commodity pool operators.

(9) *Statutory disqualification from registration.* -- Amends section 8a (2) and (3) to establish statutory disqualifications from registration.

Authorizes the CFTC to deny, condition, suspend, or restrict registration *without* a hearing or revoke registration after a hearing if any of 8 enumerated conditions are present, such as suspension or revocation of prior registration, a court order barring specified conduct involving securities or commodities, or a recent conviction for such felonies as bribery or bankruptcy fraud.

Authorizes the CFTC to deny or condition registration *after* opportunity for hearing if any of 14 other enumerated conditions are present, such as a previous violation of the Act, Federal securities laws or similar State or foreign laws, conviction of certain commodity or securities related offenses, and failure to reasonably supervise another person subject to one's supervision. Appeals are permitted from decisions to suspend, revoke or place restrictions on registrations.

(10) *Conditional registration.* -- Authorizes the CFTC to register conditionally or place conditions on registration.

Extension of antifraud and misrepresentation provision. -- (1) Extends the antifraud provisions that now apply to commodity trading advisors and commodity pool operators to cover as well associated persons of commodity trading advisors and commodity pool operators.

(2) Extends prohibition against misrepresentation of registration or contract market membership status to any registrant, including the representative or agent of any registrant.

Designation of contract markets. -- Requires the CFTC in determining whether designation of a board of trade as a contract market for any commodity would be contrary to the public interest, to consider the extent to which trading in the commodity is likely to divert investment capital away from the capital formation process and cause price manipulation and price destabilization in that commodity.

Designation procedures. -- Provides that the CFTC has 1 year to approve new contract applications or to deny the application and specify the grounds for denial. The running of the 1-year period is stayed from the time the CFTC informs the board of trade that its application is materially incomplete until a completed application is submitted. After the application is submitted in completed form, the CFTC has not less than 60 days to approve or deny the application.

Contract market rules. -- (1) Requires contract markets to enforce all bylaws, rules, regulations and resolutions which must be enforced pursuant to any CFTC rule, regulation, or order, thereby codifying CFTC regulation 1.53 requiring enforcement of bylaws, rules, regulations and resolutions in effect as of July 18, 1975, which have not been disapproved by the CFTC.

(2) Requires submission for prior CFTC approval of rules that relate to contract terms and conditions; requires submission of all other rules (except as to margin levels, or as otherwise provided by CFIC rule) but permits implementation of those rule proposals

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after 10 days' notice to the CFTC unless the Commission itself determines that the rule merits review or the contract market requests review.

(3) Provides that if the CFTC has not approved a proposed rule or instituted disapproval proceedings within 180 days after the filing of a proposed rule, or if disapproval proceedings have been instituted within 180 days but have not been completed within 1 year of filing, a contract market may put such rule into effect. Such a rule is not considered approved by the CFTC.

(4) Provides for publication in the Federal Register of a notice of economically significant rule proposals, in lieu of the full text thereof, at least 30 days before approving such rules.

(5) Continues the CFTC's authority to disapprove any rule (except margin levels) after implementation. Requires the CFTC in disapproving a rule to specify the sections of the Act or regulations that the rule would violate.

(6) Eliminates the separate category of operational and administrative rules.

(7) Continues the contract markets' authority to take emergency action or to set levels of margin.

Confidentiality provisions; disclosure. -- (1) Requires the CFTC to provide by regulation procedures by which the Commission would notify a submitter of information to the Commission, within five days of receipt of a request for its disclosure that such a request has been made under the Freedom of Information Act, and permit the submitter to provide the Commission written argument regarding the request for disclosure. The Commission would not be required to notify a submitter of the receipt of a request if the Commission determines that the request for disclosure should be denied, the disclosure is pursuant to law or Commission rule which requires disclosure of specific records in such a manner as to leave no discretion on the issue, or the information has been published or otherwise made available to the public.

(2) Extends authorized disclosure of confidential information to permit its use in connection with certain judicial receivership or bankruptcy proceedings.

(3) Requires the CFTC to give notice, upon receipt of a subpoena or summons, to those persons whose records or documents are being requested and disclose such information only after 14 days have expired from the date of mailing of the subpoena or summons.

(4) Clarifies that information may be disclosed to any appropriate Federal department or agency, including independent agencies.

(5) Extends current authority allowing information to be furnished to Congress and other Federal agencies to permit the CFTC to provide State and foreign officials with information so long as such information is used solely for State or foreign adjudicatory proceedings.

(6) Prohibits Commission reports from disclosing individual market positions as well as business transactions, except as otherwise authorized under the Act.

Emergency powers; judicial review. -- Amends section 8a(9) to specifically include in the CFTC's emergency powers the authority to set temporary emergency margin levels on futures contracts and

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the fixing of position limits that may apply to positions acquired prior to the CFTC's action.

Authorizes judicial review of emergency actions by the CFTC only in United States courts of appeal. Review is to be based upon the information available to the agency at the time action is taken and the reviewing court may not enter a stay of the agency action or mandamus order unless, after notice and hearing before a panel, it determines the agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Appeals. -- Clarifies the law governing appellate venue for review of CFTC orders by providing that in the case of an order denying registration, the petitioner may obtain review in the United States court of appeals for the circuit in which the petitioner's principal place of business (listed on its application for registration) is located.

Restraining orders. -- Amends section 6c to change the current prohibition on obtaining ex parte orders to restrain

or enjoined violations of the Act to permit the CFTC to obtain ex parte orders from courts of competent jurisdiction for the limited purposes of preventing the destruction of evidence or the dissipation of assets or obtaining access to books and records.

Certain prohibited transactions. -- (1) Expands current provisions of the Act to make it a felony for any person registered or required to be registered under the Act, or any employee or agent thereof, to embezzle or steal customer assets. Currently, this provision applies only to futures commission merchants and their employees or agents.

(2) Requires the CFTC to suspend the registration of any person convicted of a felony under section 9(a) for embezzlement or conversion and deny reregistration for a period of at least 5 years unless the CFTC determines that such action is not required in the public interest.

(3) Requires the CFTC to take similar action to suspend the registration and deny reregistration for at least a 5-year period of any person that is convicted of a felony under section 9(b) (relating to convictions for manipulation of prices or cornering of markets and knowing violations of sections 4, 4b, 4c(b)-4c(e), 4h, 4o(1), and 19) and take such action for at least a 2-year period as to any person convicted under section 9(c) of a knowing violation of position limits fixed under section 4a. The CFTC must also bar any such person from using any market regulated by the Commission on terms and conditions set by the CFTC for at least a 5-year period, or in the case of a conviction for violation of position limits for at least a 2-year period.

Conflicts of interest. -- (1) Extends to leverage transactions (a) the prohibition in current law on Commission members and employees engaging in commodity futures or options transactions or investment transactions in actual commodities and (b) the prohibition on their imparting nonpublic information to assist another in transactions in commodity futures, options, and actual commodities. Adds to those existing transactions exempt from these prohibitions transactions by independent trustees of trusts established by Commission members or employees to engage in hedging transactions in connection with permitted farming or ranching operations and

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transactions involving the lease of oil, gas, or mineral rights owned by a Commissioner or employee; and authorizes CFTC members and employees to invest in government securities and other financial instruments if the instrument is not regulated by the CFTC and nonpublic information is not used in making the investment decision.

(2) Repeals revolving door provision contained in the Act, which generally prohibits any former Commissioner or employee classified as GS-16 or higher in a policymaking position from making any appearance before or communication to the CFTC for a period of 1 year after that individual leaves the CFTC. Subsequently enacted government-wide ethics legislation, the Ethics in Government Act of 1978 (18 U.S.C. 207(c)), makes comparable restrictions applicable to former Commissioners and most Senior Executive Service employees.

Role of States; off-exchange jurisdiction. -- Notwithstanding the Act's exclusive jurisdiction and preemption provisions, permits any Federal or State law to be applied to activities of persons (1) who are required to, but who do not obtain, registration or designation by the CFTC, or (2) who otherwise unlawfully engage in commodity transactions outside the Act's regulatory structure such as off-exchange futures or other commodity investments. This provision does not apply to exchange-traded futures, authorized commodity options, and regulated leverage transactions which would remain subject to exclusive CFTC regulation. In addition, the offer and sale of foreign futures contracts are exempt from State jurisdiction, except as otherwise specified by the Commission.

Controlling person. -- Provides that a person who directly or indirectly controls another person (or entity) which violates the Act or regulations may be held liable for such violation in any action brought by the CFTC to the same extent as the controlled person. The Commission has the burden of proving that the controlling person did not act in good faith or directly or indirectly induced the act constituting the violation.

Remedies

(1) *Arbitration.* -- Eliminates the current \$ 15,000 ceiling on claims for which arbitration must be provided through contract markets and registered futures associations; retains existing right of customer to elect arbitration; eliminates the provision providing for no compulsory payment except as agreed to between the parties; and broadens the term "customer" to include futures commission merchants who are not members of the contract market.

(2) *Reparations procedure.* -- Limits reparations claims to cases where respondent is registered with the Commission; eliminates statutorily-required procedures, including the requirement that claims over \$ 5,000 must be heard by an Administrative Law Judge; authorizes the CFTC to issue rules, regulations and orders for the administration of the reparations program; and extends the automatic prohibition on trading, upon failure to pay a final reparations award, to any party not just a registrant.

(3) *Private rights of action.* -- Adds a new section to the Act to provide specific authority for private rights of action.

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(a) Provides that any person (other than a contract market, clearing organization, licensed board of trade or registered futures association) who violates the Act or who willfully aids, or induces the commission of a violation shall be liable for actual damages caused by the violation. The violation must have arisen from a transaction in which the injured person (A) received trading advice from such person for a fee, (B) made through such person any contract of sale of any commodity for future delivery (or option) on a contract market, or deposited with such person property (or incurred debt) in connection with any order to make such contract, (C) purchased or sold or ordered the purchase or sale of a dealer option, leverage contract or interest in a commodity pool, or (D) purchased or sold a futures or options contract on an exchange if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

(b)(i) Also provides liability for actual damages in the case of (A) a contract market or clearing organization of a contract market that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of the designation of such contract market, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of its license, (C) a registered futures association that fails to enforce any bylaw or rule that is required under the Act, or (D) any contract market, clearing organization of a contract market, licensed board of trade, or registered futures association that in enforcing any such bylaw, rule, regulation or resolution violates this Act or any Commission rule, regulation or order. Authorizes a cause of action in such cases by a person that engaged in transactions on such contract market or licensed board of trade to the extent of the actual losses that resulted from such transactions and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations or resolutions.

(ii) Authorizes a cause of action for actual damages against any individual who, in the capacity as an officer, director, governor, committee member or employee of a contract market, licensed board of trade, or a registered futures association willfully aids, or induces a failure to enforce any bylaw, rule, regulation or resolution referred to above by a person that engaged in transactions on, or subject to the rules of, a contract market or licensed board of trade.

(iii) Restricts causes of action by a person seeking to enforce liability against the contract market, licensed board of trade, clearing organization, registered futures association, officer, director, governor, committee member, or employee to cases where they acted in bad faith in failing to take action and that such failure to take action caused the loss.

(c) Makes the rights of action authorized by this provision the exclusive remedy under this Act available to any person that sustains a loss except that the remedy of reparations would be available in appropriate cases.

(d) Confers on the United States district courts exclusive jurisdiction of private causes of action brought under the Act. Any such action must be brought within 2 years after the date the cause of action accrued.

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(e) Makes the private cause of action provision effective with respect to causes of action accruing beginning with the date of enactment of the Futures Trading Act of 1982. Enactment of the provision does not affect any right that may exist as to causes of action accruing prior to such date.

Registered futures association. -- Authorizes a registered futures association to collect the fingerprints of its members, submit those fingerprints to the FBI, and receive the results of the FBI analysis.

Requires a registered futures association to submit proposed rules or amendments to the CFTC for review. Rules may go into effect within 10 days of receipt unless CFTC or the association requests review. CFTC must take action on rules within 30 days of receipt unless it notifies the association of its inability to complete review in that period. CFTC must approve rules if consistent with section 17 and not in violation of the Act or regulations, and disapprove rules, after opportunity for hearing, if the rules are inconsistent with section 17 or violate the Act or regulations.

Authorizes the CFTC to require a registered futures association to perform any portion of CFTC's registration functions under the Act, thereby enabling the processing of registration applications to be performed by the National Futures Association.

Requires each registered futures association to adopt and submit for Commission approval rules that (1) establish training standards and proficiency testing for personnel of members involved in the solicitation of transactions subject to the Act, their supervisory officials and all individuals for which it has registration responsibilities, (2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission, (3) establish minimum standards governing the sales practices of its members and persons associated therewith on transactions subject to the Act, and (4) establish a program to audit and enforce the foregoing requirements.

Requires each registered futures association to develop a comprehensive program that fully implements the rules approved by the Commission within a 2-year period.

Leverage transactions. -- Amends section 19 to require the CFTC to regulate leverage transactions involving silver and gold bullion and coins or any other commodities (except agricultural commodities) under such terms and conditions as the Commission shall prescribe by January 31, 1983. The CFTC may set different terms and conditions for such transactions involving different commodities.

Deletes provisions stating that any leverage transaction determined by the CFTC to be a futures contract shall be regulated as a futures contract which must be traded on an exchange.

Special study of the commodity futures industry; pilot stock index program. -- (1) Adds a new section to the Act requiring the CFTC to organize and lead, with the assistance of the SEC, the Federal Reserve, and the Treasury, a study and investigation of the structure, participation, uses and effects of trading of futures and options on the economy. Among those areas to be studied are (A) the purposes for which certain participants utilize futures markets, and the financial resources devoted to their activities, (B) the impact of futures market speculation on the liquidity and stability of cash and futures prices, particularly on the increased volume of financial futures

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and other nontraditional futures, (C) the consequences that trading in futures have on capital formation in the economy, the structure of liquidity in credit markets, interest rates and inflation, and (D) the sufficiency of the public policy tools available to the CFTC or other agencies to limit or curtail any activity found likely to have a harmful effect on national economic goals.

Requires a report to Congress not later than September 30, 1984, including an assessment of the impacts of these activities and recommendations for any legislative and regulatory changes.

Authorizes appropriation of funds necessary for the study.

(2) Requires all stock index futures contracts to be subject to a two-year pilot program. Such pilot program must include an assessment of the impact if any of such contracts on the markets in the underlying securities and the effect, if any, of the contracts on the capital formation process.

Requires a report within 4 months after expiration of the pilot program to the Committees on Agriculture of the Congress on the economic purposes being served by the contracts and any effect of such contracts on underlying markets in securities or capital formation. If such report concludes that the adverse effects resulting from stock index futures contracts outweigh any benefits, the Commission must include in the report plans for the orderly withdrawal of approval for all stock index futures contracts.

National Futures Association study and transaction fees. -- (1) Amends section 26 of the Futures Trading Act of 1978 to require the CFTC to submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association during the two-year period beginning January 1, 1983.

Provides for the report to include (1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission and the effectiveness of the operation of such program, (2) the cost savings to the Federal Government, if any, resulting from operations of the National Futures Association, (3) the costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility, (4) problem areas, if any, encountered by the Association, (5) the nature of the working relationship between the Association and the Commission, (6) the capabilities of the Commission to turn its attention to more immediate problems of regulation as a result of the activities of the Association.

(2) Prohibits any user fee or transaction fee involving a commodity futures contract or authorized option or leverage contract to be recommended or implemented until after the end of the session in which the Commission has submitted to Congress the study. If the CFTC should recommend at any time thereafter the imposition of a user fee or transaction fee, requires such recommendation to be accompanied by data on the effect of the proposed fee on United States contract market liquidity.

Permits the CFTC to charge fees for services currently rendered by the Commission in conjunction with registration, reparations, adjudication, or informational services and activities.

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PURPOSE AND NEED FOR THE LEGISLATION

The Futures Trading Act of 1982 extends the funding authorization for the Commodity Futures Trading Commission through September 30, 1986, and updates the Commodity Exchange Act to provide needed changes in the regulatory and enforcement authority of the Commission and resolve jurisdictional disputes that have arisen since Congress made the last major amendments to the Act in 1978.

I. EXTENSION OF FUNDING AUTHORIZATION

The Commodity Futures Trading Commission was established in 1974 as an independent regulatory agency to oversee the trading of commodity futures contracts and for other purposes. At that time the trading of futures contracts on agricultural commodities was regulated by the Department of Agriculture's Commodity Exchange Authority. Several nonagricultural commodity futures contracts were being traded but not regulated. Congress then realized the need for uniform regulation of all futures trading and that futures trading was a distinct and separate economic function.

Due to the unique and expanding role of futures trading in the national and international economy, an independent agency with adequate resources and regulatory tools was deemed appropriate.

The correctness of this 1964 Congressional initiative has been borne out in the phenomenal rate of growth in futures trading coupled with the growth of public and commercial confidence in the integrity of the industry and the regulatory framework. In the past five years futures trading volume has nearly tripled, from 37 million contracts to about 100 million contracts annually. The term "commodity" has come to embrace a variety of financial instruments, precious metals, and "natural resource" items, such as petroleum, as well as domestic and international agricultural products. While many new commodity futures contracts are now actively traded, agricultural commodity futures still accounted for over half the total number of contracts traded in 1981.

The Committee on Agriculture notes the growing maturity, competence and self-confidence of the Commission and its staff today as compared to 1978. During consideration of the 1978 Act, the Commission was criticized for ineffective management and failure to fully implement the 1974 Act. These shortcomings resulted in proposals for altering the structure of the agency. Wisely, Congress maintained the original structure, and management of the Commission is much improved.

The U.S. Comptroller General Charles A. Bowsher, however, made several criticisms and suggestions which the Committee believes the Commission should address as quickly as possible. Those include:

Shifting to the National Futures Association many of the responsibilities for registering futures professionals; conducting appropriate fitness checks, including fingerprinting; and conducting proficiency tests of most commodity professionals. Authority to accomplish this is contained in H.R. 5447.

Increasing the effectiveness of industry self-regulation and its regulatory approaches. The Committee concurs that the CFTC rule

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review program, the principal tool for monitoring enforcement by the exchanges of their own rules needs strengthening and that certain CFTC actions, such as new contract approval, should be tied to satisfactory rule enforcement review.

Improving protection of futures customers through: a better registration program for futures professionals; better guidance to the industry on safeguarding customer funds; improving the reparations process and making arbitration a more effective alternative. H.R. 5447 addresses several of these issues, particularly through encouraging implementation of the National Futures Association.

Improving efficiency through better use of automatic data processing. The Committee totally endorses strengthening CFTC's ADP capability and applauds recent actions to upgrade ADP expertise within the agency and contracting with other Federal agencies for ADP services. In fact, this Committee has strongly supported increased appropriations for enhanced computer capability at the Commission.

The Commission received considerable praise from various witnesses on its much improved conduct of business. Comptroller General Bowsher, in addition to several criticisms and several recommendations for improvements, credited the Commission with making progress in developing a regulatory framework to protect customers.

No serious proposal was made during several days of public hearings in February 1982 that the Commission should not be reauthorized or that it should be substantially altered. Testimony was accepted from all interested parties and letters of invitation to testify were issued to the Director of the Office of Management and Budget and the Chairmen of other House of Representatives Subcommittees who had expressed interest in the functions of the Commission. The Committee on Agriculture received no testimony in response to these invitations.

In early 1980, the Committee on Agriculture initiated oversight hearings on the implementation of the 1978 Act. Of particular interest was the degree of interagency coordination required in that Act among the CFTC, the Securities and Exchange Commission, the Department of the Treasury and the Board of Governors of the Federal Reserve System. At a February 12, 1980 hearing, the Committee was told of the formation of an interagency Committee composed of policy level personnel to discuss matters of mutual interest. The Committee was assured that coordination among the agencies was ongoing and valuable to those involved. Later in 1980, during the Committee's investigation of the silver market it was learned that both the degree of coordination and the spirit of cooperation among the agencies was inadequate. A discussion of this problem and its remedy appears later in this report.

Since 1978 the Committee has conducted stringent oversight of the Commission examining both operational features and its handling the 1979-80 silver market and the 1979 March wheat episode. The Committee has found no serious structural or organizational problems which require legislative solution. Additionally the Committee has found a Commission which is growing in maturity, competence and professionalism as befits the regulation of an industry

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which each year plays a more important role in the Nation's economy.

H.R. 5447 contains a four-year reauthorization. Rapid developments in the industry argue for a reauthorization not exceeding a four-year period. It provides the Congress an opportunity to conduct effective oversight of the Commission and review its charter in the light of the many changes that are occurring in the industry. The Committee is of the view that a four-year reauthorization strikes a proper balance between those who wish more frequent reviews and those who wish a longer term extension because of the time and expense that are incurred by the Commission and the industry.

II. CFTC/SEC JURISDICTIONAL ACCORD

H.R. 5447 contains amendments designed to codify the Commodity Exchange Act aspects of the agreement and to clarify the respective regulatory responsibilities of the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) so both may concentrate on their respective responsibilities. The need for such legislation has become apparent in the last several years due to growth in and expansion of trading in futures on various financial instruments, securities and indices on securities and options on the same. Concurrently there was significant growth in the trading of options on securities which were being traded on options exchanges and under the regulation of the Securities Exchange Commission.

This issue was largely resolved by agreement between the Chairmen of the two agencies resulting in separate submissions to Congress -- one by the CFTC with recommended amendments to the Commodity Exchange Act and another by the SEC with amendments recommended to the Securities laws.

Briefly, the agreement stipulates that the SEC will regulate options on securities and on certificates of deposit (and on all groups or indices of securities or certificates of deposit), and the CFTC will regulate futures contracts on exempted securities (other than municipal securities) and on broad-based groups or indices of any securities, as well as options on any such futures contracts. No trading will be permitted in futures contracts (or options on futures contracts) on individual corporate and municipal securities. The SEC may also allow options on foreign currency to trade on national securities exchanges, while the CFTC will have jurisdiction to regulate the trading of options on foreign currency in the commodities markets.

The following diagram illustrates the division of jurisdiction:

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GRAPHIC DEPICTION OP CFTC/SEC JURISDICTION

The agreement will not affect any trading that is now taking place on the national securities exchanges or boards of trade. It resolves questions of jurisdiction over a host of instruments generally described as "financial futures" or "financial options."

With respect to commodity futures trading, the agreement reaffirms Congress' designation of the CFTC as the sole regulator in its field. It does not affect in any way the CFTC's jurisdiction over agricultural futures or over futures in other nonsecurities instruments or products. The CFTC also retains its exclusive jurisdiction over the trading on boards of trade of futures contracts (or options on futures contracts) on securities issued or guaranteed by the United States Government or other securities which are exempt from the registration requirements of the Federal securities laws, other than municipal securities.

The agreement recognizes the SEC as the sole Federal regulator of the securities options markets. Thus, the agreement states that the CFTC will have no authority to regulate or oversee regulation of the trading of options directly on any security.

In recognition of the SEC's unique responsibilities over the trading markets for corporate equity and municipal securities, the agreement specifies certain criteria to govern approval by the CFTC of futures trading in a group or index of such securities. Such group or index (1) must be a widely published and accurate measure of a broad segment of the corporate or municipal securities markets, (2) must not be susceptible to manipulation nor to use in the manipulation of the underlying securities market or securities options market and (3) must be settled by cash or by other means not involving the delivery of municipal securities or securities subject to the registration requirements of the Federal securities

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laws. Any securities index futures contract that does not meet the three tests will not be permitted to trade.

Should the SEC object to CFTC designation of any particular securities group or index future, the SEC will be afforded an opportunity for an oral hearing before the CFTC to present the bases for its objection. In the event that the CFTC nonetheless approves the trading of such futures contract, the SEC may petition for review in a Federal court of appeals.

The agreement recognizes that futures trading on individual corporate or municipal securities raises particularly difficult issues. Accordingly, it would not permit the trading of futures on individual corporate and municipal securities. Both agencies, however, intend to devote further study to issues in this area with a view toward a recommendation to lift this restriction.

At the time the Committee considered H.R. 5447, it was aware of the decision by the U.S. Court of Appeals of the Seventh Circuit in the case of *Board of Trade of the City of Chicago v. Securities and Exchange Commission and Chicago Board Options Exchange*, decided March 24, 1982, in which the court held that the Securities and Exchange Commission had no jurisdiction of its own to permit trading in options in government National Mortgage Association (GNMA) certificates. The court held that options on exempted securities that were also commodities, such as GNMA's certificates were within the exclusive jurisdiction of the CFTC. Nonetheless, in the interest of comity and promoting the harmony achieved by the two regulatory agencies, the Committee voted to report legislation amending the Commodity Exchange Act that would implement the CFTC aspects of the agreement. In effect, the agreement nullifies the court decision, by reducing the jurisdictional reach of the CFTC under the Commodity Exchange Act over such options and at the same time extending to new areas the jurisdiction of the SEC.

The Committee acted contingent upon the assumption that amendments would be provided to the Securities laws that do not go beyond the recommendations of the two regulatory agencies as described above. It would vigorously oppose any attempt to further reduce the authority of the CFTC as set forth in the jurisdictional accord.

In accepting this joint proposal the Committee hopes to put to rest the tension previously existing between the two agencies which hampered both the futures and the securities industries.

It is the hope that the jurisdictional accord will turn the focus of debate from the issue of which agency has or should have jurisdiction of the merits of the proposals made to the agencies. This resolution should serve the public interest, in general, and business, commerce and investment, in particular, by removing impediments to useful new instruments so that in meritorious cases their benefits could be made available without undue delay.

The committee has long recognized and accepted the inherent differences between the futures industry and the securities industry and endorses the concept of separate regulation. Basically, the CFTC will retain its traditional rule of regulating markets and instruments that serve a hedging and price discovery function while the SEC will regulate markets and instruments with an underlying investment purpose.

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III. NATIONAL FUTURES ASSOCIATION/USER FEES

One of the major topics debated during the public hearings and markup sessions associated with H.R. 5447 was whether to impose user fees on the futures trading industry and what impact such fees would have on the industry's ability to successfully establish a new self-regulatory body called the National Futures Association (NFA).

The National Futures Association was designated by the Commission on September 22, 1981 as a "registered futures association" authorized under section 17 of the Commodity Exchange Act. NFA is intended to be a commodity industry self-regulatory organization patterned somewhat after the National Association of Securities Dealers. Some of the duties and functions it is expected to perform will be supplementary to those currently assigned to the Commission. With a successful and competent NFA it is possible that some Commission duties could be delegated to the NFA, subject to CFTC oversight.

The National Futures Association's duties would reach primarily to the off-exchange aspects of futures trading and sectors of the industry. Such functions could include: audits of futures commission merchants; oversight of introducing brokers, pool operators and trading advisors; training, testing, and registering of industry professionals including establishing and enforcing fitness standards and ethics rules.

The Committee has encouraged and promoted the idea of such a self-regulatory organization since adoption of the 1974 CFTC Act. Important segments of the industry have been reluctant to support the idea due to the cost involved and for other reasons. Some progress has been made during the last two years which resulted in CFTC designation of NFA in 1981.

The Committee adopted amendments in the Futures Trading Act of 1978, at the request of industry leaders, designed to facilitate the establishment of a registered futures association. At the time, the Committee accepted and acted on industry assurances of its desire and ability to move ahead with the NFA. The slow progress has been a disappointment. Consequently, the Committee has now embraced some legislatively mandated performance criteria which the NFA must meet during the next two years. Patience with the disparity between the industry's professed desires and its ultimate lack of action in implementing a successful self-regulatory organization is wearing thin.

H.R. 5447 contains several amendments designed to facilitate the goal of encouraging the NFA to become an effective organization and operational in an expeditious manner. These amendments require a CFTC report to Congress on the progress made in specific areas.

These include the following:

1. Authorizing a registered futures association to collect the fingerprints to the Federal Bureau of Investigation

(FBI), and receive all the results of the FBI analysis.

2. Permitting rules or rule changes submitted to the CFTC for review by a registered futures association to go into effect within

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10 days of receipt unless the CFTC of the association requests review.

3. Authorizing the CFTC to require a registered futures association to perform any portion of CFTC's registration functions under the Act, thereby enabling the processing of registration applications to be performed by the National Futures Association.

4. Requiring each registered futures association to adopt and submit for Commission approval rules that (1) establish training standards and proficiency testing for personnel of members involved in the solicitation of transactions subject to the Act, their supervisory officials and all individuals for which it has registration responsibilities, (2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission, (3) establish minimum standards governing the sales practices of its members and persons associated therewith on transactions subject to the Act, and (4) establish a program to audit and enforce the foregoing requirements.

5. Requiring each registered futures association to develop a comprehensive program that fully implements the rules approved by the Commission within a two-year period.

The issue of the Committee's long-standing desire for the industry to form a title III organization became complicated further in 1982 when the Commission, with Administration support, proposed statutory implementation of an industry user fee in its recommended legislation as contained in the original version of H.R. 5447.

The Commission's proposal was determined to be not so much a user fee but a transaction tax. It would place a charge of 6 cents per side of a trade for each futures contract and exchange traded options contract for the account of exchange or NFA members. A 12 cents per side charge would be assessed on persons who are not members of the exchange or the NFA. For dealer options and leverage contracts the charge would be \$ 3 per trade. All fees would go directly to the U.S. Treasury.

This two-tier system was intended to give due recognition to the financial contribution already being made by exchange members to exchange self-regulatory programs and by the contemplated industry cost of the NFA.

During debate on these matters, the Committee was convinced that the imposition of the proposed fee would unfairly deprive the NFA of its funding base during its infancy. Special consideration was given to this argument since both the Committee and the Commission had been actively encouraging establishment of the NFA for several years. To impose an additional fee on the same individuals and corporations at this critical time would constitute action in bad faith, on the part of this Committee.

The Committee recognizes that the futures markets' benefits are not singularly bestowed on market participants. The major functions of risk transfer and price discovery are broad in scope benefiting everyone along the chain from primary producers to ultimate consumers. For this reason it is felt the general tax base should pay most of the bill to ensure competent government regulation. Additionally the Committee recognizes that industry participants already contributes to the self-regulatory functions. At the Committee's

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request, one industry expert estimated that six major exchanges alone spent \$ 17,793,000 on self-regulatory functions in

1981. The proposed NFA budget could reach \$ 6 million annually when fully implemented. These combined contributions would exceed the CFTC budget which in fiscal year 1982 is estimated at \$ 19,924,000.

However, the Committee is not unmindful of the need to reduce the federal deficit either by reduction in spending or by adopting revenue enhancing measures. Consequently, it adopted a compromise provision which would result in more efficient expenditures and perhaps outright cost savings.

H.R. 5447 would delay imposition of a user fee pending the successful implementation of the NFA and the receipt by Congress of a CFTC study to determine:

(1) The extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission and the effectiveness of the operation of such program;

(2) The cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;

(3) The costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;

(4) Problem areas, if any, encountered by the Association;

(5) The nature of the working relationship between the Association and the Commission;

(6) An assessment of any achieved efficiencies by the Commission as a result of the Association's operations;

(7) The capabilities of the Commission to turn its attention to more immediate problems of regulations as a result of the activities of the Association.

During the period of implementation of NFA and the CFTC study, H.R. 5447 would prohibit any user fee or transaction fee involving a contract for the purchase or sale of a commodity for future delivery, option authorized under the Act, or leverage contract from being recommended or implemented until after the end of the session in which the Commission has submitted to Congress there study. If the CFTC should recommend at any time thereafter the imposition of a user fee or transaction fee, the bill requires such recommendation to be accompanied by data on the effect of the proposed fee or tax on United States contract market liquidity.

The CFTC may continue to charge fees for services currently rendered by the Commission in conjunction with registration, reparations, adjudication, or informational services and activities.

The Committee believes this to be a reasonable and equitable compromise for an interim period. Additionally it pledges a thorough review of the situation follow the CFTC study. The review would include a solicitation of views from the Administration and the industry alike. Failure of the industry to implement the NFA in the manner specified and failure to take seriously its self-regulatory responsibilities would weaken considerably the Committee's reluctance to adopt a user fee proposal.

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IV. EXPANDED ROLE FOR THE STATES

The 1974 Act which established the Commodity Futures Trading Commission bestowed on the CFTC exclusion jurisdiction to regulate futures trading and enforce the provisions of the Act, thereby preempting any State regulatory laws. This was done in recognition of the somewhat esoteric nature of the commodity futures markets and the desire to have knowledgeable and uniform enforcement of the Act. The exclusive jurisdiction has been largely successful in regard to transactions conducted on duly constituted commodity exchanges.

By the 1978 reauthorization process it became apparent that the CFTC's budget and resources were inadequate to control a variety of off-exchange commodities activities, some of which are fraudulent in nature. At that time Congress amended the Act to provide that States may seek injunctions or civil damages in Federal court under the provisions of the Commodity Exchange Act. It also recognized that State officials could sue in local courts under their general civil or criminal antifraud laws.

Since 1978 the Committee has monitored the success of the State role. Even though the CFTC took the initiative to work with States in implementing and using these authorities, State actions under the Commodity Exchange Act have been limited.

Both the Commission and the Committee reexamined the proper role of the States in consideration of H.R. 5447. Both are of the view that the States should be extensively involved in actions against those who offer fraudulent off-exchange investments and in policing transactions outside those preserved exclusively for the jurisdiction of the CFTC.

In a further effort to encourage an expanded role of States, H.R. 5447 provides new authorities which will be useful in preventing fraudulent activities.

First, in the area of information sharing, H.R. 5447 expressly permits the Commission to share otherwise confidential information with the States. In addition, the bill authorizes the Commission to provide information on any registrant either voluntarily or at the request of any State. The availability of this information will aid States in preparing their own cases. It will also enable them to assess whether to join litigation being prepared by the Commission. And, by making information sharing a two-way street, the Committee hopes for improved cooperation between the Commission and the States.

Second, H.R. 5447 would explicitly permit the application of any Federal or State law to be applied to activities of persons who are required to, but who do not obtain, registration or designation by the CFTC or who otherwise unlawfully engage in commodity transactions outside the Act's regulatory structure such as off-exchange futures or other commodity investments.

These initiatives in effect declare the Committee's intention that the resources of the CFTC and State officials should be used together to clean up the continuing problem of off-exchange commodity frauds. Chairman Philip Johnson characterized the provision as an "open season" on such activities, and the Committee concurs.

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The Committee, however, continues to support the idea of a single unified program of regulation and exclusive CFTC jurisdiction over exchange-traded futures, authorized commodity options programs and regulated leverage contracts.

V. INTERAGENCY COORDINATION

In establishing the Commodity Futures Trading Commission in 1974, the Congress was cognizant of the multiple dimensions of industrial markets such as futures, cash, forward, foreign and options in dozens of different commodities. The creation of an independent agency to regulate futures trading responded to the need to build broad expertise beyond that of the Department of Agriculture which regulated futures prior to 1974.

The importance of coordination with other Federal agencies was inherent in both the 1974 and 1978 Acts. This is especially true since numerous futures contracts are now traded on underlying commodities which are subject to direct regulation by other Federal agencies. For instance, the Department of Agriculture, the Department of Energy, the Department of the Treasury and the Securities and Exchange Commission each have a variety of responsibilities for agricultural commodities, natural resources, debt instruments, and exempted securities respectively on which futures

contracts are actively traded.

For this reason the Congress mandated the CFTC to coordinate its actions with other Federal agencies beginning in the 1974 Act. That Act contained several directives to encourage interagency coordination and understanding. CFTC was directed to maintain continuing liaison, with the Department of Agriculture and the Secretary of Agriculture was directed to establish a formal liaison to facilitate the flow of information. Congress also directed USDA and any other department or Federal agency which has market information sought by the Commission to furnish it.

During the 1978 Congressional reauthorization of the CFTC, the inadequacy of Federal agency coordination was made apparent by attempts to parcel out select areas of CFTC jurisdiction. For example, the SEC, GAO and OMB sought to transfer authority over futures on securities from the CFTC to the SEC; and, the Treasury and OMB sought to grant the Secretary of the Treasury broad authority over futures in Treasury-backed securities. After considering these proposals, Congress wisely reaffirmed the exclusive jurisdiction of the CFTC over all futures trading, but amended the Act to assure that other Federal agencies had the opportunity to review and comment on any request for new contract designations "involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof . . ."

At the same time, the 1978 amendments directed that communications and coordination among the agencies be improved to ensure consideration of the following issues:

. . . the relationship between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of (The Department of the

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Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission) the effect that any . . . designation, suspension, revocation, or emergency action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

The Committee has been disappointed by the low level of interagency coordination accomplished under 1978 amendments. Fault lies not simply with the CFTC but with other agencies as well.

The Committtss's review of the 1979-1980 silver market incident showed insufficient communication and little evidence of general coordination of policies, programs or procedures or evidence of any formal coordination mechanism. As a result of various Congressional Committee reviews of the silver market, an amendment to the CEA was adopted in the summer of 1980 requiring the Commission to establish a joint working group with the Federal Reserve Board, Department of the Treasury, and the Securities and Exchange Commission to analyze the various aspects of the events in silver cash and futures and report to Congress by October 1, 1980.

The report was delivered on June 1, 1981, and the Subcommittee held public hearings on it on October 1, 1981. Representatives of the four agencies at that hearing did little to dispell the view that a spirit of coordination and cooperation was almost nonexistent. Briefly, the SEC took issue with the section on financial futures and refused to participate in its preparation. Additionally, the SEC differed with conclusions regarding the regulation of margins on futures contracts and with the inadequacy of attention to the impact of exchange regulatory actions on the price decline.

Similarly, the Federal Reserve Board referred to the joint report as "the CFTC Report" and its representative indicated that the Board had not and would not take a position until "other" investigations were completed and legislative proposals were "on the table"; and, the Treasury representative acknowledged that Treasury "was not signatory" and "had not officially endorsed" the report. Only the CFTC was willing to stand behind the report.

Such disregard of Congressional intent does not speak well of the actions of the participants involved in the study.

The Committee hopes that recent initiatives by CFTC Chairman Philip McBride Johnson toward better coordination are accepted by the Federal Reserve, Treasury Department, SEC and other agencies, and are accepted with enthusiasm.

Those CFTC initiatives include:

Routine scheduling of interagency meetings to share information and observations on the markets;

Invitation to representatives of the Treasury, Federal Reserve, SEC, and Department of Agriculture to attend CFTC market surveillance meetings;

Formalized systems for sharing data, including market surveillance information collected by the CFTC, with the SEC, the Treasury and the Federal Reserve. The same data is shared with other Federal agencies on a "need to know" basis;

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Implementation of technical cooperation and joint research projects between the CFTC and other agencies such as USDA and DOE on areas where the agencies have mutual interest and expertise.

The Committee is confident that these changes will go a long way toward resolving the long-standing problem of inadequate coordination. Much of the credit for these improvements must go to CFTC Chairman Johnson who has given the Committee his personal commitment to deal forthrightly with the problem. Accepting these administrative modifications, the Committee determined that further legislative changes are not required in 1982. However, oversight to assure continued improvement will be undertaken.

VI. AGRICULTURAL OPTIONS

H.R. 5447, as amended, repeals the 1936 ban on the trading of options on agricultural commodities and gives the CFTC authority to approve trading of such options under a pilot program for a period of up to three years.

Options contracts differ from futures contracts in that the purchaser of an option secures the right to buy or sell a specified quantity of a commodity at a set price and date. On the other hand, the purchaser of a futures contract secures the right and obligation to deliver or take delivery of a specified quantity of a commodity at a set price and date. A premium is paid for an option in return for a right; no obligation is incurred. In futures trading, no premium is paid, but a margin deposit is made (and additional margin may be required) to ensure completion of the contractual obligation.

The Committee, following cautious but positive testimony, from some farm groups, decided in favor of testing the utility of agricultural options as a more flexible, less complicated method of price protection for farmers than standard hedging with futures contracts. Options offer a way to simply purchase a degree of price protection from a falling market without giving up potential benefits from a favorable price movement.

Entering into a special pilot program of exchange traded agricultural options is a cautious approach which is appropriate. It provides adequate time to assess in an orderly way the utility of and farmer acceptance of options.

The Committee wants at least to provide farmers and other interested parties a fair chance to benefit from this new marketing device, just as is provided others by the current CFTC pilot program on nonagricultural options.

The final test in this pilot program should be the level of participation by the agricultural industry in using options for commercial purposes.

VII. REGULATORY POWERS AND ENFORCEMENT

The Committee recognizes that in such a rapidly growing and changing industry, the regulatory and enforcement

powers of the Commission must be systematically examined and updated. As a general rule the Committee has found that the Commission has adequate regulatory and enforcement tools to carry out its assigned

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responsibilities under the Act. To ensure the continuing viability of the markets and the protection of the public, H.R. 5447 contains a number of amendments that should provide the Commission with the additional tools it needs to respond effectively to the changing environment.

The Committee has proposed to revamp the existing regulatory provisions to assure the responsibility of those commodity professionals who deal with the public, to expand the responsibilities of registrants for the conduct of principals and key employees, and to lay the foundation for a self-regulatory program with the Commission acting in an oversight role.

(a) Extension of registration requirements

First, H.R. 5447 would extend existing registration requirements to include all persons who solicit customers or funds or who influence or advise customers as to the investment of those funds. Specifically, the proposals require the partners, officers, employees, consultants, and agents of commodity pool operators who solicit pool participations or who supervise such persons to register as associated persons of commodity pool operators. Similarly, personnel and consultants of commodity trading advisors who solicit discretionary accounts or who supervise such persons would also be required to so register.

The registration of associated persons of commodity pool operators and commodity trading advisors is necessary to ensure that such persons are qualified to offer pool participations and investment advice to potential participants and clients and are adequately supervised.

These provisions are included in the context of recent administrative decisions that the Commission had no subject matter jurisdiction over an employee of a commodity trading advisor who was neither registered nor required to be registered with the Commission.

Requiring registration will permit the Commission to conduct fitness checks through the FBI, SEC and other sources to uncover past misconduct such as criminal convictions, to proceed more effectively against individuals associated with registered entities who violate the Act, and to subject these persons to reparations claims. The need to screen these categories of commodity professionals has become more urgent because of a dramatic increase in the number of commodity pool operators and commodity trading advisors, and a concomitant increase in the number of customers and the amount of funds under management by them.

For example, the number of commodity pool operators registered with the Commission rose from 494 at the end of fiscal year 1978, to 882 at the end of fiscal year 1981, an increase of more than 75 percent. (Because such individuals have not previously been actively regulated by the Commission, however, there are no figures available as to the number of persons who would be affected by a registration requirement for persons who solicit customers on behalf of such operators and advisors.)

This change would make the registration program more consistent because it would require all persons who are essentially functioning in the same capacity with respect to other registrants as

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persons associated with futures commission merchants to register as associated persons of such other registrants. By so designating them, the Commission may also more readily make their employers responsible in the first instance for the supervision of sales practices and fitness.

H.R. 5447 clarifies that those antifraud provisions of the Act which apply to commodity pool operators and commodity trading advisors would also apply to their associated persons.

H.R. 5447 also resolves any existing uncertainty as to the status of agents of futures commission merchants. Although agents may perform the same functions as branch officers of futures commission merchants, agents generally are separately owned and run. Futures commission merchants frequently disavow any responsibility for sales abuses or other violations committed by these agents. The Committee believes that the best way to protect the public is to create a new and separate registration category for "agents" (e.g., as introducing brokers). Many of these "agents" are individuals or very small businesses. Activities of agents and those of commodity trading advisors or associated persons of futures commission merchants may be virtually identical, yet commodity trading advisors and such associated persons are registered and regulated under the Act while many agents are not.

The new registration category of "introducing broker" would encompass persons who solicit or accept futures orders but who do not handle customer funds, and in the case of individuals, who elect to be registered as introducing brokers rather than associated persons. The current ambiguity and the resulting uncertainties of the regulatory status of agents would thus be eliminated.

The proposed amendment would make introducing brokers directly subject to the Commission's regulatory authority. At present, agents may not register with the Commission; instead their names are listed on the registration application of the futures commission merchant that clears their trades. Under the Committee amendment, persons now considered agents would be required to register directly with the Commission as introducing brokers and would be required to provide the Commission with the same type of detailed information now provided by other applicants for registration. A registration requirement will permit the Commission, or the National Futures Association (NFA) under the Commission's oversight to establish and review qualifications, and to refuse, suspend, or revoke registration as appropriate.

In addition to permitting greater review of qualifications, the proposed amendment would allow the Commission or NFA to set minimum financial and other standards for introducing brokers, analogous to those presently in effect for futures commission merchants. Compliance with these standards could be monitored and enforcement action could be taken when necessary. Thus, in place of the lack of regulation that now exists for agents, the proposed amendment would fully integrate these persons into the regulatory structure administered by the Commission under the Act.

The registration amendments also would extend the Commission's authority to establish a proficiency examination requirement (as well as other fitness qualifications) to all persons who are required to register with the Commission. Under existing law, the

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Commission's authority in this respect applies solely to futures commission merchants, floor brokers and those persons associated with them. Pursuant to that authority, the Commission has proposed a rule which generally would require new applicants, as a condition of registration as associated persons, to pass a specified written proficiency examination within 2 years preceding the filing of their registration application.

Extending the Commission's testing authority will further effectuate the objective that all commodity professionals who deal with the public meet standards of fitness. It is envisioned by the Committee that any testing program permitted by statute could be developed and administered by a registered futures association such as the National Futures Association, pursuant to rules and regulations of the Commission.

(b) Streamlining registration procedures

Second, the Commission's proposals streamline and simplify the current registration procedures to enable the Commission to register fit persons more expeditiously and to remove unfit persons from the industry more promptly.

The proposals would amend the Act to establish a system of "statutory disqualifications" which would enumerate the most important bases for finding applications or registrants unfit for registration. This will mean that in most cases Commission staff need no longer bear the burden of establishing what conditions warrant a Commission finding of unfitness, and should, therefore, reduce the amount of time and resources which the staff, as well as applicants and registrants currently devote to registration cases. In addition, such a system would provide advance notice to applicants and registrants of the most significant fitness standards used by the Commission, thereby promoting fairness and uniformity of treatment.

The registration disqualification amendments created a two-tiered system. Under the first tier the Commission may deny, condition, suspend, or replace restrictions upon registration without a prior hearing, or revoke registration after such a hearing, as may be appropriate in cases which involve especially grave offenses that are clearly related to a person's fitness for registration with the Commission.

Each disqualification is based upon a previous finding or order by the Commission, a court, or another governmental body. As a result, whether or not a person is subject to such a disqualification generally is readily ascertainable by checking officially maintained governmental records. By eliminating the need to provide hearings to persons who are manifestly unfit for registration, the Commission will be able to dispose of most registration cases quickly, thus freeing resources for the performance of its other important regulatory and oversight functions.

Under the second tier, offenses which are less grave (e.g., a misdemeanor conviction) which may require factfinding or for which it may be appropriate for the Commission to consider mitigating or extenuating circumstances or evidence of rehabilitation would be grounds for a finding of unfitness only after an opportunity for hearing before the Commission. In keeping with the Commission's desire to make registrants responsible for their employees, these

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proposals also require that reasonable inquiry be made by employers who are registered into the background of such persons. If a reasonable effort is made to discharge these obligations, or if the Commission is notified of potential disqualification by an employer and nonetheless registers or licenses such persons, however, the registrant's registration will not be at risk.

The Committee recognizes that, for obvious reasons, the making of full fitness checks may be time-consuming. Therefore, H.R. 5447 authorizes the Commission to grant a six-month provisional license to applicants. This procedure will permit an apparently qualified applicant to begin work or to conduct business prior to completion of the registration review.

In this vein, the proposal would provide the Commission with additional flexibility in the administration of the registration requirements by authorizing the Commission to grant registration on a conditional basis, and to register associated persons either permanently or for a substantial length of time. At present, the Commission must either grant or deny registration. The discretion to grant conditional registration will allow the Commission to permit an applicant to conduct business, under certain stipulations, in circumstances where neither approval nor denial would be appropriate and where, at present, denial might be the only available option. For example, the Commission could condition registration on the creation of additional supervision requirements. So conditioning registration puts real teeth into those requirements, inasmuch as the registration of such person would be at risk if it failed to comply.

The proposals also remove any referene to the time period for registration of associated persons and authorize the Commission to prescribe the duration of the registration of associated persons of futures commission merchants, commodity pool operators and commodity trading advisors. It is intended that the exchanges clarify that the Commission may require an applicant for registration as an associated person of any category of registrant be "sponsored" by the registrant who will employ him, consistent with the Commission's recently revised registration rules.

In connection with reducing the burdens associated with the current registration scheme, H.R. 5447 contains several

revisions in the existing definition of the term "commodity trading advisor". The current definition includes persons who give advice concerning the value of commodities or who issue analyses or reports concerning commodities for compensation or profit and as part of a regular business. As such, this definition literally encompasses thousands of persons (e.g., consumer advisers, jewelry appraisers, economists who recommend the purchase of gold as a hedge against inflation) who have no connection with futures, options, or leverage transactions. The amendment would narrow the definition to exclude under most circumstances those advisors who merely advise as to cash commodities or their value. The Commission, however, would retain the authority to issue regulations which include within the new definition any person who gives such advice if that will effectuate the purposes of this provision and the Act.

The proposals also extend the current exclusions from the commodity trading advisor definition to the electronic media (e.g., television

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reporters and commentators) and a new exclusion is added for trustees of certain pension plans which are subject to extensive regulation under the Employee Retirement Income Security Act of 1974, provided that the furnishing of trading advice is solely incidental to the discharge of their fiduciary responsibilities. This exclusion is particularly significant in view of the increasing interest in and use of futures trading by pension plan managers to hedge their portfolios against interest rate fluctuations.

(c) Framework for delegation of the registration function

Third, the proposals provide for the performance by any person of any portion of the Commission's registration functions, in accordance with rules approved by the Commission and subject to the Act. In addition, they provide the Commission with authority to require any registered futures association to undertake this responsibility with respect to each of its members other than a contract market and with respect to each associated person of such member. These proposals, among other things, would enable the Commission to delegate the processing of registration applications to the National Futures Association. It is in this context that the system of statutory disqualifications and other amendments proposed by the Commission must be viewed. These new provisions, by creating a virtually self-executing system with clear guidelines as to the most important grounds of unfitness, make such a delegation more feasible. Of course, it is contemplated that the discharge of such delegated responsibility will be subject to Commission oversight, with any decision regarding registration by a futures association appealable to the Commission. Moreover, this proposal is not intended to alter the fact that registrants are deemed to be registered with the Commission.

(d) Enforcement

The Committee gave special attention to the enforcement program of the Commission to assure that the public is adequately protected against fraud. The improvements in the registration provisions of the Act discussed above will assist substantially in screening out unscrupulous persons from participating in the commodity business. A strong self-regulatory agency such as the National Futures Association has the potential of enabling the Commission to concentrate its resources on enforcement of the law to assure that futures customers are protected in their dealings with commodity professionals. Vigorous law enforcement is important to protect the public and provides a comparatively cheap and more effective alternative to the adoption of costly new layers of regulation. In addition to seeking to enlarge further the role of the States in proving and prosecuting off-exchange commodity fraud, the Committee has included in H.R. 5447 a number of legislative changes to sharpen the Commission's enforcement ability. These changes should reduce the costs of regulation for the majority of honest, law-abiding businessmen.

A number of futures markets exist abroad and others are now under development. Protection of United States residents solicited to trade on these foreign markets may necessitate regulation of those who vend foreign futures from domestic locations. It may

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prove desirable, for instance, to require such vendors to comply with some of the regulatory requirements now imposed on futures commission merchants marketing domestic futures. To make explicit the Commission's authority to prevent fraud in the domestic offer and sale of all futures contracts, the Committee has included provisions that expressly authorize the Commission to develop, if needed, a regulatory system for those who market foreign futures from a domestic location.

This includes express authority for the CFTC to promulgate regulations relating to fraud, minimum financial standards, disclosure of risk and reporting requirements, keeping of books and records, safeguarding of customer funds, and registration by any person located in the United States who is engaged in the offer and sale of foreign futures. The CFTC may adopt different rules for different foreign boards of trade and markets but is precluded from adopting rules which govern foreign exchanges or clearinghouses or requiring approval of contracts, rules or actions of foreign markets and clearinghouses.

"Aiding and abetting" is a well established basis for holding a person responsible for another person's violations. Those who intentionally assist another in violating the Act should not be able to escape responsibility simply because another person carried out the offense. In its present form, section 13(a) of the Act provides that aiders and abettors may be held liable as principals only in administrative proceedings under the Act. Although Federal courts have generally recognized the applicability of common law principles of aiding and abetting to persons who assist others in violating the Act, this has not uniformly been so. In order to assure the consistent treatment of aiders and abettors both in administrative proceedings and before the courts, the Committee has expanded section 13(a) to apply to all proceedings under the Act.

It is sometimes difficult for the Commission to reach behind corporate or partnership entities to obtain sanctions against specific individuals who instigate violations of the Act. To remedy this problem, the Committee has added provisions to the Act which would make clear that a person who directly or indirectly controls another person (or entity) which violates the Act, would himself be liable as a principal to the same extent as the controlled person. The Committee placed the burden on the Commission, however, to establish that the controlling person did not act in good faith or directly or indirectly induced the act constituting the violation. Among other things, this provision would strengthen the Commission's ability to impose sanctions against individuals who are, in essence, the alter egos of corporations which have duties under the Act. A somewhat comparable provision exists in current law under the Security Exchange Act of 1934.

In its present form, section 6c of the Act prevents the Commission from obtaining injunctions on an ex parte basis (i.e., without prior notice to the other party). In some situations, such prior notification may result in the destruction of books and records and the dissipation of customer funds.

To prevent destruction of evidence and conversion of assets, H.R. 5447 has amended section 6c to permit the Commission to obtain ex parte orders from courts of competent jurisdiction, which prohibit

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destruction, alteration or disposition of books and records or the refusal to permit inspection thereof and which prohibit the transfer or removal of funds. Ex parte orders would only be permitted for these limited purposes.

Under existing law, it is a felony for any futures commission merchant to embezzle or steal customer assets. Section 9(a) of the Act has been amended so that similar conduct by any person registered or required to be registered under the Act is likewise a felony. This is because other registrants may have significant customer assets under their control. For example, commodity pool operators are entrusted with substantial sums of investors' funds, sometimes in the millions of dollars.

The Committee has included additional provisions in H.R. 5447 to protect the public from persons who have a record of felonious conduct in the commodities business. For example, H.R. 5547 requires the CFTC to suspend the

registration and deny reregistration of any person convicted of a felony under the Act for embezzlement or conversion and deny reregistration for a period of at least five years unless the CFTC determines that such action is not required in the public interest.

Similarly, the Commission is required by the bill to suspend the registration and deny reregistration for at least a five-year period of any person convicted of a felony for manipulation of prices or cornering of markets and to take such action for at least a two-year period as to any person convicted of a knowing violation of any position limits fixed under section 4a. The CFTC must also bar any person convicted of a felony under subsection 9(b) from using any market regulated by the Commission on terms and conditions set by the CFTC for at least a five-year period, and in the case of a conviction for violation of position limits for at least a two-year period.

These penalty provisions coupled with the more stringent registration provisions should give the investing public greater confidence in the integrity of persons with whom they deal who represent different segments of the commodity industry.

VIII. REMEDIES FOR VIOLATIONS OF THE ACT

(a) General

Another area to which the Committee addressed itself related to improving the machinery by which a commodity customer can obtain relief for violations of the Act by industry professionals. At the time H.R. 5447 was introduced, the Commission's reparations program was the subject of much adverse criticism because of the length of time required to process claims and the complexity of the required procedure. Moreover, if a judgment was obtained, especially against a nonregistrant or bankrupt firm, there was no assurance collection was possible. The alternative remedy of arbitration was of limited value because of statutory restrictions on its use and the delay in organization and development of the National Futures Association, which was expected to provide an additional arbitration forum. Finally, the availability of private rights of action under the Act in Federal court was the subject of dispute. The

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court were split on the availability of such a remedy and the Supreme Court had the issue under review.

The Comptroller General in his testimony made the recommendation that as to the Commission's reparations program there was a need for simplification of the rules and procedures. Further he recommended that steps be taken to make arbitration a more attractive and effective alternative to reparations -- among these removing the statutory limitations on size of claims which could be arbitrated. Finally, he asked for Congress to clarify whether it intends customers to have a private right of action to adjudicate commodity-related claims in Federal court. The Commission had a number of detailed statutory recommendations which were included in H.R. 5547, as originally introduced. These recognized the problem and many of these suggestions were accepted by the Committee.

(b) Reparations

The reparations program was established within the Commodity Futures Trading Commission in April 1975 in order to provide a process through which persons could seek relief in the event they had been wronged by conduct violating the Commodity Exchange Act. The concept of reparations in the futures field is set forth in section 14 of the Act. Under that section, any person may file a complaint seeking damages for alleged violations of the Act, or any CFTC rule or regulation, by any person required to be registered with the Commission. A reparation proceeding may be brought before an administrative law judge or any presiding officer designated by the Commission to hear evidence on the complaint, to determine if a respondent has committed violations of the Act and if and to what extent damages have been sustained.

To enable the Commission to simplify its rules of procedure regarding reparations and streamline the process, the

Committee gave the Commission broad discretion to promulgate such rules, regulations and orders as it deems appropriate for the efficient and expeditious administration of the program.

Among the modifications H.R. 5447 makes in current procedures is elimination of the current \$ 5,000 ceiling on damage claims that may be considered without a hearing. Thus, the commission would be able to have cases decided on documentary evidence without regard to the amount of damages claimed.

H.R. 5447 deletes several other of the complex procedural requirements of the present statute which the Commission has found to be unduly cumbersome. Moreover, under the bill, the Commission would not be required to ensure that its procedures conform to typical forms of agency action required by the Administrative Procedure Act. This change should enable the commission to use its best judgment in fashioning appropriate procedures that will be both fair and efficient.

Also, since the reparations program seeks to pass upon the whole controversy surrounding each claim, including counter-claims arising out of the same set of facts, the bill would create appropriate sanctions against a claimant who has failed to honor a reparations award in favor of the counter-claimant. Trading privileges could be denied in such circumstances to the dishonoring party until payment

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is made. This new procedure is designed to insure the integrity of the reparations program and of the Commission's orders and to make the system more equitable for all participants.

In 1978, the Commission obtained changes in the Act which were designed to enlarge the class of persons subject to the Commission's reparations procedures to include unregistered persons. Over the course of the past four years, the Commission has encountered several obstacles, not anticipated at the time its legislative changes were recommended, to asserting reparations jurisdiction over so-called "outlaw" firms or individuals. Unregistered firms and individuals often file in bankruptcy, are destitute, or have disappeared by the time a claim is asserted, resulting in uncollectible reparations awards. In these circumstances, the reparations process actually operates as a disservice to those who have already been harmed, by apparently promising recovery, which as a practical matter cannot be had. Moreover, these types of claims have served to delay the entire reparations process, thereby deferring the completion of cases where recovery is possible.

Thus, a final statutory change made by the Committee at the Commission's request was to eliminate reparations claims against individuals or firms not registered with the Commission.

(c) Arbitration

The Committee's proposed amendments to sections 5a(11) and 17(b)(10) of the Act would enhance the attractiveness of arbitration as an alternative to reparations. In particular, the Committee eliminated the \$ 15,000 limitation upon disputes which must be heard by exchanges and registered futures associations, in the expectation that customers with more sizable claims would be encouraged to arbitrate their claims instead of petitioning for reparations hearings. As sections 5a(11) and 17(b)(10) currently read, exchanges and registered futures associations may refuse to arbitrate a customer's claim against one of their members or employees if the amount in question exceeds \$ 15,000. The Committee is of the view that arbitration is an equally viable forum for resolving customer claims in excess of \$ 15,000 and there is no logical reason why reparations should be the only out-of-court forum for resolution of these disputes.

The Committee proposed amendment to sections 5a(11) and 17(b)(10) would also delete the present language in the Act requiring that the arbitration procedures not result in any compulsory payment except as agreed upon by the parties. This change is intended to make clear that awards rendered on counter-claims in arbitration are binding without the necessity of an agreement. H.R. 5447 does not affect the existing requirement that the use of arbitration by the customer is voluntary or the Commission's understanding that exchange members must participate in arbitration

proceedings which the customer has elected to pursue.

(d) Private Rights of Action

At the time the Committee considered the bill, the Supreme Court had not yet resolved the issue of whether a private right of action could be implied under the Act. The Committee is of the view that the right of an aggrieved person to sue a violator of the

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Act is critical to protecting the public and fundamental to maintaining the credibility of the futures market.

To that end the Committee added a new section to the bill to provide specific authority for private rights of action for recovery of actual damages against violators of the Act. In order to recover the violation must have arisen from a transaction on the futures market, a regulated option or leverage contract, or participation in a commodity pool.

The Committee also specifically provided for liability for actual damages by a contract market, clearing organization of a contract market, licensed board of trade or registered futures association that failed to enforce a bylaw, rule or regulation made a condition of its designation or license. In addition, a cause of action could be brought against an officer, director, or employee who willfully aided or induced such a violation. The cause of action in these cases would be restricted to cases where the plaintiff had engaged in a regulated commodity transaction and could show that there was bad faith in failing to take the necessary action. Any action by a private litigant under the Act must be brought within two years after the date the cause of action accrued.

The Committee included these restrictions on the causes of action to avoid suits for speculative damages to assets that are affected by fluctuations in prices on the commodity market but which are not the subject of transactions on such market.

The availability of these remedies -- reparations, arbitration and private rights of action -- supplements, but does not substitute, for the regulatory and enforcement program of the CFTC and self-regulatory agencies. The Committee fully expects that these agencies will vigorously use the tools at its command to protect the investing public so that it does not become necessary to rely on private litigants as a policeman of the Commodity Exchange Act.

IX. COMMISSION EMERGENCY POWERS

The Committee included in its amendments to the Commodity Exchange Act new provisions to assure that the Commission would have the tools it needs to act promptly in emergency situations to protect the public interest and at the same time establish a mechanism that will assure that the Commission does not act in an arbitrary or capricious manner.

Under current law in emergency situations the Commission is authorized to "take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract." The Act defines the term "emergency" to mean in addition to threatened or actual market manipulation and corners, any action of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity.

As described elsewhere in this report, there was concern as a aftermath of the silver affair as to the breadth of the Commission's powers in emergency situations. Accordingly, the Committee has amended the Act to make explicit that this power of the commission extends to the setting of temporary emergency margin levels

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on any futures contracts and the fixing of position limits that may apply to a position acquired in good faith prior to the

effective date of the Commission's action.

Another issue that was the subject of discussion during the Committee's hearing was the request by the industry for an amendment to the section to provide expressly for judicial review of emergency action taken by the Commission. The U.S. Court of Appeals for the Seventh Circuit held that the Commission's action under this section is a matter committed to agency discretion and is immune to judicial review (*Board of Trade of the City of Chicago v. Commodity Futures Trading Commission*, 605 F. 2d 1016, Seventh Circuit, 1979, cert. denied, 446 U.S. 928, 1980). This case arose after the CFTC ordered the Chicago Board of Trade to terminate trading in its March 1979 wheat contract due to the CFTC's determination that an emergency existed as a result of potentially dominant positions held by a small number of speculative traders. The district court entered a preliminary injunction and the Seventh Circuit reversed on the basis set forth above.

The Commission has exercised its authority under section 8a(9) of the Commodity Exchange Act to take emergency actions on four occasions. These involved the potato market in 1976, the coffee market in 1977, the wheat market in 1979 and the grain markets in 1980. The first three of these market emergencies involved threats of manipulation of expiring futures contracts, while the last resulted from the actions taken by President Carter when he embargoed sales of grain to the Soviet Union. These emergencies are summarized briefly below.

1. November 1976 Maine potatoes on the New York Mercantile Exchange

In November 1976, CFTC market surveillance economists detected a substantial concentration of long positions in the futures market which could have posed a threat of manipulation. The situation was compounded by the shortage of rail cars required for making delivery on this future. The Commission brought these facts to the attention of the exchange and suggested that action be taken to assure an orderly liquidation of the contract. When the exchange failed to act, the Commission itself declared an emergency and ordered the exchange to impose 100 percent margins on all accounts and to limit trading in this contract to liquidation only.

2. December 1977 coffee on the New York Coffee and Sugar Exchange

Throughout 1977 the Commission had been experiencing surveillance problems associated with the futures market activity of a number of coffee-producing countries. The Commission had reason to believe that these countries were attempting to use the futures market as a means of supporting or raising world coffee prices. (The Commission was in the process of investigating trading in the July 1977 coffee future, and ultimately it issued a complaint charging a number of traders with price manipulation.) In November 1977, a number of these same traders held very large positions in the expiring December contract, substantially in excess of the deliverable supply. The Commission determined that this posed a

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threat of manipulation to the market. The Commission met with exchange officials to evaluate the problem and, jointly with the exchange, determined that a market emergency existed and that certain actions should be taken. The Commission then, in conjunction with the exchange, declared a market emergency and ordered a phased liquidation of all position in that market subject to a prescribed schedule.

3. March 1979 wheat on the Chicago Board of Trade

In late 1978 and early 1979, the Commission's surveillance staff became aware of a severe shortage of deliverable wheat available to the Chicago Board of Trade wheat contract emanating from a short crop of soft winter wheat and severe weather in the Chicago region which substantially curtailed supplies that could move to Chicago from other areas, particularly Minnesota. The staff was also aware of substantial long speculative positions in the market by a group of traders who may have been trading according to a common plan. After consideration of the available information, the Commission determined that an emergency existed and requested the Chicago Board of Trade to take

appropriate actions. Upon review of the actions proposed by the Board of Trade, the Commission determined that those actions were inappropriate to the situation at hand. Accordingly, the Commission declared a market emergency and ordered a one-day suspension of trading to allow the exchange to undertake further regulatory action. The next day when the Commission determined the exchange failed to act appropriately, the Commission ordered the exchange to suspend all further trading in the March contract and to settle any contracts remaining after the delivery period expired at the last prevailing settlement price for that future. The Chicago Board of Trade challenged this emergency order in Federal district court and succeeded in getting the court to stay the order. Upon appeal, the Commission received a favorable decision from the U.S. court of appeals finding that the Commission's emergency powers were not judicially reviewable.

4. The Soviet grain embargo

In January 1980, President Carter ordered an embargo of grain sales to the Soviet Union as a reaction to the Soviet Union's invasion of Afghanistan. This embargo effectively cancelled sales of about 17 million metric tons of corn, wheat and soybeans. In response to this embargo, the Commission immediately began consultation with market users, futures commission merchants and the affected commodity exchanges. The Commission also met with USDA to determine what plans it had to take compensatory actions to ease the impact of the embargo on the U.S. agricultural economy. In view of all these factors, the Commission determined to declare a market emergency and suspend trading for two days in futures contracts for wheat, corn, oats, soybeans, soybean meal and soybean oil. These contracts were traded on the Chicago Board of Trade, the Kansas City Board of Trade, the Minneapolis Grain Exchange, and the MidAmerica Commodity Exchange. The Commission acted because, in its view, the sudden shock to the market and uncertainties concerning unannounced USDA plans to compensate

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those affected by the embargo would render the markets temporarily incapable of accurately reflecting the forces of supply and demand. In the absence of emergency action, it was expected that very substantial downward price movements in these markets would have occurred, and those downward price movements would likely have been excessive given the compensatory programs USDA was about to implement. The two-day suspension gave the markets time to consider the USDA support programs in light of the embargo action.

The Committee is of the view that the Commission must have the power to respond appropriately to a market emergency and did not wish to provide any type of judicial review that would hamper the Commission's ability to take swift and decisive action when needed. In particular, it did not wish to provide a mechanism whereby litigation would circumscribe the Commission's ability to take effective emergency action. At the same time, it is of the view that the Commission's exercise of emergency powers should be subject to some review by the courts to avoid an abuse of administrative powers.

The Committee thus agreed to a limited form of judicial review that would meet this two-fold objective. Under the amendment, action by the Commission would be subject to review only in the appropriate U.S. court of appeals and would be based upon an examination of the information before the Commission at the time the determination is made. Thus, there is avoided the possibility of any court ordering a trial de novo or calling for hearings with witnesses and the presentation of evidence and the concomitant procedural delays that would inhibit effective Commission action. Further, under H.R. 5447, the court reviewing the Commission's action could not enter a stay or mandamus unless it determined after notice and hearing before a panel that the agency action complained of was arbitrary, capricious, an abuse of discretion or otherwise not in accordance of the law.

The Committee is of the view that the limited judicial review provision should not cause hardship to the CFTC in handling emergency situations. It will continue to conduct oversight regarding the Commission's operations and if the provision should prove an impediment to protection of the public interest, the Committee will reopen the issue.

X. SPECIAL STUDIES

For six decades the Agriculture Committee has been responsible for legislation involving futures trading. The major expansions in the industry over the last decade did not catch the Committee by surprise.

Both industry and the Federal regulators have been called to the Committee probably scores of times in both legislative and oversight proceedings. Establishment of the independent regulatory agency in 1974 was a Congressional initiative in which the Committee was a primary participant.

This dedication to keeping abreast of the ever-evolving futures industry in a volatile and unpredictable economy is a role the Committee takes seriously.

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The Committee finds no evidence that the pace of change in the industry will abate in the near future. For this reason serious and thorough assessments of the impact of certain changes in the industry are called for in H.R. 5447.

H.R. 5447 calls for CFTC to organize and lead, with the assistance of the SEC, the Federal Reserve and the Treasury, a study and investigation of the structure, participation, uses and effects of trading futures and options on the economy. Among those areas to be studied are (A) the purposes for which participants utilize futures markets, and the financial resources devoted to each of these activities, (B) the impact of futures market speculation on the liquidity and stability of cash and futures prices, particularly on the increased volume of financial futures and other nontraditional futures, (C) the consequences that trading in futures have on capital formation in the economy, the structure of liquidity in credit markets, interest rates and inflation, and (D) the sufficiency of the public policy tools available to the CFTC or other agencies to limit or curtail any activity found likely to have a harmful effect on national economic goals.

It is contemplated that this study would seek out and utilize the best minds available, both theoretical and practical. A similar study was conducted in the 1960's regarding the security industry. That study provided the foundation for more knowledgeable public policy decisions. Such a solid foundation is now needed for policy makers in the area of futures trading.

A report on the study is to be submitted to Congress not later than September 30, 1984, including an assessment of the impact of these activities and recommendations for any legislative and regulatory changes.

H.R. 5447 also requires a separate CFTC study assessing the impact, if any, of stock index futures contracts on the markets in the underlying securities and the effect, if any, of the contracts on the capital formation process.

This study would monitor a two-year pilot program of stock index futures trading and a report to Congress is required within four months after the expiration of the pilot program. If the report concludes that the adverse effects resulting from stock index futures trading outweigh any benefits, the Commission must include in the report plans for the orderly withdrawal of approval for all stock index futures contracts.

The Committee recognizes the controversial nature of this untested market development. While not wanting at this time to deny CFTC's authority to approve trading in stock index futures, the Committee mandates a cautious approach by requiring a pilot program review. Additionally, the Committee will freely exercise its oversight responsibilities in the interim period if circumstances warrant.

XI. SILVER MARKET 1979-80

A. Background

In late 1979 and early 1980, silver prices, both cash and futures, fluctuated sharply, soaring from less than \$ 10 per ounce in August, 1979, to a peak of over \$ 50 per ounce in mid-January, 1980, then

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plummeting back to \$ 10.80 in late March, 1980. The price in May, 1982, is in the \$ 6-8 range. Silver futures are traded primarily on the Commodity Exchange, Inc. (COMEX) in New York City but also to a lesser degree on the Chicago Board of Trade (CBOT).

These events caused a serious adverse impact on the national economy -- not only on the persons trading in the commodities markets but also on brokerage houses, banks, industrial firms and many others. Controversy has swirled around these events ever since. A number of studies have been conducted concerning the silver episode because of a desire to assure that there would never again be a repetition of such a situation.

The following is a brief description of the events that transpired, the problem areas identified and the variety of actions and initiatives which have been taken to forestall a recurrence of another commodity market crisis.

During the period in question, the key long traders, those acquiring silver or speculating that the price would go up, included: members of the Hunt family of Texas and IMIC, an institution controlled by various Hunt family members and several Arab investors; and a second group constituted primarily of a few foreign traders conducting most of their trades through the Conti Commodity commission house. This "Conti group" consisted of accounts established for Naji Robert Nahas, Banque Populaire Suisse, Norton Waltuch, Gilian Financial and Conti Capital Management, Inc.

Some of the major short traders, those traders generally selling silver (hedging the price of silver they own) or speculating that the price would go down; included Englehard Minerals, Mocatta Metals, Sharps Pixley and the J. Aron Company.

The Hunt group had been fairly active in the silver markets in the mid-1970's holding both long futures contracts and physical silver. In 1979, the Hunt group increased their net long futures position to 24,722 contracts giving them potential control of over 120 million ounces by September 30. They also began acquiring large quantities of physical silver, much of it obtained through settlements with short traders, but also apparently including purchases in London and other cash markets. Their cash holdings of silver steadily increased from October, 1979 through January, 1980. This physical acquisition was accompanied by a decrease in their net futures position as a result of three large exchanges of futures for physicals with Englehard Minerals and Sharps Pixley in mid-January.

During February and March, 1980, the Hunts, reacting to the regulatory actions taken by exchanges which included imposition of position limits, limitations on trading and increased margin requirements with falling silver prices, drastically reduced their futures position, going down to 1,444 contracts by April 2nd. Some of the decline was accomplished by accepting physical silver in delivery under the contracts, but much of the decline was brought about by the forced liquidation of futures contracts to satisfy margin calls. Also, to provide additional funds to meet margin calls, a substantial amount of silver owned by the Hunt group was sold for approximately \$ 100 million. Despite this, on April 2, the Hunt group still held title to an estimated 150 million ounces of physical silver bullion.

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Unlike the Hunts, most of the investors in the Conti Group were new as large participants in U.S. commodity futures markets. These investors established relatively large long positions on the Comex by August, 1979. Prior to this time the positions of the Conti group were either quite small or nonexistent. However, it should be noted that foreign traders in U.S. commodity futures markets, when trading in certain commodities including metals, are exempt from filing one of the standard forms associated with establishing a new position.

As a result, it is difficult to assess with accuracy the magnitude of the Conti group's positions or how closely related they were. The best estimates are that collectively, these positions peaked at 7,741 contracts (38.7 million ounces) on November 30, 1979.

The futures positions of the Conti group increased only marginally from August to October 1979. Thereafter, the combined positions of the group declined steadily, reaching 2,667 contracts at the beginning of April, 1980. However, silver stocks owned by the Conti group reached a peak 37.8 million ounces in the first week of April, 1980. These cash silver holdings were achieved largely through deliveries on expiring futures contracts.

It is difficult to establish the precise influence exerted upon silver price levels by the Hunt and Conti groups and whether there was any connection between the two. However, given the large size of their net long futures positions and their sizeable acquisitions of physical silver during the period, it is reasonable to postulate that their activities contributed substantially to the upward movement in silver prices.

Those on the other side of the market (the shorts) from the Hunt and Conti groups are not as easily identifiable as the longs. Many seem to have been small domestic traders and there were numerous foreign accounts. Position information on these classes of traders is not as readily available as it was for the longs. However, it is known that by January 1980 most of the small traders were out of the silver market.

However, among the short traders were some of the largest silver traders and dealers in the world. They included Engelhard Minerals, Mocatta Metals, Sharps Pixley, J. Aron Company, and others.

The effect of the shorts in this type market must be viewed with the knowledge of whether they were speculating or hedging and spreading. If the majority of the shorts were speculating in a rising market, they would be called on to meet rising margin requirements in order to hold their positions. If in order to meet margins some short speculators began buying back their contracts additional upward pressure will be executed on the price exacerbating the situation for other shorts.

If most of the major shorts are hedgers, their futures position losses would be offset by the rising value of their cash holdings insulating them somewhat. However, such hedgers may have to increase their borrowing activity to finance their short term losses in futures therefore incurring greater interest expenses.

Increased debt load and interest expenses would also impact spread traders. Individuals engaged in spread trading seek to profit from changes in the relationships between nearby and distant futures prices by holding long and short positions of equal size in different

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maturities of the same contract. Since losses (or gains) on long positions may be essentially offset by gains (or losses) on long positions, spreaders are substantially insulated from prolonged price movements in either direction.

In the 1979-80 silver market it appears from the information available that most of the major shorts were hedging and spreading rather than speculating in silver. A small percentage of the total open interest in silver during the period in question can be traced to short traders with large speculative positions.

Even though the major shorts appear to have been hedging and spreading during the period of the rapid price climb, they incurred substantial debt burdens and heavy interest expenses.

The governing boards of the Commodity Exchange, Inc. and Chicago Board of Trade implemented numerous rule changes during this period. These actions influenced the trading behavior of futures market participants and may also have influenced silver price movements in the August 1979-March 1980 period.

Rule changes imposed by the Comex and CBOT during the August 1979-March 1980 period included adjustments in the daily price limits and margin requirements, limits on position sizes of speculative accounts, and liquidation-only trading orders. On Comex, the daily price limit and the minimum level of initial margin was increased, the latter on six occasions. The daily price limit on the Chicago Board of Trade was also increased while the minimum initial margin on

the CBOT was increased seven times. The CBOT and Comex imposed speculative position limits on October 25, 1979 and January 7, 1980, respectively. On January 21, 1980, the Comex imposed liquidation-only trading for all contract months. The following day, the CBOT implemented liquidation-only trading in nearby contract months.

While the short-run impact of these individual regulatory tools is imprecise, taken together they eventually brought the long term price of silver into line with long term supply and demand. A theoretical discussion of the tools and their impact is contained in the CFTC Report to Congress on silver.

During and following the silver episode, concern was voiced by certain market participants and others that at least some of the rule changes implemented by the Comex and CBOT were influenced by self-serving motives of members of the exchange's governing boards. Specifically, it was alleged that conflicts of interest existed due to the purportedly large net short futures positions of many board members. These positions, it has been argued, created an effective interest on the part of board members to force silver prices downward to relieve financial burden due to being on the wrongside of a rising market -- massive debts incurred to cover losses and margins and extremely high interest costs.

For Comex board members holding reportable silver futures positions the data available indicates they were primarily net short on the dates on which speculative position limits and liquidation trading orders were imposed. However, the major net short positions were reported as hedges by the board members and affiliated firms. Although net short to a slight degree, the reported speculative positions were, for the most part, spreads between contract months.

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For most CBOT board members holding silver futures positions the data available indicates equal or nearly equal long and short futures position on dates corresponding to the imposition of speculative limits and liquidation only trading. Thus, although several of these positions were classified as speculative, a clear majority of CBOT board members who had silver positions reported what were essentially futures spread positions.

Additionally Comex board members as a group reported net long (cash and futures combined) positions throughout most of the period. Thus, the overall evidence does not indicate that exchange board members would have profited from speculating in silver price declines. However, the fact that the futures positions were hedged or spread does not mean that board members had no interest in the price of silver. To the extent that the long side of the positions is represented by physical silver, the adverse cash flow and interest costs associated with maintaining these positions during a rapid price rise can be enormous.

The data available support the hypothesis that deliveries and potential deliveries to large long participants in the silver futures markets contributed to the rise and fall in silver prices in both the cash and futures markets. The rise appears to have been caused in part by the conversion of silver futures contracts to actual physical silver by the Hunts. The subsequent fall in prices was then exacerbated by the anticipated selling of some of the Hunt's physical silver as well as the liquidation of Hunt group and Conti group futures positions. For the most part, the short-term effect of exchange actions on silver prices is unclear although over the longer term the changes made it difficult for the large long traders to use the futures market. To acquire additional silver.

At this time, available information does not prove that board members acted other than to maintain an orderly silver futures market. Additionally, the board members were under pressure from the CFTC to take strong regulatory actions. Those exchange board members holding physical silver hedged by futures positions, however, may have gained from the downturn in silver prices by the reversal of adverse cash flow and interest costs which had been associated with maintaining their short hedges while prices were rising.

B. Agriculture Committee's review of silver episode

The Committee was extremely concerned about the impact and implications of the silver episode and actively pursued its oversight responsibilities. Among the actions taken were:

Subcommittee oversight hearings on February 12th, May 21st, 22nd, 29, 1980, and October 1, 1981. (See Committee Hearing documents Serial No. 96-RR and Serial No. 97-EE).

Committee staff investigation of positions of the board members of the Commodity Exchange, Inc. and the Chicago Board of Trade which were trading silver futures contracts.

Enactment of Public Law 96-276 adding a new section 21 to the Act requiring a complete review and analysis of the silver situation by a joint group composed of the CFTC, the SEC, the Treasury Department and the Federal Reserve Board. The report was received

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June 1, 1981. A Subcommittee hearing was held to review the report on October 1, 1981.

Outside consultants, Dr. Michael Caughlin and Jay Etta Hecker, formerly Director and Senior Economist of the CFTC's Office of Policy Review, respectively, were retained by the Committee to review all available material and information on the silver episode and report to the Committee their findings and recommendations. Their report, "The 1979-80 Silver Futures Market -- A Review" was delivered to the Committee February 19, 1982.

The CFTC report and the Caughlin report agree that the actual and potential effects of the episode include:

Actual effects of silver price volatility:

Destabilizing effect on entire future industry;

Destabilizing effects in the securities markets;

Disruptive effect on industrial and commercial operations; and

Contributory factor in inflation spiral.

Potential effects:

Jeopardized the financial well-being of futures commission merchants and their parent companies;

Threatened the financial stability of exchanges and clearinghouses; and,

Threatened the financial stability of banks.

Several areas of concern are apparent to the Committee and numerous administrative and legislative actions have been taken.

1. *Market manipulation.* -- The record before the Committee illustrates that there was no consensus within the Commission about the appropriate regulatory response to the potential silver market manipulation. The episode revealed different approaches between exchanges when one exchange perceived an emergency and implemented early corrective measures, while the other did not until a later date. In the past, attitudes about what constitutes a market emergency have been so divergent as to become a serious impediment to the effective regulation of the futures markets. A divergence between the regulatory philosophies of the exchanges and the CFTC is noted -- reduced to the barest terms it means that the major regulatory participants often have not agreed on the rules of the game or how to implement the rules.

Determinations of market emergencies will always require informed judgment -- judgment that should be permitted on technically sophisticated and scientifically accurate market information. Measure are needed to lift the debate out of

the realm of philosophy and into more practical considerations about whether a market disruption is occurring, what is causing it and what to do about it. The CFTC's recently promulgated speculative limit rule requiring exchange to set speculative limits may help narrow the room for divergent interpretations of market structure.

The Committee believed that the CFTC should attempt to develop a consensus with the industry leading to a more formalized approach to dealing with overly volatile market situations. While in the past, divergent views on manipulations and threatened manipulations have come between government regulators and exchange regulators, the Committee feels they should work toward a common understanding resulting in at least informal guidelines.

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2. Conflict of interest. -- Conflict of interest allegations were widely discussed during and since the silver episode. Even the appearance of a conflict of interest is extremely damaging to the public perceptions of the industry. Other business institutions determined years ago that it simply is not reasonable to expect those with a financial interest in a market to make objective regulatory decisions about those same markets. The futures industry has addressed this issue in part by appointing an increasing number of public and outside members to Exchange Boards. However the Committee believes that the CFTC and the exchanges should address this issue in a joint effort to resolve the long standing problem and mitigate the damage done by actual or perceived conflicts of interest.

3. Interagency coordination. -- Interagency coordination during the 1979-1980 "silver episode" indicated that communication among the agencies was informal and not up to the standards necessary to deal with fast moving market developments. It was not until the silver market began its collapse and major brokerage houses, banks and other financial intermediaries were in immediate jeopardy that the heads of the appropriate governmental agencies convened. The interagency coordination during the "silver episode" was aimed primarily at cutting short the damages of an already existing crises. The numerous steps recently taken by the CFTC, some at the request of this Committee, along with a better understanding of the importance of futures markets by other agencies, should go a long way toward reconciling this problem. (See section on Interagency Coordination in this Report). However, the Committee will continue its oversight responsibilities to see that the responsible agencies and departments cooperate in a mature and professional manner.

4. Reporting requirements. -- The Commission in its silver report emphasize the seriousness of the foreign reporting problems and claims that . . . "a recurrence of the recent disruptive events in the silver market would involve foreign accounts". The CFTC invested an inordinate amount of time and effort in its attempts to determine the ownership and identity of foreign omnibus accounts and their possible relationship to large domestic traders. Persons trading through foreign omnibus accounts frequently have avoided or ignored the CFTC reporting requirements. The CFTC should enforce provisions of the Act requiring all large futures market participants -- foreign and domestic -- to report their positions. The necessary authority to do this is contained in the Act.

5. Upgrade CFTC surveillance capability. -- The existing CFTC market surveillance system is not up to date-market data and information should be more highly computerized. While implementation will be costly, the technology, hardware, statistical methodology and most of the necessary market data are currently available and could be integrated within a reasonably short period of time to significantly upgrade the Commission's market surveillance system. The Committee applauds CFTC's recent initiative to upgrade its computer personnel and to contract with other agencies for better computer facilities. The 1974 Act mandates the establishment of a CFTC program to evaluate the expanded use of data processing techniques to strengthen regulation. The absence of scientifically

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based analytical methods to evaluate market abnormalities has impaired the CFTC's effectiveness.

The Committee believes the shortcomings in the CFTC's outdated market surveillance capability should be addressed as soon as possible and requests the CFTC to report on the progress made in the Commission's next annual

report to Congress.

C. Actions to prevent future market disruptions

1. *CFTC initiatives.* -- The CFTC has taken a number of administrative actions to avoid a recurrence of a silver type episode in the future. First, the Commission has adopted rules requiring exchanges to fix speculative position limits for all commodity futures markets. At present, the Commission is reviewing commodity exchange proposals concerning the level of these position limits for individual contract markets. Had reasonable speculative position limits been in place prior to the accumulation of the large speculative positions in silver during 1979, they could have helped to prevent the major market disturbance which resulted.

Second, the Commission has adopted regulations changing the financial requirements of futures commission merchants. The adopted rules include imposition of a more stringent method for calculating net capital requirements, a reduction in the period of time that a futures account can remain undermargined or in deficit without becoming a charge against the futures commission merchant's net capital requirement, and imposition of restrictions on the use of physical commodities as collateral for loans used to margin long futures positions. Also the amount of time any account can be in deficit has been reduced from two business days to one.

Third, the Commission has under consideration various rules designed to address problems related to securing additional information of the futures accounts of foreign traders. During the silver episode, this problem arose in relation to difficulties experienced by the Committee in obtaining reliable information on large silver futures positions held by certain foreign traders. Since effective enforcement of speculative position limits requires accurate and timely information pertaining to the accounts of both domestic and foreign traders, a clear need exists for changes in regulatory policy toward foreign accounts in this regard. However, the need for additional information must be weighed against potential adverse effects of regulatory action in this area, including potential negative market impacts associated with reduced foreign trader participation and the possibility of retaliation by foreign governments against U.S. traders. Accordingly, careful consideration of the available regulatory alternatives is still necessary before the Commission implements specific rules that address this problem.

Fourth, interagency meetings to share information and observations on the markets are now routinely scheduled. Joint surveillance meetings of the Commission with representatives of the Federal Reserve, the Department of Treasury and Securities Exchange Commission were established to facilitate communication between Federal regulatory agencies concerned with developments in commodity futures markets. Under the agreement between the indicated agencies and the Commission, these meetings are scheduled as market conditions require but at least quarterly. In addition, representatives

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of the above-mentioned agencies of the Department of Agriculture can attend the Commission's weekly market surveillance meetings when there are issues of interest to their agencies being discussed. Also, formal systems for sharing data between the Commission, the Department of Treasury, the Securities Exchange Commission, and the Federal Reserve System have been implemented. Data shared under this arrangement includes market surveillance information collected by CFTC and information gathered by the other agencies. Moreover, CFTC furnishes surveillance data to other Federal agencies on an individual need to know basis subject to the provision of section 8 of the Commodity Exchange Act. Using this section of the Act, the Commission has provided data to the Comptroller of the Currency on a frequent basis in recent years. Finally, CFTC has agreed to share with the Securities and Exchange Commission surveillance data pertaining to those commodities on which options trading is authorized.

Fifth, the Commission has taken action to enhance formal communications with other Federal agencies through reorganization of its Governmental Affairs Office. In its reorganized form, the primary objective of this office is to assure the Commission's full compliance with the interagency cooperation provisions of the 1978 Futures Trading Act.

Since reorganization, the Office of Governmental Affairs has maintained active lines of communication with other Federal agencies as well as Congressional committees.

Finally, the Commission has approved the establishment of an industry sponsored National Futures Association. Among other functions, the Association will conduct field audits of futures commission merchants to collect information pertinent to their financial positions. The information collected will be shared with the Commission. Accordingly, the establishment of the Association may substantially improve the Commission's ability to monitor the financial condition of futures commission merchants as well as to ensure they comply with existing and future changes in the Commission's financial requirements.

2. Other agency initiatives. -- Since the silver episode, the SEC has adopted certain amendments to its rules relating to the financial responsibility requirements for broker-dealers and has proposed certain other amendments. The SEC adopted amendments to its FOCUS Report that require broker-dealers to include in their monthly reports filed with the SEC information regarding concentrations in commodity positions and current operational difficulties. The SEC has also proposed amendments to its net capital rule (which are similar to the recent amendments to the CFTC's net capital rule) that would shorten the time period within which broker-dealers are required to take a charge against capital for undermargined commodity futures accounts and commodity futures accounts that liquidate to a deficit or contain a debit balance. In addition, the proposed amendments to the SEC net capital rule would require broker-dealers to value noncash assets used to secure loans or other receivables related to a commodity account according to a specific formula, rather than at 100 percent of their market value.

The Federal Reserve conducted a study of the silver market and its relationships to financial markets and the banking system. That

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report provided detailed information on the banking arrangements used by brokerage firms and their customs to finance silver positions. Also, the Federal Reserve was responsible for reviewing the \$ 1.1 billion loan advanced by a consortium of thirteen banks to Placid Oil. Placid Oil, owned by Hunt family trusts, formed a limited partnership to serve as a credit facility through which silver related debits of the Hunt brothers could be settled.

The Office of Comptroller acted quickly to put audit terms into banks which had credit arrangements with parties involved in the silver episode. Generally, the office found that the banks had followed appropriate regulatory procedures for establishing the credit worthiness of their customers.

3. H.R. 5447 initiatives. -- The Committee compliments the CFTC and other Federal agencies for making these administrative adjustments to prevent another silver-type episode and urges quick compliance with the recommendations made previously in this section.

However, the Committee has included certain additional legislative authorities in H.R. 5447 to assist in dealing with future, threatened market disruptions. This bill:

Authorizes the CFTC to establish different speculative limits for each day of the closing month of a contract in order to provide an orderly closing.

Explicitly authorizes in emergency situations the fixing of speculative limits on positions acquired before the Commission action.

Expressly authorizes the CFTC to establish speculative limits by rule making and requires that exchange speculation limits may be no high than those set by the CFTC without approval. Makes a violation of speculative limits set by an exchange a violation of the Act if the exchange limit has been approved by the CFTC. Makes the criminal provisions of section 9(c) of the Act applicable to those who knowingly violate such speculative limits.

Provides certain liability for supervisory personnel for the actions of those controlled by them.

Strengthens the ability of the CFTC to share information with self-regulatory organizations concerning any transaction or market operation.

Authorizes the CFTC to provide State and foreign officials with information for bona fide law enforcement purposes.

Requires CFTC to monitor the trading activities of large hedgers and report to the Agriculture Committees any unwarranted price pressures by them.

Strengthens the role of an industry self-regulatory organizations, such as the NFA when activated, to assist in policing certain activities of industry professionals.

Specifically authorizes private rights of action.

D. Conclusion

The silver episode represents one of the strongest challenges ever faced by a U.S. financial regulatory agency. This is evidenced by the massive press coverage, several full length books, at least four Congressional Committee investigations, a voluminous multiagency study and report to Congress and several judicial proceedings. The incident illustrated high drama with parts played by

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members of a wealthy and famous family, mysterious foreigners and top level government officials.

Reviewing the incident it is easy to criticize the Commodity Futures Trading Commission, as this Committee and others have done. However, on balance no evidence exists to indicate any other Federal agency dealt better with the situation. Whatever criticism may be warranted applies as well to the other regulatory agencies whose jurisdiction applies to the brokerage houses, banks and other institutions involved in the case.

Without question the incident required strong Congressional review. Much has been learned in both the Executive and Legislative Branches of Government as a result of Congressional proceedings. The lessons have led to administrative changes in several agencies and these legislative proposals in H.R. 5447. These new authorities, tools and procedures, if used wisely, should prevent future recurrences of silver-like episodes. This Committee intends that and no less, and will continue its vigilance to ensure compliance with the law.

Special attention will be given to assuring that the industry, especially the exchanges, are more diligent in carrying out their self-regulatory responsibilities. Commodities markets are more than a private "crap shoot". As they grow, their public responsibility grows with them. To the extent that industry self-regulation fails, more and more authority will be granted to the Federal regulators. The Committee would consider that eventuality unfortunate, and looks to industry participants and the CFTC to ensure such moves do not become necessary.

XII. 1979 MARCH WHEAT

Another market disruption in which the Committee took great interest and exercised its oversight responsibility involved the March 1979 wheat contract on the Chicago Board of Trade. The Subcommittee on Conservation and Credit held oversight hearings on March 28, 1979, the Committee staff reviewed the situation and an outside economist, Dr. Richard G. Heifner with the U.S. Department of Agriculture was engaged to study the matter and report to the Committee his findings.

The events of March 1979 on the Chicago wheat futures market had their origins in the extremely small 1978 soft

red wheat crop. The short crop in combination with transportation shortages and other factors caused prices for early maturing contracts on the Chicago futures market to exceed prices for later maturing contracts throughout the 1978-79 wheat marketing year. Difficulties with the futures market first appeared as the December contract neared maturity. Two traders from a single firm held over 60 per cent of the long positions four days before the contract was due to mature; the price for the contract rose 25 cents during the last three days of trading.

As the March 1979 futures contract neared maturity, a similar pattern appeared to be developing. This time four traders held 87 percent of the long positions four days before trading was to end. On March 15, using powers provided under the Commodity Futures Trading Commission Act of 1974, the CFTC ordered trading suspended

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on the March wheat futures contract for one day. The action was taken because of an alleged "major market disturbance" due to "transportation and warehouse facility shortages" and because of "a threatened manipulation or corner." Late the next day, which was Friday, after failing to reach agreement with the Board of Trade on further action to deal with the alleged disturbance, the CFTC ordered trading in the contract terminated for the three remaining trading days. During the weekend the Board of Trade obtained a court injunction against the CFTC order. Trading on the contract was resumed on Monday, and the contract matured with only small price changes during the last three days of trading.

Among the factors suggesting that the four long traders would have been able to manipulate price above economically justified levels, if they had chosen to do so, are the following:

1. The four largest longs held 87 percent of the long positions and this exceeded three times the deliverable supply.
2. Two of the traders were from the same firm and had been involved in what appeared to be a manipulation of the December 1978 Chicago wheat contract.
3. Transportation problems and limitations on elevator space prevented substantial quantities of wheat from being brought to Chicago and Toledo from other locations for delivery.
4. One trader had enjoined the Board of Trade to prevent his position from being forceably reduced.
5. The Board of Trade, as well as the CFTC, recognized a problem and had sought assurances from the traders involed that liquidation would be "orderly."

By itself, the concentration of positions in the hands of only a few traders is not necessarily an indication that manipulation is imminent. Positions normally become concentrated in a few hands as the end of trading in a contract approaches. Moreover, because of redeliveries the deliverable supply does not impose an absolute limit on the amount that can be delivered to fulfill contract obligations. And, there was no solid evidence that the four large longs were acting together. However, they were in a position to squeeze the market, if they had chosen to do so.

Among the factors suggesting that the price was distorted are the following:

1. The 36 1/4 cents premium for the March Chicago future over the May future was highly unusual.
2. The March Chicago futures price increased on March 15 with little or no corresponding movement in related wheat prices at other locations.
3. The demand for cash wheat at Chicago and Toledo appeared to be solely for delivery on the futures, rather than for commercial use. Hard wheat and soft wheat were selling at the same price since either was deliverable on the futures contract at par value.

4. The cash price declined and the premium for soft wheat over hard wheat returned after the close of trading on the future.

Price movements in the March future had generally been gradual with no limit moves and the price had been higher early in the month. Officers of the exchange had observed that the large longs had offers to sell in the pit at only 1/4 cent over the market price.

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The evidence of price distortion was not very strong. However, the large longs were in a position to exert substantial control over the market during the last few days of trading. Some type of emergency action to prevent them from assuming such control was justified.

The Committee recognizes that the CFTC's action to halt trading in any market is a drastic measure to be used with great discretion. Efforts to prevent circumstances making such action necessary should be the Commission's priority.

In that view, the Committee notes Dr. Heifner's three recommendations for preventing real or threatened manipulations:

1. "The CFTC should have authority to impose regularly prescribed limits on trader's positions during the last few weeks of trading in a maturing futures contract for the express purpose of preventing price manipulations during the delivery period."

H.R. 5447 provides just such authority to the Commission as the Committee realizes the important utility of this regulatory tool.

2. "The CFTC should have explicit emergency power to impose or reduce maximum allowable positions in a maturing futures contract when one or more large traders gains the ability to control prices."

H.R. 5447 explicitly authorizes the CFTC in emergency situations to fix speculative limitations on positions acquired before the Commission action.

3. "The possibilities for improving the Chicago wheat futures contract to make it less subject to manipulation should receive further study by the Board of Trade, by the CFTC and by other parties."

The CFTC has made an initial review of this contract but has not proposed changes. The Committee is concerned that the delivery provisions and specified delivery points of the CBOT wheat contract and several other agricultural contracts as well as in need of review and perhaps adjustment. Agricultural production patterns, marketing and transportation systems have changed dramatically since the wheat contract and others were first approved. For this reason the Committee has called for a study of delivery under agricultural futures contracts by the CFTC with a report to the Committee within one year of enactment. This CFTC study should give special attention to the CBOT wheat contract to determine if alterations are needed.

The Committee recognizes the March wheat case as another example of a very few market participants creating damaging, costly and needless problems for the rest of the industry whose standard of business conduct is higher. So long as such incidents continue, the trend toward heavier governmental regulation is almost inevitable.

BACKGROUND

The following discussion of the history of Federal regulation of commodity trading is taken from the opinion of the Supreme Court in the case of *Merrill Lynch, Pierce, Fenner & Smith v. Curran et al.* (no. 80-203, May 3, 1982).

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I

Prior to the advent of futures trading, agricultural products generally were sold at central markets. When an entire crop was harvested and marketed within a short time span, dramatic price fluctuations sometimes created severe hardship for farmers or for processors. Some of these risks were alleviated by the adoption of quality standards, improvement in storage and transportation facilities, and the practice of "forward contracting" -- the use of executory contracts fixing the terms of sale in advance of the time of delivery. n7

n7 See House Report, *supra*, at 33-34. H.R. Rep. No. 93-975. 93d Cong., 2d Sess., 1 (1974) (hereinafter "House Report").

When buyers and sellers entered into contracts for the future delivery of an agricultural product, they arrived at an agreed price on the basis of their judgment about expected market conditions at the time of delivery. Because the weather and other imponderables affected supply and demand, normally the market price would fluctuate before the contract was performed. A declining market meant that the executory agreement was more valuable to the seller than the commodity covered by the contract; conversely, in a rising market the executory contract had a special value for the buyer, who not only was assured of delivery of the commodity but also could derive a profit from the price increase.

The opportunity to make a profit as a result of fluctuations in the market price of commodities covered by contracts for future delivery motivated speculators to engage in the practice of buying and selling "futures contracts." A speculator who owned no present interest in a commodity but anticipated a price decline might agree to a future sale at the current market price, intending to purchase the commodity at a reduced price on or before the delivery date. A "short" sale of that kind would result in a loss if the price went up instead of down. On the other hand, a price increase would produce a gain for a "long" speculator who had acquired a contract to purchase the same commodity with no intent to take delivery but merely for the purpose of reselling the futures contract at an enhanced price.

In the 19th Century the practice of trading in futures contracts led to the development of recognized exchanges or boards of trade. At such exchanges standardized agreements covering specific quantities of graded agricultural commodities to be delivered during specified months in the future were bought and sold pursuant to rules developed by the traders themselves. Necessarily the commodities subject to such contracts were fungible. For an active market in the contracts to develop, it also was essential that the contracts themselves be fungible. The exchanges therefore developed standard terms describing the quantity

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and quality of the commodity, the time and place of delivery, and the method of payment; the only variable was price. The purchase or sale of a futures contract on an exchange is therefore motivated by a single factor -- the opportunity to make a profit (or to minimize the risk of loss) from a change in the market price.

The advent of speculation in futures markets produced well-recognized benefits for producers and processors of agricultural commodities. A farmer who takes a "short" position in the futures market is protected against a price decline; a processor who takes a "long" position is protected against a price increase. Such "hedging" is facilitated by the availability of speculators willing to assume the market risk that the hedging farmer or processor wants to avoid. The speculator's participation in the market substantially enlarges the number of potential buyers and sellers of executory contracts and therefore makes it easier for farmers and processors to make firm commitments for future delivery at a fixed price. The liquidity of a futures contract, upon which hedging depends, is directly related to the amount of speculation that takes place. n8

n8 See n. 11, *infra*. The ability of producers and processors to hedge against risks of price changes is only one of the advantages of futures trading. Other advantages are described at some length in the House Report.

supra, at 132-134.

Persons who actually produce or use the commodities that are covered by futures contracts are not the only beneficiaries of futures trading. The speculators, of course, have opportunities to profit from this trading. Moreover, futures trading must be regulated by an organized exchange. In addition to its regulatory responsibilities, the exchange must maintain detailed records and perform a clearing function to discharge the offsetting contracts that the short or long speculators have no desire to perform. n9 The operation of the exchange creates employment opportunities for futures commission merchants, who solicit orders from individual traders, and for floor brokers, who make the actual trades on the floor of the exchange on behalf of futures commission merchants and their customers. The earnings of the persons who operate the futures market -- the exchange itself, the clearing house, the floor brokers, and the futures commission merchants -- are financed by commissions on the purchase and sale of futures contracts made over the exchange.

n9 The House Report, *supra*, at 149, states that only about "3% of all futures contracts traded are normally settled by an actual delivery."

Thus, in a broad sense, futures trading has a direct financial impact on three classes of persons. Those who actually are interested in selling or buying the commodity are described as "hedgers", n10 their primary financial interest is in the profit to be earned from the production or processing of the commodity. Those who seek financial gain by taking positions in the futures market generally

n10 Of course, when a hedger takes a long or a short position that is greater than its interest in the commodity itself, it is to that extent no longer a hedger, but a speculator.

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are called "speculators" or "investors"; without their participation, futures markets "simply would not exist." n11 Finally, there are the futures commission merchants, the floor brokers, and the persons who manage the market; they also are essential participants, and they have an interest in maximizing the activity on the exchange. The petitioners in these cases are members of this third class whereas their adversaries, the respondents, are speculators or investors.

n11 "Broadly speaking, futures traders fall into two general classification, i.e. 'trade' hedging customers, and speculators. All orders which reach the trading floor originate with one or the other group of traders. The 'trade' hedging customers, and speculators. All orders which reach the trading floor originate with one or the other group of traders. The 'trade' customer is the hedger who seeks, at low cost, to protect himself or his company against possible loss due to adverse price fluctuations in the market place. Speculators, on the other hand, embrace all representatives of the general public, including some institutions, plus floor scalpers and position traders, who seek financial gain by taking positions in volatile markets. The principal role of the speculator in the markets is to take the risks that the hedger is unwilling to accept. The opportunity for profit makes the speculator willing to take those risks. The activity of speculators is essential to the operation of a futures market in that the composite bids and offers of large numbers of individuals tend to broaden a market, thus making possible the execution with minimum price disturbance of the larger trade hedging order. By increasing the number of bids and offers available at any given price level, the speculator usually helps to minimize price fluctuations rather than to intensify them. Without the trading activity of the speculative fraternity, the liquidity, so badly needed by futures markets, simply would not exist. Trading volume would be restricted materially since, without a host of speculative orders in the trading ring, many larger trade orders at limit prices would simply go unfilled due to the floor broker's inability to find an equally large but opposing hedge order at the same price to complete the match." House Report, *supra*, at 138.

II

Because Congress has recognized the potential hazards as well as the benefits of futures trading, it has authorized the regulation of commodity futures exchanges for over 60 years. In 1921 it enacted the Future Trading Act, 42 Stat. 187, which imposed a prohibitive tax on grainⁿ¹² futures transactions that were not consummated on an exchange designated as a "contract market" by the Secretary of Agriculture. ⁿ¹³ The 1921 statute was held unconstitutional as an improper exercise of the taxing power in *Hill v. Wallace*, 259 U.S. 44 (1922), but its regulatory provisions were promptly reenacted in the Grain Futures Act, 42 Stat. 998, and upheld under the commerce power in *Chicago Board of Trade v. Olsen*, 262 U.S. 1 (1963). ⁿ¹⁴ Under the original legislation, the principal function of the Secretary was to require the governors of a privately organized exchange to supervise the operation of the market. Two of the conditions for designation were that the governing board of the

ⁿ¹² Grain was defined to include "wheat, corn, oats, barley, rye, flax, and sorghum." § 2(a) of the CEA, 42 Stat. 998, codified as amended, 7 U.S.C. § 2 (1976 ed., Supp. III).

ⁿ¹³ It was an effort by Congress, through taxing at a prohibitive rate sales of grain for future delivery, to regulate such sales on boards of trade by exempting them from the tax if they would comply with the congressional regulations." *Chicago Board of Trade v. Olsen*, 262 U.S. 1, 31 (1923).

ⁿ¹⁴ "The Grain Futures Act which is now before us differs from the Future Trading Act in having the very features the absence of which we held . . . prevented our sustaining the Future Trading Act. [T]he act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by manipulation they have become a constantly recurring burden and obstruction to that commerce." *Id.*, at 32.

Congress replaced the prohibitive tax on futures trading not conducted on a designated contract market with a direct prohibition of such trading. See § 4 of the CEA, 42 Stat. 999-1000, codified as amended, 7 U.S.C. § 6.

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contract market prevent its members from disseminating misleading market informationⁿ¹⁵ and prevent the "manipulation of prices of the cornering of any grain by the dealers or operators upon such board."ⁿ¹⁶ The requirement that designated contract markets police themselves and the prohibitions against disseminating misleading information and manipulating prices have been part of our law ever since.

ⁿ¹⁵ § 5(c) of the CEA, 42 Stat. 1000, codified as amended, 7 U.S.C. § 7(c).

ⁿ¹⁶ § 5(d) of the CEA, 42 Stat. 1000. Section 5(d), codified as amended, 7 U.S.C. § 7(d), requires as a condition of designation that the governing board of the board of trade "provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board."

The Secretary of Agriculture also was authorized to proceed directly against a violator of these and other provisions of the CEA by suspending a violator's trading privileges. § 6(b) of the CEA, 42 Stat. 1002, codified as amended, 7 U.S.C. § 9. Moreover, misdemeanor penalties were authorized for violations of certain provisions of the CEA. § 9 of the CEA, 42 Stat. 1003, codified as amended, 7 U.S.C. § 13 (1976 ed., Supp. III). The penalties subsequently have been increased. Today, § 9(b) of the CEA, 7 U.S.C. § 13(b) (1976 ed., Supp. III), provides in pertinent part: "It shall be a felony punishable by a fine of not more than \$ 500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery

on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity
Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than \$ 100,000, together with the costs of prosecution."

In 1936 Congress changed the name of the statute to the Commodity Exchange Act, enlarged its coverage to include other agricultural commodities, n17 and added detailed provisions regulating trading in futures contracts. Commodity Exchange Act, ch. 545, 49 Stat. 1491. Among the significant new provisions was § 4b, prohibiting any member of a contract market from defrauding any person in connection with the making of a futures contract, n18 and § 4a, authorizing a commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General to fix limits on the amount of permissible speculative

n17 The 1936 amendments extended coverage to cotton, rice, butter, eggs, and Irish potatoes. § 3(a) of the 1936 amendments, 49 Stat. 1491 (amending § 2(a) of the CEA, codified as subsequently amended, 7 *U.S.C.* § 2 (1976 ed., Supp. III)).

n18 § 5 of the 1936 amendments. 49 Stat. 1493 (adding § 4b of the CEA). Section 4d, codified as amended, 7 *U.S.C.* § 6b, provides in pertinent part:

"It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or by-products thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof --

"(A) to cheat or defraud or attempt to cheat or defraud such other person;

"(B) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof:

"(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person: or

"(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person."

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trading in a futures contract. n19 The legislation also required registration of futures commission merchants and floor brokers. n20

n19 § 5 of the 1936 amendments, 49 Stat. 1492 (adding § 4a of the CEA). Section 4a, codified as amended, 7 *U.S.C.* § 6a, provides in pertinent part:

"(1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery

made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the commission shall, from time to time, after due notice and opportunity for hearing, by order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the commission finds are necessary to diminish, eliminate, or prevent such burden."

n20 § 5 of the 1936 amendments, 49 Stat. 1494-1495 (adding §§ 4d(1) and 4e of the CEA, codified as amended, 7 U.S.C. §§ 6d(1), 6e (1976 ed. and Supp. III)). The 1936 amendments also authorized the commission to order an exchange to cease and desist from violating the CEA or any rules promulgated thereunder in lieu of revoking its designation as a contract market. § 9 of the 1936 amendments, 49 Stat. 1500 (adding § 6b of the CEA, codified as amended, 7 U.S.C. § 13a (1976 ed., Supp. III)).

In 1968 the CEA again was amended to enlarge its coverage n21 and to give the Secretary additional enforcement authority. Act of Feb. 19, 1968, 82 Stat. 26. The Secretary was authorized to disapprove exchange rules that were inconsistent with the statute, n22 and the contract markets were required to enforce their rules; n23 the Secretary was authorized to suspend a contract market n24 or to issue a cease and desist order n25 upon a showing that the contract market's rules were not being enforced. In addition, the criminal sanctions for price manipulation were increased significantly, n26 and any person engaged in price manipulation was subjected to the Secretary's authority to issue cease and desist orders for violations of the CEA and implementing regulations. n27

n21 Livestock and livestock products were included in the definition of commodity. § 1(a) of the 1968 amendments. 82 Stat. 26 (amending § 2(a) of the CEA, codified as subsequently amended. 7 U.S.C. § 2 (1976 ed., Supp. III)).

n22 § 23 of the 1968 amendments, 82 Stat. 33 (adding § 8a(7) of the CEA, codified as amended, 7 U.S.C. § 12a(7)).

n23 § 12(c) of the 1968 amendments, 82 Stat. 29 (adding § 5a(8) -- (9) of the CEA, codified as amended, 7 U. S. C. § 7a(8) -- (9)). Today, § 5a(8) of the CEA, 7 U. S. C. § 7a(8), requires each contract market to: "enforce all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or by any committee, which provide minimum financial standards and related reporting requirements for futures commission merchants who are members of such contract market, and which have been approved by the Commission."

n24 § 15 of the 1968 amendments, 82 Stat. 30 (amending § 6(a) of the CEA, codified as subsequently amended, 7 U. S. C. § 8(a) (1976 ed., Supp. III)).

n25 § 18 of the 1968 amendments, 82 Stat. 31-32 (amending § 6b of the CEA, codified as subsequently amended, 7 U. S. C. § 13a (1976 ed., Supp. III)).

n26 § 25 of the 1968 amendments, 82 Stat. 33-34 (amending § 9 of the CEA, codified as subsequently amended, 7 U. S. C. § 13 (1976 ed., Supp. III)).

n27 1 § 17 of the 1968 amendments, 82 Stat 31 (adding § 6(c) of the CEA, codified as amended, 7 U. S. C. § 13b).

In 1974, after extensive hearings and deliberation, Congress enacted the Commodity Futures Trading Commission Act of 1974. 88 Stat. 1389. Like the 1936 and the 1968 legislation, the 1974 enactment was an amendment to the existing statute n28 that broadened its coverage n29 and increased

n28 Title I, 88 Stat. 1389, Title II, 88 Stat. 1395, and Title IV, 88 Stat. 1412, each amended separate sections of the CEA; Title III, 88 Stat. 1406, added an entirely new section authorizing the creation of national futures associations.

n29 Section 201(b) of the 1974 amendments, 88 Stat. 1395 (amending § 2(a) of the CEA, codified as subsequently amended, 7 *U.S.C.* § 2 (1976 ed., Supp. III)), extended the coverage of the statute to "all . . . goods and articles . . . and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in."

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the penalties for violation of its provisions. n30 The Commission was authorized to seek injunctive relief, n31 to alter or supplement a contract market's rules, n32 and to direct a contract market to take whatever action deemed necessary by the Commission in an emergency. n33 The 1974 legislation retained the basic statutory prohibitions against fraudulent practices and price manipulation, n34 as well as the authority to prescribe trading limits. The 1974 amendments, however, did make substantial changes in the statutory scheme; Congress authorized a newly created Commodities Futures trading Commission to assume the powers previously exercised by the Secretary of Agriculture, as well as certain additional powers. The enactment also added two new remedial provisions for the protection of individual traders. The newly enacted § 5a(11) required every contract market to provide an arbitration procedure for the settlement of traders' claims of no more than \$ 15,000. n35 And the newly enacted § 14 authorized the Commission to grant reparations to any person complaining of any violation of the CEA. or its implementing regulations, committed by any futures commission merchant or any associated thereof, floor broker, commodity trading advisor, or commodity pool operator. This section authorized the Commission to investigate complaints and, "if in its opinion the facts warrant such action," to afford a hearing before an administrative law judge. Reparations orders entered by the Commission are subject to judicial review.

n30 § 212 of the 1974 amendments, 88 Stat. 1403-1404 (amending §§ 6, 6b, 6(c), and 9 of the CEA, codified as subsequently amended, 7 *U.S.C.* §§ 9, 13, 13a, 13b (1976 ed. and Supp. III)).

n31 § 211 of the 1974 amendments, 88 Stat. 1402 (adding § 6c of the CEA, 7 *U.S.C.* § 13a-1).

n32 §§ 213 of the 1974 amendments, 88 Stat. 1404 (replacing § 8a(7) of the CEA, 7 *U.S.C.* § 12a(7)).

n33 § 215 of the 1874 amendments, 88 Stat. 1404-1405 (adding § 8(9) of the CEA, 7 *U.S.C.* § 12a(9)).

n34 Congress extended the registration requirement and the corresponding antifraud and criminal penalty provisions to commodity trading advisors and commodity pool operators. §§ 205 and 409 of the 1974 amendments. 88 Stat. 1398-1400. 1414 (adding §§ 4n, 4o, and amending § 9(c) of the CEA, codified as subsequently amended, 7 *U.S.C.* §§ 6n, 6o, 13 (1976 ed. and Supp. III)).

n35 § 209 of the 1974 amendments, 88 Stat. 1401 (adding § 5a(11) of the CEA, codified as subsequently amended, 7 *U.S.C.* § 7a(11) (1976 ed., Supp. III)).

The latest amendments to the CEA, the Futures Trading Act of 1978, 92 Stat. 865, again increased the penalties for violations of the statute. The enactment also authorized the States to bring *parens patriae* actions, seeking injunctive or monetary relief for certain violations of the CEA, implementing regulations, or Commission orders.

Like the previous enactments, as well as the 1978 amendments, the Commodity Futures Trading Commission Act of 1974 is silent on the subject of private judicial remedies for persons injured by a violation of the CEA.

SECTION-BY-SECTION ANALYSIS

Short title

Section 1. This section provides as a short title for the bill the "Futures Trading Act of 1982".

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TITLE I -- JURISDICTION

Title I contains a number of amendments to the Commodity Exchange Act regarding the jurisdiction of the Commodity Futures Trading Commission. It reflects a proposal jointly made by the Commission and the Securities and Exchange Commission to resolve disputes that had arisen between those agencies concerning jurisdiction over certain new products.

The growing demand for new products related to securities or financial instruments, either as investments or as price hedging tools, has magnified the importance of removing the jurisdictional confusion that has hampered the development of the markets for such instruments. The confusion is a result essentially of amendments in 1974 to the Commodity Exchange Act (the "CEA") that (1) expanded the definition of "commodity" to embrace not only tangible goods but to reach intangible rights and interests, (2) gave the CFTC "exclusive jurisdiction" over agreements and transactions "involving" futures trading in commodities, and (3) inserted in the Commodity Exchange Act a qualified proviso to preserve the SEC's preexisting authority over securities trading and the securities markets.

After the proposal was transmitted to Congress, the United States court of appeals for the seventh circuit in the case of *Board of Trade of the City of Chicago v. Securities and Exchange Commission (SEC) and Chicago Board of Options Exchange* decided that the SEC had no jurisdiction of its own to permit trading in options in Government National Mortgage Association mortgage backed pass-through certificates (GNMA's). It held that GNMA options were under the exclusive jurisdiction of the Commodity Futures Trading Commission. This decision would negate a part of the accord reached by the CFTC and SEC and recommended to Congress. Nonetheless, the Committee decided to support legislation that would implement the accord.

Options; futures contracts

Sec. 101. This section amends section 2(a) of the Commodity Exchange Act to redesignate paragraph (1) as paragraph (1)(A) and add a new subparagraph (B) relating to jurisdiction. The new subparagraph provides that the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any option on one or more securities as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1934, including any group or index of such securities, or any interest therein or based on the value thereof.

It expressly continues the exclusive jurisdiction of the Commission over any transaction involving contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof). It provides, however, that no board of trade may be designated as a contract market with respect to any such futures contracts (or options on such contracts) unless the board of trade demonstrates and the Commission expressly finds that the specific contract (or option)

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with respect to which the application has been made meets the following minimum requirements.

(a) Settlement on such contract (or option on such contract) must be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section

3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

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

(c) Such group or index of securities must be predominately composed of securities of unaffiliated issuers and must be a widely published measure of the market for all publicly traded equity or debt securities or a substantial segment thereof.

The new subparagraph provides that upon application by a board of trade for designation as a contract market with respect to any futures contract (or option on such contract) involving a group or index of securities, the Commission must provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth above, and consult with the SEC with respect to such designation. If, within fifteen days following the close of the public comment period, the SEC objects to the designation on the ground that any of the minimum requirements is not met, the Commission must afford the SEC an opportunity for an oral hearing before the Commission, and give appropriate weight to the SEC's views. The oral hearing would be held after the public comment period, prior to Commission action upon the designation, and between thirty and forty-five days after the close of the public comment period, unless both the Commission and the SEC otherwise agree. If an oral hearing is held and the SEC fails to withdraw its objections, and the Commission nonetheless issues an order designating a board of trade as a contract market, the SEC has the right of judicial review of such order in accordance with the standards of section 6(b) of this Act. If, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the SEC has the right to participate in that hearing as an interested party.

Finally, the subparagraph provides that no person may offer to enter into or enter into, the execution of any contract of sale (or option on such contract) for future delivery of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982. The prohibition also applies to futures contracts (or options on such contracts) on any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982.

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Options on foreign currencies

Sec. 102. This section amends section 4c of the Commodity Exchange Act by adding a new subsection (f) to provide that nothing in the Act shall be deemed to apply to any transaction in an option on foreign currency traded on a national securities exchange. The effect of this provision is that the SEC may allow options on foreign currency to trade on national securities exchanges while the CFTC would continue to have jurisdiction to regulate the trading of options on foreign currency in the commodities market. The term "foreign currency" is defined nowhere in the Act and a question has arisen whether the provision waiving jurisdiction over options on "foreign currency" traded on a national securities exchange applies to options on gold coins issued by foreign governments. The term "foreign currency" as used in this section refers only to those currencies used in ordinary commerce whose values rise or fall in relation to the dollar. Although technically considered legal tender in some countries of origin, gold coins are not used in ordinary commerce and derive their value from their gold content, rather than their relation to the dollar. Therefore, such coins would not be considered "foreign currency".

Commodity pools

Sec. 103. This section amends section 4m of the Commodity Exchange Act by adding a new subsection (2) to

provide that nothing in the Act relieves any person of any obligation or duty, or affects the availability of any right or remedy available to the SEC or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool (or of persons engaged in transactions with respect to such securities), or reporting by a commodity pool.

By amending section 4m of the Commodity Exchange Act the Committee intends to clarify and limit the extent to which Federal securities laws apply to the formation and operation of commodity pools which trade in futures contracts and options on futures contracts. There has been considerable confusion whether the exclusive jurisdiction of the CFTC over accounts, agreement and transactions involving futures contracts vests the CFTC with the sole responsibility for protection of persons who participate in the futures markets through a pool. The Committee recognizes that generally interests in commodity pools are securities requiring registration under applicable Federal securities laws unless exempted by some provision or rule thereunder. Therefore, the amendment is intended to make clear that the investor protections of the Securities Act of 1933 and the Securities Exchange Act of 1934 will be available to commodity pool participants.

However, the Committee also recognizes the existence of a comprehensive regulatory scheme which has been adopted by the CFTC and governs the activities of all commodity pool operators. Therefore, the amendment is not intended to impair the exclusive jurisdiction of the CFTC over the operations of a commodity pool in connection with its trading of futures contracts (and options on futures contracts) traded on designated contract markets.

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Accordingly, the amendment continues the CFTC's exclusive regulatory authority over all aspects of the operation of commodity pools, including, but not limited to, such matters as the form or organization, fees charged and the trading conduct of a particular commodity pool. Registration or regulation of commodity pools under any other Federal securities statutes, or under any State securities or "Blue Sky" laws is preempted.

Sharing information with contract markets and other self-regulatory organizations

Sec. 104. This section amends section 8a(6) of the Commodity Exchange Act to authorize the Commission to disclose to a "registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934," full facts concerning any transaction or market operation which in the Commission's judgment would tend to disrupt the market or be harmful to producers, consumers or investors, or which are necessary or appropriate to effectuate the purposes of this Act. Any information furnished by the Commission cannot be disclosed by the recipient except in any self-regulatory action or proceeding. The section currently authorizes disclosure of such facts to a contract market if the information is deemed to disrupt any market or is harmful to the public. The amended section makes the considerations listed above apply as well to disclosure of information to self-regulatory organizations.

TITLE II -- MISCELLANEOUS AMENDMENTS TO THE COMMODITY EXCHANGE ACT

DEFINITIONS

Technical amendment

Sec. 201. This section amends the definitions in section 2(a) of the Commodity Exchange Act in two respects.

(1) Paragraph (1) adds as a new definition, the definition of the term "introducing broker" to mean any person (except any individual who is registered as an associated person of a futures commission merchant), engaged in soliciting or in accepting orders for the purchase or sale of futures contracts on or subject to the rules of any contract market if that person does not accept any money, securities, or property (or extend credit in lieu thereof), to margin, guarantee, or secure any trades or contracts that result or may result therefrom. This person is required to register with the Commission under other provisions of the bill along with persons associated therewith, thus enabling the

Commission to regulate their activities in the public interest.

(2) Paragraph (2) amends the definition of the term "commodity trading advisor" to make clear that it applies to any person, who for compensation provides advice on any commodity option authorized under section 4c, or any leverage transaction authorized under section 19 of this Act, as well as on commodity futures contracts. It also adds to the exclusions of the definition those who confine their advice to the cash market, clarifies that the exemptions include any person acting as an employee of a bank or trust company, any

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news reporter, news columnist, or news editor who gives advice through the electronic media, as well as through publications or writings, and the fiduciary of any defined benefit plan subject to the provisions of the Employee Retirement Income Security Act of 1974. Because participation by employees in a defined benefit plan is generally compulsory and noncontributory, trading advice is not directly marketed to the participants therein. In addition, a fiduciary of such a plan is subject to extensive regulation under ERISA. In the case of all these exemptions the furnishing of such services by the foregoing persons must be solely incidental to the conduct of their business or profession. The Commission further retains the right, by rule or regulation, to include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.

(3) Paragraph (3) deletes section 2(a)(7)(B) of the Act. This provision, which was added to the Act by the Futures Trading Act of 1978, is a post-government employment restriction applicable to Commissioners and Commission employees classified as GS-16 or above who hold positions excepted from the competitive service by reason of being of a confidential or policy making character. The restriction generally bars representative appearances before the Commission and other communications by such persons for a period of one year after they leave the Commission.

Subsequently, Congress enacted title V of the Ethics in Government Act of 1978, which amended *18 U.S.C. 207*, effective July 1, 1979. One of the amendments which then became effective was *18 U.S.C. 207(c)*, a one-year post-government employment restriction, with certain narrow exceptions, applicable to former senior government officials which applies to Commissioners and most senior officials at the Commission. This provision would continue to apply after deletion of section 2(a)(7)(B) of the Commodity Exchange Act.

Legislative findings

Sec. 202. This section amends section 3 of the Act which specifies the legislative findings that provide the basis for regulation of futures transactions. The amendment extends the findings to apply to transactions in commodity options. It also clarifies in the findings that transactions and prices of commodities on boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, rendering regulation imperative for the protection of such commerce and the national public interest therein.

Unlawful futures trading; foreign futures

Sec. 203. This section amends section 4 by creating a new section 4(a) which combines the provisions of existing section 4 and 4h(1) into a single, simplified provision. Section 4(a) specifies that all transactions in commodity futures contracts in the United States must be effected on boards of trade that have been designated as contract markets through members of such contract markets. As

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such, no change in existing law is intended. Section 4(a), however, does not prevent noncontract market members from engaging in the business of offering and selling futures contracts traded on or subject to the rules of foreign exchanges

directly to the American public.

This section adds a new section 4(b) to the Act which concerns the Commission's existing authority to regulate the offer and sale of futures contracts made on foreign exchanges by any person located in the United States, its territories or possessions. The domestic offer and sale of such contracts is affected with a national public interest and affects interstate commerce. Under existing Commission regulations, it is illegal for any person to use the channels of interstate commerce to engage in fraudulent activities in connection with transactions in contracts for future delivery traded or executed on any foreign exchange.

Section 4(b) expressly empowers the Commission to protect the interests of United States residents against fraudulent or other harmful practices by a vendor of foreign futures who is located in the United States, its territories or possessions, including authority to adopt rules and regulations that impose different requirements for such persons depending on the particular foreign board of trade or market on which the contracts are made. The Committee expects that the Commission will, if necessary, draw distinctions under its regulations between exchanges that pose no significant dangers to customers in the United States and others that do. It does not authorize the Commission to regulate the internal affairs of a foreign board of trade, exchange, market, or clearinghouse for such market (such as the terms and conditions of foreign futures created by a foreign exchange) or require Commission approval of any action of any such market or its clearinghouse.

However, nothing in the provisions prevents a foreign board of trade from applying to the Commission for certification that its futures contracts conform with requirements of this Act where, by its terms, the Act establishes minimum requirements for a specifically identified contract. For example, a foreign board of trade may seek certification from the Commission that a futures contract offered by it that is based upon a group or index of American securities meets the minimum requirements specified in subparagraphs (a) through (c) of section 2(a)(1)(B)(ii) of the Act, without seeking or obtaining designation by the Commission as a contract market. Any such certification is to be conducted under the procedures, and subject to the rights of other persons, set forth in the provision of the Act establishing such minimum requirements. A futures contract, based upon a group or index of foreign securities only, could be certified by the Commission under such criteria as the Commission may deem appropriate. Upon certification by the Commission, the minimum requirements for such contract will be deemed to have been met, and the offering and sale of the contract in the United States, its territories or possessions will be lawful so long as such activity complies with the regulations of the Commission adopted under section 4(b) and the Act.

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Speculative limits

Sec. 204. This section amends section 4a of the Act relating to speculative limits.

Paragraph (1) makes clear that different speculative or position limits may be established for different numbers of days remaining until the last day of trading in a contract.

Paragraphs (2) and (3) are intended to confirm the Commission's existing authority to adopt speculative position or daily trading limits under section 4a of the Act by rule or regulation in a rulemaking proceeding, as well as by order.

Paragraph (4) amends subsection (3), which exempts transactions or positions shown to be bona fide hedging transactions or positions, from rules, regulations or orders that fix position limits. The amendment provides that the exemption for bona fide hedging shall permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of the powers of the Commission to prevent unwarranted price pressures by very large hedgers, the Commission is required to monitor the trading activities of large hedgers selected by the Commission and report its findings and recommendations to the Senate and House Agriculture Committees in its annual report for each of the four years following the date of enactment

of the Futures Trading Act of 1982.

Paragraph (5) is a technical change to apply the section to a person registered as an "introducing broker".

Paragraph (6) adds a new subsection (6) to section 4a. This subsection makes clear that any contract market or licensed board of trade may fix limits on the amount of trading which may be done or positions which may be held by any person under a contract of sale of any commodity for future delivery traded on or subject to the rules of such contract market (or under options on such contracts or commodities) traded on or subject to the rules of such contract market or such board of trade. In cases where the Commission has fixed limits for any futures contract or for any commodity option, position limits adopted by such contract market or such board of trade can not be higher than the limits fixed by the Commission. They could if deemed necessary adopt lower limits than those set by the Commission.

It is made clear that it is a violation of the Act for any person to violate any position limit fixed by a contract market or licensed board of trade for a contract of sale of any commodity for future delivery or an option on such contracts or commodities if approved by the Commission. The criminal provisions of section 9(c) of this Act apply only to those who knowingly violate such limits.

Agricultural options

Sec. 205. This section amends section 4c of the Commodity Exchange Act to delete the prohibition on approval of options contracts on agricultural commodities and authorize their approval on a pilot program basis. The amended subsection would permit the Commission to authorize a pilot program for a period up to three

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years but such authorization may not apply to more than one such commodity at any contract market approved therefor by the Commission. Beginning three years following the authorization of the pilot program, the Commission may authorize transactions in such commodities at contract markets approved therefor without regard to the restrictions in the pilot program but only after the Commission transmits to the House and Senate Agriculture Committees documentation relating to its ability to regulate such transactions, including a copy of the proposed rules and regulations, and the expiration of sixty calendar days of continuous session of Congress after such transmittal.

Introducing broker -- Registration requirement customer funds and property

Sec. 206. This section amends section 4d of the Act to prohibit any person from acting as an introducing broker unless the person has registered with the Commission and the registration is still in force. The term "introducing broker" is newly defined by the bill in section 2(a)(1)(A) of the Act as discussed above.

Registration -- Technical amendments

Sec. 207. This section amends section 4f of the Act to set forth the requirements that apply to any applicant for registration as an introducing broker -- the requirements for applications of such persons are substantially the same as those that are contained in the section for persons applying for registration as futures commission merchants. There is deleted from the section the requirement that applicants for registration as futures commission merchants must list any agents engaged in soliciting or accepting on behalf of the applicant any order for the purchase or sale of a futures contract since such persons are now considered "introducing brokers" and must independently report as such.

The section also amends section 4f(2) to require that each applicant for registration as an introducing broker must meet minimum financial requirements as the Commission may prescribe.

Finally, this section amends section 4f(1) by deleting the reference to a hearing for a suspension or revocation of a license so as to be consistent with the proposed addition of new section 8a(2) of the Act which, among other things,

provides for refusal, suspension or revocation of the registration of any person because of a statutory disqualification listed in that section.

Introducing brokers -- Reports, books, and records

Sec. 208. This section amends section 4g of the Act to require that introducing brokers make such reports and keep such records as the Commission may prescribe, and make their books and records available for inspection by the Commission and Department of Justice.

Misrepresentation -- Technical amendments

Sec. 209. This section amends section 4h of the Act by deleting paragraph (1) of section 4h which prohibits conducting an office or place of business anywhere in the United States or its territories that is used for dealings in commodities for future delivery unless

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such dealings are executed or consummated by or through a member of a contract market since a comparable provision is now contained in new section 4(a). The prohibition on false representations contained in existing section 4h(2) is retained in section 4h as proposed to be amended. That section, however, is broadened to prohibit false representations that a person is registered with the Commission in any capacity, and not only as a futures commission merchant, as under current section 4h(2).

Recordkeeping conformed to current system -- Large trader reports

Sec. 210. This section amends section 4i of the Act to clarify that even if the Commission eliminates routine reporting requirements for large traders, persons whose trades or positions in any cash commodity or future equal or exceed levels set by the Commission must keep books and records on futures and related cash transactions and allow their inspection.

It would make clear that the Commission and the Department of Justice retain their authority to inspect the books and records of any trader whose trades or positions in any cash commodity or commodity future equal or exceed the level set by the Commission for contracts in that commodity, regardless of whether the trader is required by the Commission to file reports of his trading activity. The Commission retains the authority to require the filing of reports regarding such transactions or positions. This amendment merely makes the duty of a trader to keep books and records available for inspection by appropriate governmental authorities independent of any Commission requirement concerning the filing of trading reports by such a trader. Such large traders are also required to make available for inspection information relating to their activities on any other board of trade.

Registration, associated person status

Sec. 211. This section amends section 4k of the Act which relates to the registration of associated persons.

Subsection (1) is amended to require that any person associated with an introducing broker in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, must register with the Commission under this Act as an associated person of such introducing broker. It also makes it unlawful for an introducing broker to permit such a person to be associated with the introducing broker in any such capacity if the introducing broker knew or should have known that such person was not so registered.

A new section 4k(2) is added to the Act (existing section 4k(2) is redesignated as section 4k(4) of the Act) to extend the provisions for registration of associated persons to include partners, officers, employees, agents or

consultants of commodity pool operators who solicit funds, securities, or property for participation in commodity pools or who supervise persons so engaged. Such persons are required by new section 4k(2) to register as associated persons of commodity pool operators, both to assure that their activities are supervised by the commodity pool operator with which they are associated, and to prevent unfit persons from engaging in such activities.

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An associated person of a commodity pool operator may not, however, solicit funds, securities or property to margin, guarantee, or secure the trades of any customer unless he is also registered as an associated person of a futures commission merchant.

Section 211 deletes existing section 4k(3) of the Act which, with certain revisions, is transferred under this bill to new section 8a(10) of the Act. This section also adds a new section 4k(3) of the Act which extends the provisions for registration of associated persons to include the partners, officers, employees, and agents of commodity trading advisors who solicit discretionary accounts. Such persons are required by new section 4k(3) to register as associated persons of commodity trading advisors, both to assure that their activities are supervised by the commodity trading advisor with which they are associated, and to prevent unfit persons from engaging in such activities. This section would permit a person who is registered as an associated person of a commodity trading advisor to solicit discretionary accounts, but would not permit such a person to manage such accounts. An associated person of a commodity trading advisor may not solicit funds, securities or property to margin, guarantee, or secure the trades of any customer unless he is also registered as an associated person of a futures commission merchant.

This subsection also provides that any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision.

The bill amends existing section 4k(2) of the Act which, as previously noted, is redesignated as section 4k(4). New section 4k(4) provides that any person desiring to be registered as an associated person of a futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor must apply to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Any such person, when registered must likewise continue to report and furnish to the Commission information required by the Commission. Such registration expires at such time as the Commission may by rule, regulation, or order prescribe.

The bill adds a new section 4k(5) to the Act which makes it unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in new section 8a(2) of this Act, unless the registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

A futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor, therefore, is subject to a duty to make reasonable inquiry into the background of any person who becomes or remains associated with it as an associated person. Although "reasonable inquiry" is a concept which depends on particular facts and circumstances, it is intended to include, at a

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minimum, a check of the person's background with the Commission and with prior employers. In addition to a registrant jeopardizing its own registration by hiring or retaining a person subject to a statutory disqualification, under section 9(c) of the Act, it would commit a misdemeanor punishable by a fine of up to \$ 100,000 or imprisonment for up to one year, or both, together with the cost of prosecution. This provision creates a substantial disincentive for a registrant to hire or retain an associated person who is subject to a statutory disqualification. By imposing greater

statutory responsibility on employers for the fitness of their employees than currently exists, section 4k(5) should lead to an upgrading of the level of employees in the industry.

Conforming amendment

Sec. 212. This section deletes sections 4n (5) and (6) of the Act, inasmuch as new sections 8a (2), (3), and (4) of the Act contain the grounds for refusal, suspension or revocation of registration for applicants and for registrants with the Commission in each of the various categories of registration. The bases set forth in sections 4n (5) and (6) are listed as statutory disqualifications in section 8a (2) or are grounds for refusal, suspension or revocation of registration under sections 8a (3) and (4).

Extension of antifraud provision

Sec. 213. This section amends section 4o of the Act to make the prohibitions on fraud and misrepresentation by commodity trading advisors and commodity pool operators contained in section 4o applicable as well to associated persons of commodity trading advisors and associated persons of commodity pool operators, two new categories of registrants which would be established by new sections 4k (2), (3) and (4).

Extension of authority regarding proficiency examination

Sec. 214. This section amends section 4p of the Act by extending the Commission's authority to establish appropriate standards with respect to training, experience and other qualifications as the Commission finds necessary or desirable to insure the fitness of all persons registered with the Commission. Currently, section 4p limits the Commission's authority in this area to futures commission merchants, floor brokers, and their respective employees.

Registration information to the States

Sec. 215. This section adds a new section 4q to the Act to require the Commission to provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision and to provide it without a prior request whenever the Commission determines that the information may be helpful to the State or political subdivision. The Commission is expected to cooperate fully with the States in providing information that will assist the States in taking action to protect the public.

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Designation of contract markets

Sec. 216. This section amends section 5(g) of the Act to require the Commission in determining whether designation of a board of trade as a contract market for any commodity would be contrary to the public interest, to consider, among other things, the extent to which trading in the commodity is likely to divert investment capital away from the capital formation process, to cause price manipulation, and to cause price destabilization in that commodity.

Contract market rules

Sec. 217. Paragraph (1) amends section 5a(8) of the Act to require each contract market to enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board or any committee, which (a) have been approved by the Commission pursuant to paragraph (12) of this section, (b) have become effective under that provision, or (c) must be enforced under any Commission rule, regulation or order. The amendment conforms this section to the changes made by the bill in section 5a(12). It also is intended to make clear that contract markets must enforce all rules currently effective under Commission regulation 1.53. That regulation requires enforcement of bylaws and rules in effect as of July 18, 1975 not disapproved by the Commission. As under current law a contract market may not enforce any bylaw, rule, regulation, or resolution that has been disapproved by the Commission.

Paragraph (2) amends section 5a(12) to reduce the types of contract market rules that require prior approval of the Commission before they may be implemented. The amended paragraph continues to require the submission to the Commission for its prior approval of all bylaws, rules, regulations, and resolutions (rules) made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, except those rules relating to the setting of levels of margin.

Each contract market must submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may put them into effect ten days after receipt unless within that period, the contract market itself requests review and approval by the Commission or the Commission notifies the contract market in writing of its determination to review for approval such rules. The determination to review such rules for approval must be made by the Commission and cannot be delegated to any employee of the Commission. In cases of rules of major economic significance, as determined by the Commission, the Commission is given authority to publish in the Federal Register a notice of such rules rather than the full text as under current law.

The Commission is given authority by this provision to exempt by regulation certain contract rules from the requirement that they must be submitted to the Commission for review in accordance with the procedures prescribed in this section. It is intended that the only rules for which such an exemption would be provided, if at all, would be rules purely of a housekeeping nature that

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have no economic or market significance and do not affect the public at large.

If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it must provide the contract market with written notice of the proposed grounds for disapproval, including the specific section or sections of the Act or the Commission's regulations which would be violated. At the conclusion of any such proceedings, the Commission shall approve or disapprove such rule. The amended section requires that any disapproval shall specify the sections of the Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within 180 days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be placed into effect by the contract market until such time as the Commission disapproves such rule in accordance with this subsection.

Arbitration

Sec. 218. This section amends the provision in section 5a(11) of the Commodity Exchange Act relating to arbitration. It continues the obligation of each contract market to provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof. This section, however, makes certain changes and clarifications. Specifically, the \$ 15,000 limit on claims which may be arbitrated in contract market arbitration proceedings is removed, in order to provide an alternative forum for customers' claims in excess of \$ 15,000. Also, the provision requiring an agreement for compulsory payments is removed. This revision is intended to ensure that arbitration awards on counterclaims are binding upon both parties. Finally, the definition of the term "customer" is broadened by this section to include any person for or on behalf of whom a member of a contract market effects a transaction on such contract market, except another member of that contract market. Thus, the definition includes futures commission merchants or floor brokers who have a claim based on a customer relationship with such contract market member, provided they are not members of the same contract market.

Sec. 219. This section contains an amendment to section 17(b)(10) of the Act which conforms this subsection to amended section 5a(11), the parallel arbitration provision for contract markets. Specifically, the \$ 15,000 limit on claims which may be arbitrated in futures association arbitration proceedings is removed, in order to provide an alternative forum for customers' claims in excess of \$ 15,000. Also, the provision requiring an agreement for compulsory payments is removed. This revision is intended to ensure that arbitration awards on counterclaims are binding upon both parties. Finally, the definition of the term "customer" is broadened by this

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section to include any person except another member of the association.

Designation procedures

Sec. 220. This section amends the provisions of section 6 of the Commodity Exchange Act relating to the procedures for designation of contract markets. It requires the Commission to approve or deny any such application within one year of the filing of the application. If the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one-year period would be stayed from the time of the notification until the application is resubmitted in completed form. The provision guarantees, however, that the Commission would have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form so that it may complete the requisite hearing requirements. If the Commission denies an application, it must specify the grounds for the denial.

Appeals

Sec. 221. This section makes two technical amendments to section 6(b) of the Commodity Exchange Act.

Paragraph (1) amends the provisions relating to revocation of registration and trading privileges for any violation of the Act so that they would apply to any person registered with the Commission in any capacity and not only to a futures commission merchant or any person associated therewith, commodity trading advisor, commodity pool operator, or floor broker as in current law.

Paragraph (2) amends the subsection to require a person who wishes to appeal an order denying registration to file the appeal with the United States court of appeals for the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located. Under the present provisions of section 6(b), appeal is required to the circuit in which the petitioner is "doing business". This created uncertainty for the handling of appeals by an applicant who has not previously engaged in business who is denied registration by the Commission. The amendment is designed to resolve the issue.

Restraining orders

Sec. 222. This section amends section 6c of the Act to permit the ex parte issuance, by courts of competent jurisdiction, of restraining orders which prohibit any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission from inspecting when and as requested, any books, records or other documents, or which prohibit withdrawals, transfers, removals, dissipations or disposals of funds, assets or other property. Such power is provided to prevent possible removal or destruction of potential evidence or other impediments to legitimate law enforcement activities and to prohibit movement or disposal of funds, assets and other property which may be subject to lawful claims of customers.

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Confidentiality provisions -- Disclosure

Sec. 223. Paragraph (1) of this section amends section 8(a) of the Commodity Exchange Act to provide procedures for notifying submitters of information of requests for disclosure before the Commission releases the information. It requires the Commission to promulgate regulations, after notice and public comment, specifying procedures by which the Commission shall, when requested by a submitter at the time of submission of information to the Commission, notify the submitter, within five days of receipt of a request, that a request for records containing such information has been made under the Freedom of Information Act. The procedures must permit the submitter or requester to submit to the Commission written argument regarding a request made for disclosure of records. The Commission is not required to notify a submitter of the receipt of a request under these procedures if the Commission determines, prior to giving such notice, that the request for disclosure should be denied, the disclosure is pursuant to law or Commission rule which requires disclosure of specific records in such a manner as to leave no discretion on the issue, or the information has been published or otherwise made available to the public.

Paragraph (2) amends section 8(b) to permit the Commission to disclose otherwise confidential information in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under the Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code. Such disclosure is now expressly authorized only if the judicial proceeding is brought under the Act.

Paragraph (3) amends subsection (e) to expressly authorize the Commission to disclose information in its possession to any agency or department of the United States acting within the scope of its jurisdiction and not merely to agencies of the Executive Branch as provided in current law. The amendment also authorizes disclosure by the Commission of such information upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction. This should enhance the ability of the State enforcement officials to ensure fair and honest dealing in commodity-related matters and should also greatly enhance the ability of the States and local officials to bring enforcement proceedings authorized by the Act.

The amendment will also enable the Commission to provide valuable assistance to officials of foreign agencies who are seeking to discipline firms that engage in the fraudulent solicitation of United States customers. Moreover, this cooperative policy will facilitate the Commission's ability to prosecute those firms who engage in unlawful practices on both United States and foreign markets.

Under the bill, the decision to disclose information is a matter of Commission discretion. In deciding if disclosure is warranted in a given situation, the Commission is expected to evaluate whether the need to take prompt enforcement action or to conduct an expeditious

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investigation outweighs the general need to preserve the confidentiality of market information.

Any information furnished to any department or agency of any State or political subdivision cannot be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under the Act or the laws of the State or political subdivision to which the State or political subdivision, or any department or agency is a party. Similarly, before furnishing any information to a foreign government or political subdivision the Commission must be satisfied that the information will not be disclosed except in connection with any adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency is a party.

Paragraph (4) adds a new subsection (h) to section 8 to require the Commission to follow specified procedures before furnishing information in response to a subpoena or summons served on the Commission. Under this provision, the Commission may disclose information in its possession pursuant to a subpoena or summons only if a copy of the

subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission and 14 days have expired from the date of mailing of the subpoena or summons.

Registration authority; temporary license

Sec. 224. This section amends section 8a(1) of the Commodity Exchange Act to authorize the Commission to register certain new categories of commodity professionals as discussed elsewhere in this section by section analysis; namely, introducing brokers, and associated persons of introducing brokers, commodity trading advisors and commodity pool operators. It also includes the provisions of existing section 8a(4) as to authority for the Commission to establish from time to time reasonable fees and charges for registration and renewals thereof. Finally, the amendment adds a new provision authorizing the Commission to grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt. The term of any such temporary license may not exceed six months from the date of its issuance. This permits an apparently qualified applicant for registration to begin operations during the time the application is being considered, thereby facilitating the registration process.

(New section 8a(10) of the Act also permits the Commission to delegate the performance of any portion of its registration functions, including the granting of such temporary licenses, to a registered futures association.)

The grant of a temporary license under this provision is not intended to constitute a registration nor to confer any right or create any presumption in favor of registration with the Commission. Thus, if subsequent to the issuance of a temporary license, the Commission determines that the applicant is subject to a statutory disqualification under the Act, as described below, registration will not be granted. Similarly, the refusal of a temporary license does

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not necessarily mean that registration ultimately will be refused. For example, further investigation of the grounds which led to a refusal of a temporary license may disclose that they are insufficient to justify refusal of registration under the Act.

Statutory disqualification from registration; delegation of registration functions

Sec. 225. This section amends section 8a(2) of the Act to establish a system of statutory disqualifications for registration. Under this system, the Commission is authorized without a prior hearing to refuse to register, to register conditionally, to suspend or to place restrictions upon the registration of any person (that is, any applicant or registrant) pursuant to such rules, regulations, orders and procedures as the Commission may adopt, if such person is subject to a statutory disqualification listed in section 8a(2). The amendment thus expands existing law under which the Commission may deny registration without a hearing if the applicant is subject to an outstanding order of the Commission imposing various sanctions. See sections 4n(5) and 8a(2)(A). In addition, for such statutory disqualifications, the Commission is authorized to revoke the registration of any person registered with the Commission upon such a hearing as may be appropriate.

There are eight conditions listed as statutory disqualifications in section 8a(2), which are modeled after existing provisions of the Act, Commission regulation 1.10e, 17 C.F.R. 1.102 (1981), the Commission's interpretative statement regarding good cause for denial of registration, 17 C.F.R. Part 1 Appendix A, and certain analogous provisions of the Securities Exchange Act of 1934. Each statutory disqualification is based upon a previous finding or order by the Commission, a court, or another governmental body.

Enumerating several bases for finding applicants or registrants unfit for registration will permit the Commission to develop an expedited procedure for registration, provide notice of the most important fitness standards which the Commission will apply, and promote uniformity of treatment of applicants and registrants. The Commission also

retains the discretion, in appropriate cases, to register a person, notwithstanding the existence of a statutory disqualification.

As under current law, the applicant or registrant may obtain judicial review of any Commission action under section 8a(2) in an appropriate Federal court of appeals, pursuant to the provisions of section 6(b) of the Act. The applicant or registrant, however, generally will be limited to contesting before the Commission the fact of the statutory disqualification. Once the fact of the statutory disqualification is shown, refusal of registration, conditional registration, suspension, revocation or the placing of restrictions upon its registration follows as a matter of law. Section 8a(2) should result in a substantial savings of Commission resources and in a significant improvement in registration processing.

Under this amendment, the absence of a statutory disqualification is a precondition of doing business unless the Commission determines otherwise in its discretion. It is contemplated that the Commission will develop procedures pursuant to section 8a(2) that will provide adequate notice to an applicant or registrant that the

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Commission has information which indicates that he is subject to a statutory disqualification, and which also will afford him an opportunity to reply or explain in writing (e.g., advise the Commission of a clerical error or a case of mistaken identity). Moreover, the Commission can conduct such further proceedings as it deems necessary if, despite a statutory disqualification, it deems it appropriate not to deny the application.

Subparagraph (A) makes a person subject to a statutory disqualification if a prior registration of such person with the Commission in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked.

Subparagraph (B) makes a person subject to a statutory disqualification if an application for registration by such person in any capacity with the Commission has been refused (after opportunity for hearing under section 8a(3)) within five years preceding the filing of the present application for registration. This amendment eliminates the possibility under current law that a person recently refused registration may immediately reapply to the Commission and be entitled to a hearing for registration in the same or another category. Further, if after his registration, registration is refused in another capacity, such refusal would also be a statutory disqualification for continuing the prior registration.

Subparagraph (C) makes a person subject to a statutory disqualification if such person is permanently or temporarily enjoined by court order, including a court order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a Commission registrant or as any of certain specified securities professionals, or as an affiliated person or employee of any of the foregoing, or (ii) engaging in or continuing any activity involving transactions or advice concerning commodity interests subject to Commission regulation or concerning securities. This provision, however, does not permit revocation of an existing registration solely on the basis of a temporary order, judgment or decree, such as a temporary restraining order or a preliminary injunction. It would permit revocation of an existing registration based on a permanent injunction which is a decision on the merits.

Subparagraph (D) makes a person subject to a statutory disqualification if such person has been convicted within 10 years preceding the filing of any application for registration or at any time thereafter of a felony which involves: (i) any transactions or advice concerning any commodity interest subject to Commission regulation or concerning a security, (ii) the conduct of the business of any Commission registrant or specified securities industry professional or an affiliated person or employee of any of the foregoing, (iii) certain enumerated offenses of particular gravity which bear a close relationship to a person's fitness to be registered with the Commission, e.g., embezzlement, theft, extortion, fraud, forgery, bribery, misappropriation of funds, securities or property, counterfeiting, or (iv) the violation of the following provisions of title 18 of the United States Code: section 152 (concealment of assets in a bankruptcy proceeding, making

a false or fraudulent oath in a bankruptcy proceeding, perjury in connection with a bankruptcy proceeding, etc.), sections 1341, 1342, 1343 (mail frauds and swindles, the use of fictitious

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names and addresses, frauds perpetrated through use of the wire, radio, or television), chapter 25 (counterfeiting and forgery), chapter 47 (fraud and false statements), chapter 95 (racketeering), and chapter 96 (racketeer influenced and corrupt organization).

Subparagraph (E) makes a person subject to a statutory disqualification if such person, within 10 years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or by any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Act, the Federal securities laws or any similar State or foreign statute, or any rule, regulation or order under any such statutes such as the rules of the Municipal Securities Rulemaking Board where the violation involves the same serious offenses as those enumerated in subparagraph (D) (iii), or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person. Violations occurring more than 10 years prior to the date of application, however, are not statutory disqualifications, but may be considered in a proceeding conducted under section 8a(3), discussed later.

Subparagraph (F) makes a person subject to a statutory disqualification if such person is subject to an outstanding order of the Commission denying trading privileges on any contract market, denying, suspending or revoking membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant, with a member of a contract market, or with a member of a registered futures association.

Subparagraph (G) makes a person subject to a statutory disqualification if such person willfully made any material false or misleading statement or omitted to state any material fact in the application as to any of the matters set forth in subparagraphs (A) through (F) of this subsection; that is, as to the existence of the other statutory disqualifications.

Subparagraph (H) makes a person subject to a statutory disqualification if refusal, suspension or revocation of the registration of any of its principals would be warranted because of a statutory disqualification listed in this section. The term "principal" is defined in this subparagraph for purposes of both sections 8a (2) and (3). Specifically, the term "principal" is defined to mean a general partner in the case of a partnership, or an officer, director or beneficial owner of at least 10 percent of the voting shares of a corporation, and any other person that the Commission finds to be in a position to exercise actual control of the entity.

Any person may appeal an adverse decision on registration made pursuant to the provisions of this paragraph in the manner provided in section 6(b) of this Act.

Paragraph (2) strikes out existing section 8a(4) relating to the fixing of registration fees since its provisions have been incorporated by the bill in section 8a(1). It also designates existing section 8a(3) as section 8a(4).

Paragraph (3) adds a new paragraph (3) that authorizes the Commission to refuse to register or to register conditionally any person,

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after opportunity for hearing, based upon certain conditions, acts or omissions which are enumerated in subparagraphs (A) through (N) of section 8a(3). Pending final determination under this section, a registration may not be granted. These factors have the same derivation as the statutory disqualifications listed in section 8a(2). As under current law, an applicant for registration is entitled to a hearing before the Commission and may obtain review of any Commission decision to refuse or to condition registration made under section 8a(3) in an appropriate Federal court of appeals,

pursuant to the provisions of section 6(b) of the Act.

Subparagraph (A) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that the person has been found by the Commission or by any court of competent jurisdiction to have violated or consented to findings of a violation of any provision of the Act, or any rule, regulation, or order thereunder, other than those set forth in section 8a(2), or to have willfully aided, abetted, counseled, commanded, induced or procured the violation by any other person of such provisions. Unlike section 8a(2)(E), violations occurring more than 10 years prior to the date of application may be considered.

Subparagraph (B) parallels subparagraph (E) of section 8a(2), except that there is no 10-year limitation on the use of such violations, no restriction as to the type of securities-related violations involved, and commodities-related violations, which are referred to in subparagraph (A), are not included.

Subparagraph (C) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person failed reasonably to supervise another person, who is subject to the person's supervision, with a view to preventing violations of the Act, any of the statutes enumerated in subparagraph (B), or any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation. No person, however, is deemed to have failed reasonably to supervise another person, within the meaning of this subparagraph, if (i) there have been established procedures, and a system for applying such procedures which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (ii) such person reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with. This paragraph contains the same standard of supervision as is used in section 15(b)(4)(E) of the Securities Exchange Act of 1934 (*15 U.S.C. 78o(b)(4)(E)*).

Subparagraph (D) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has been convicted of a felony other than a felony enumerated in section 8a(2)(D) within 10 years preceding the filing of the application, or has been convicted of any felony (including those in section 8a(2)(D)) more than 10 years preceding the filing of the application. Moreover, if an applicant is convicted of such a felony after his registration, this also is a basis for suspension or revocation of his existing registration.

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Subparagraph (E) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has been convicted within 10 years preceding the filing of the application of a misdemeanor of the nature described in the parallel paragraph for felony convictions, that is, subparagraph (D) of section 8a(2).

Subparagraph (F) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has been debarred by any agency of the United States from contracting with the United States. This provision is contained in current section 8a(2)(B)(i) of the Act.

Subparagraph (G) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person willfully made any material false or misleading statement or willfully omitted to state any material fact in his application (other than a misstatement or omission covered by section 8a(2)(G)) or in any report required to be filed with the Commission by the Act or the regulations thereunder, or in any proceeding before the Commission.

Subparagraph (H) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court or in a foreign court of conduct which would constitute a felony under

Federal law if the offense had been committed under Federal jurisdiction. This paragraph is derived from a factor listed in the Commission's interpretative statement regarding good cause for denial of registration.

Subparagraph (I) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that an applicant for registration in a capacity for which there are minimum financial requirements prescribed under the Act or under the Commission's rules and regulations has not established that he meets those requirements. This paragraph parallels existing section 8a(2)(C) which, however, is limited to applicants for registration as futures commission merchants. This amendment is intended to reflect the possibility that the Commission may establish minimum financial requirements for additional categories of registrants in the future.

Subparagraph (J) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person is subject to an outstanding order denying, suspending or expelling him from membership in a contract market, a registered futures association, or in any other self-regulatory organization, (e.g., a stock exchange or the National Association of Securities Dealers) or barring or suspending him from being associated with any member or members of such contract market, association, or self-regulatory organization.

Subparagraph (K) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement

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to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder where such violation involves the offenses enumerated in subparagraph (D)(iii) of section 8a(2); or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person.

This subparagraph is designed to make the violation of Federal and State regulatory statutes other than those dealing with commodity futures trading or securities a basis for refusal of registration or conditional registration under the Act. Inasmuch as regulatory schemes and standards for different industries and professions undoubtedly vary, an opportunity for hearing is provided before a determination concerning registration is made by the Commission on this basis.

Subparagraph (L) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has associated with him any person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in section 8a(2), unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed.

Subparagraph (M) authorizes the Commission to refuse to register or to condition the registration of any person for other good cause shown. This provision is intended to duplicate existing section 8a(2)(B)(ii) of the Act and confirms that the Commission may continue to seek to refuse or to condition registration upon other reasonable grounds which are not explicitly set forth in the Act.

Subparagraph (N) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that any principal of such person has been or could be refused registration under section 8a(3). This paragraph parallels subparagraph (H) of section 8a(2) and the definition of the term "principal" contained in that subparagraph applies here as well.

Paragraph (4) amends section 8a(4), as redesignated, by making it clear that the Commission may place restrictions on a registration as well as suspend or revoke a registration of a registrant for violation of paragraph (3) of that section.

It also states that a person may appeal from a decision to suspend, revoke, or to place restrictions upon registration made pursuant to the provisions of this subsection in the manner provided in paragraph (b) of section 6 of this Act.

Paragraph (5) makes a technical change.

Paragraph (6) adds a new paragraph (10) to the section pursuant to which the Commission may authorize any person (such as a registered futures association) to perform any portion of its registration functions, in accordance with rules approved by the Commission, and subject to the applicable provisions of the Act. It is intended that any decision made with respect to registration by a person so authorized will be reviewable by the Commission. Further, regardless of who performs the registration functions, registrants

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will continue to be deemed to be registered with the Commission.

Emergency powers -- Judicial review

Sec. 226. This section amends section 8a(9) of the Commodity Exchange Act to make clear that the emergency powers of the Commission include the setting of temporary emergency margin levels on any futures contract, and the fixing of positions limits that may apply to a position acquired in good faith prior to the effective date of the Commission's action. It also authorizes for the first time a limited form of judicial review of emergency action that may be taken by the Commission under this paragraph. Any such action is subject to review only in the United States court of appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the court of appeals for the District of Columbia circuit. Such review shall be based upon an examination of all of the information before the Commission at the time the determination is made. The court reviewing the Commission's action may not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Certain prohibited transactions

Sec. 227. Paragraph (1) expands section 9(a) of the Commodity Exchange Act to make it a felony for any person registered or required to be registered under this Act, or any employee or agent thereof, to embezzle, steal, purloin, or convert with criminal intent any money, securities, or property having a value in excess of \$ 100, which belongs to any customer, client or pool participant if the funds were received in connection with the business of such person or as margin. Currently, section 9(a) applies only to futures commission merchants and their employees and agents.

The amended subsection also requires that a person convicted of a felony under the subsection must be suspended from registration under this Act and denied reregistration for five years or such longer period as the Commission shall determine, unless the Commission determines that the imposition of such suspension or denial of reregistration is not required to protect the public interest.

Paragraph (2) amends section 9(b) which makes it a felony for a person to manipulate the price of a commodity or a futures contract, attempt to corner any such commodity or transmit false or misleading market information. The amendment requires that a person convicted of a felony under the subsection must be suspended from any registration under this Act, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest.

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Paragraph (3) amends section 9(c) in a manner comparable to the amendment to section 9(b). It provides that a person convicted under this subsection of knowingly violating the provisions of section 4a (relating to position limits) must be suspended from any registration under this act, denied registration or reregistration for a period of two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest.

Paragraph (4) amends section 9(d) which imposes criminal penalties for certain prohibited transactions by Commissioners and employees of the Commission. First, it extends the prohibited transactions to include leverage contracts as well as commodity futures, options or investment transactions in an actual commodity as provided for in current law. The amendment would conform the Act to the Commission's Code of Conduct now in force. It also adds to the exemptions provided for in current law transactions entered into by the trustee of a trust established by a Commissioner or Commission employee over which the Commissioner or Commission employee exercises no control if the transaction is entered into solely to hedge against adverse price changes in connection with farming or ranching operations of such Commissioner or Commission employee or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, and a transaction in which a Commissioner or Commission employee buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit or similar financial instrument if no nonpublic information is used by such person in such transaction.

Paragraph (5) amends section 9(e) of the Act which currently forbids Commission members and employees from imparting nonpublic information which may affect the price of any commodity futures or commodity with the intent to assist another in any transaction in commodity futures, commodity options or actual commodities. That provision also prohibits the acquisition and use by any person of such nonpublic information in any such transaction. Consistent with the amendment to section 9(d), section 9(e) is also being amended to include within its prohibitions specific reference to leverage transactions.

Reauthorization

Sec. 228. This section amends section 12 of the Commodity Exchange Act to extend the authorization for appropriations through September 30, 1986.

Off-exchange jurisdiction -- Role of States

Sec. 229. This section adds a new subsection (e) to section 12 of the Commodity Exchange Act to enhance the authority of the States in protecting the public against persons engaging in unlawful off-exchange transactions not authorized by the Act. It provides

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specifically that nothing in this Act supersedes or preempts criminal prosecution under any Federal criminal statute. It also does not supersede or preempt any Federal or State statute (including any rule or regulation thereunder) that is applicable to any transaction as to any commodity, that is not conducted on or subject to the rules of a contract market, or (except as otherwise specified by the Commission by rule or regulation) any board of trade, exchange or market located outside the United States, its territories or possessions, or that is not subject to regulation by the Commission under section 4c (options transactions) or 19 (leverage transactions) of this Act.

This amendment thus authorizes the application of other Federal and State laws to activities and persons who unlawfully engage in commodity transactions outside the Act's regulatory structure. Under this provision, for example, State law enforcement agencies will be able to proceed under their own laws and through local courts or administrative proceedings against persons who engage in commodity futures transactions other than on or subject to the rules of

contract markets designated by the Commission. Similarly, persons engaged in commodity option or leverage transactions not authorized by the Act or Commission regulations will not be able to successfully to defend their activities based on the Commission's exclusive jurisdiction over these transactions.

Under the amendment, the Commission would continue to have exclusive jurisdiction over foreign futures transactions traded in the United States but the Commission could take formal action (by rule or regulation) to extend the regulatory power of the States to these transactions in appropriate cases. This will enable the Commission to issue rules and regulations permitting State regulation of United States persons engaging in commodities on foreign boards of trade when necessary and appropriate.

Finally, the subsection permits the application of Federal or State statutes (including any rule or regulation thereunder) to any person required to be registered or designated under this Act who fails or refuses to obtain such registration or designation. The Commission is authorized to refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering these statutes for appropriate investigation, action or proceedings.

This amendment, together with existing section 6d of the Act, which permits State law enforcement authorities to proceed in Federal court against persons who violate the Act, will enable the Commission to call upon the assistance of other law enforcement bodies in order to foster a coordinated and effective program to detect and prosecute those who engage in unlawful conduct.

Aiding and abetting -- Controlling person

Sec. 230. This section amends section 13 of the Commodity Exchange Act in two respects. First, it amends subsection (a) to make that subsection apply to all legal proceedings arising under the Act. At present, the provision is applicable only to administrative proceedings under the Act. As amended, that subsection provides that any person who commits, or who willfully aids, induces, or procures the commission of, a violation of any of the provisions of

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the Act, or any of the rules, regulations or orders issued pursuant to the Act, or who acts in concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this Act or any of such rules, regulations, or orders may be held responsible in both court proceedings and administrative proceedings under the Act for such violation as a principal.

It also adds a new subsection (b) to provide that any person who, directly or indirectly, controls any person who violates any provision of this Act or any of the rules, regulations, or orders issued pursuant thereto may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. The subsection requires, however, that the Commission has the burden of proving that the controlling person did not act in good faith or directly or indirectly induced the act or acts constituting the violation.

Section 2(a)(1) of the current law contains a provision that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. This section had been included in the Act many years ago and in essence provides respondeat superior and general principal-agent standards for imposing liability on employers and principals for the acts of their employers or agents. It is the intention of the Committee that this section not be used as a basis for imputing liability to a controlling person of a firm for acts of an employee or agent of the firm since it does not include the protections that have carefully been articulated in the amended section 13(b) and would make a nullity of that provision.

Reparations procedure

Sec. 231. This section makes a number of changes in section 14 of the Commodity Exchange Act to improve and expedite the reparations procedure. Under the amendment to subsection (a), claims may be entertained in reparations only against those respondents registered by the Commission as required by law and not also against those who are required to be registered under the Act as under current law. It has been the Commission's experience that many claims have been brought against persons engaged in fraudulent conduct who have failed to seek and obtain registration with the Commission as required by law. Since it is common that these violators default in the reparations proceeding and cannot be located, there is little likelihood that a customer will ever receive payment of a reparations award entered by the Commission in such cases.

Moreover, the efficient administration of the reparations program, necessitates that the Commission assign resources to the program as intelligently as possible. Sudden surges in new claims, precipitated by activity of persons or firms previously unknown to the Commission, and on whom the Commission has had no opportunity to impose sound business practices or conduct meaningful surveillance,

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impede the expeditious resolution of claims generally, including those asserted against Act registrants. The amendment is intended to render the reparations program more manageable than at present.

The amendment would also revise subsection (b) to give the Commission broad authority to promulgate such rules, regulations and orders as it deems appropriate for the efficient and expeditious administration of the reparations program. Such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing and service of pleadings or orders; and the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

This amendment would delete several procedural provisions in the existing law which the Commission has found to be cumbersome and permit the Commission to fashion fair procedures that should facilitate and expedite the handling of claims before the Commission. For example, there would be deleted the provision in existing law that all complaints involving amounts over \$ 5,000 must be heard before an administrative law judge. Thus, the Commission would not be required to ensure that its procedures conform to those that might ordinarily be required for more typical forms of agency actions by the Administrative Procedure Act. The Commission would remain subject to the constitutional duty to provide fundamental fairness to all parties to the proceeding.

A technical amendment has been made in new section 14(f) -- currently section 14(h) -- which would provide that the trading privileges of a customer against whom an award was rendered on a respondent's counterclaim could be terminated if payment of the award was not timely made. Existing law permits trading privileges to be terminated only when the respondent fails to pay an award rendered on the customer's claim.

Technical amendment

Sec. 232. This section amends section 16(d) of the Commodity Exchange Act with a technical amendment to include express reference to the "market positions" of any person in the prohibition on disclosure of certain information in Commission market reports. The wording of section 16(d) of the Act concerning the nondisclosure of confidential information basically tracks the wording of section 8, which was amended in 1978 to include this same reference. This amendment conforms section 16(d) to section 8.

Registered futures associations

Sec. 233. This section amends section 17 of the Commodity Exchange Act to strengthen the provisions relating to registered futures associations.

Paragraph (1) amends subsection (b)(4)(E) to specifically authorize the registered futures association to require applicants for membership to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate

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processing. It further authorizes such an association to receive from the Attorney General all the results of identification and processing of the fingerprints.

Paragraph (2) changes the reference in subsection (h) from "(k)" to "(1)".

Paragraph (3) amends subsection (j) which relates to Commission approval of changes in or additions to the rules of a registered futures association to conform the procedures to amended section 5a(12), a parallel rule review and approval provision for contract markets.

It continues to provide that any such changes must be submitted to the Commission. It provides, however, that they may be placed into effect 10 days after their receipt by the Commission unless within the 10-day period the registered futures association requests review and approval thereof by the Commission or the Commission notifies the registered futures association in writing of its determination to review for approval such rules. The Commission must approve such rules, within 30 days of their receipt if Commission approval is requested or within 30 days after the Commission determines to review for approval any other rules, unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission must approve such rules if the rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations of the Commission. The Commission must disapprove, after appropriate notice and opportunity or hearing, any rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of the provisions of the Act or the regulations of the Commission.

Paragraph (4) of the amendment adds new subsections (o), (p), and (q) to section 17.

Subsection (o) authorizes the Commission to require any registered futures association to perform any portion of the registration functions under the Act with respect to each member of the association other than a contract market and with respect to each associated person of such member. It is intended that the Association would only be required to perform registration functions to the extent that the Commission determined that the Association had the capacity to undertake such functions. The performance of these functions must be in accordance with the rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission. Any decision made regarding registration by a futures association would be appealable to the Commission. Moreover, it is intended, as under the current system, that this amendment not affect the fact that registrants are deemed to be registered with the Commission.

Subsection (p) mandates certain requirements for each registered futures association. It requires the association already registered under the Act (the National Futures Association) to adopt and submit for Commission approval not later than 90 days after the date of enactment of the bill, and each futures association that may apply for registration after such date to adopt and include

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with its application for registration, rules that require the association to undertake certain functions.

These include rules that would establish training standards and proficiency testing for personnel of members

involved in the solicitation of transactions subject to the provisions of this Act, supervisory officials of such personnel, and all individuals for which it has registration responsibilities, and a program to audit and enforce compliance with such standards. In addition, the rules must establish minimum capital, segregation, and other financial requirements applicable to its members for which requirements are imposed by the Commission and implement a program to audit and enforce compliance with the requirements. The requirements may not be less stringent than those imposed on such firms by the Act or by Commission regulation. Finally, the rules must establish minimum standards governing the sales practices of its members and persons associated therewith as to transactions subject to the provisions of the Act.

New subsection (q) requires that each registered futures association develop a comprehensive program that fully implements the rules approved by the Commission under section 17 as soon as practicable but not later than two years after the date of enactment of the Futures Trading Act of 1982, in the case of any futures association registered on such date, and not later than two years after the date of registration in the case of any other registered futures association.

Leverage transactions

Sec. 234. This section amends the provisions relating to leverage contracts contained in section 19 of the Commodity Exchange Act.

Paragraph (1) amends subsection (c) to require the Commission to regulate all leverage transactions involving commodities described in subsection (b) of this section or any other commodities (except agricultural commodities) under terms and conditions as the Commission shall prescribe by January 31, 1983. Any such order, rule, or regulation may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for such transactions involving different commodities.

Paragraph (2) strikes out subsection (d) which provides that if the Commission determines that any leverage transaction is a contract for future delivery within the meaning of the Act, such transaction shall be regulated as a futures contract in accordance with the applicable provisions of the Act. This provision is tantamount to a ban. The Committee intends for the Commission to regulate leverage transactions, not to ban them. In order to accomplish this the Committee amendment specifically requires the Commission to regulate leverage transactions by January 31, 1983, and, as a necessary consequence of the mandate, also deletes the Commission's discretionary authority to prohibit certain leverage transactions as provided in subsection (b) of current law.

Nothing contained in the Committee amendment is intended to affect the current statutory prohibition against leverage transactions in agricultural commodities contained in section 19(a); it will continue in effect. Moreover, nothing contained in the Committee amendment is intended to affect the authority which the Commission

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has heretofore used to impose regulatory moratoria on both new entrants into the leverage business and also the commodities traded pursuant to leverage contracts. The Committee does intend, however, for the Commission to proceed immediately in promulgating regulations which will initially govern transactions in all commodities presently being traded pursuant to leverage agreements, which the Committee understands includes such commodities as gold, silver, platinum and copper.

Although the Commission's obligation to regulate leverage transactions would extend to trading in all commodities other than those agricultural commodities designated in section 19(a), the Committee does not presently anticipate that any existing or new leverage merchant intends to trade such commodities as financial instruments, stock indices, options and so forth. Nevertheless, mindful of the increasing demands upon the Commission's resources, the Committee recognizes that, with respect to certain commodities, it may wish to continue to enforce a regulatory moratorium which would be selectively lifted only after the Commission had carefully considered both whether trading in a particular commodity pursuant to a leverage contract would be consistent with the traditional use and purpose of leverage transactions and whether the Commission could effectively ensure the financial solvency of the transactions or

prevent manipulation or fraud. Furthermore, nothing in the Committee amendment is intended to affect the Commission's authority, contained in section 19(c), to set different terms and conditions for leverage transactions involving different commodities.

The committee also recognizes that because of similar resource considerations the Commission may deem it necessary to lift gradually its current regulatory moratorium on new entrants into the leverage business. However, the Committee intends for the Commission to encourage competition wherever possible, including among leverage merchants, and therefore cautions that any moratorium should be retained only until such time as the commission or a self-regulatory organization such as the National Futures Association is able to oversee effective regulation of additional leverage firms and/or commodities traded pursuant to leverage contracts.

In response to a request for a definition of the term "leverage contract", the Commission submitted the following letter to the Subcommittee.

COMMODITY FUTURES TRADING COMMISSION,
Washington, D.C., March 19, 1982.

HON. ED JONES,
Chairman, Conservation, Credit, and Rural Development, House Committee on Agriculture, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I very much appreciated the opportunity to appear before the Conservation, Credit, and Rural Development Subcommittee on February 23, 1982, in connection with the Subcommittee's hearing on extending the Commodity Exchange Act. During the course of my presentation of the Commission's views, questions were raised by Congressmen Steven Gunderson and

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Byron L. Dorgan that were requested to be included in the hearing record. Therefore, I would like at this time to answer those questions for the record:

1. Congressman Byron L. Dorgan requested information concerning the definition of leverage contracts and the distinctions, if any, between those contracts and futures contracts.

The Commission has not adopted a definition of leverage transactions, since the term is generally defined in Section 19 of the Commodity Exchange Act, which sets forth several characteristics regarding the nature of these transactions. Section 19 derives from prior Congressional action in 1974. At that time Congress enacted the Commodity Futures Trading Commission Act of 1974. Sections 201 and 217 of that Act, 7 U.S.C. §§ 2, 15a (1976), gave the Commission exclusive jurisdiction over "any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract."

Of course, certain of these characteristics readily apply to commodity futures contracts, although leverage transactions were not entered into on the recognized commodity exchanges trading precious metals in 1974. In Section 217, however, Congress expressly empowered the Commission to determine whether any such leverage transaction is a contract for future delivery within the meaning of the Commodity Exchange Act and thus must be regulated as such in accordance with the provisions of the Act.

The concept of leverage transactions in 1974 would appear generally to have contemplated long-term contracts for delivery of silver or gold bullion or bulk coins to public customers. The primary testimony about leverage contracts given in connection with the 1974 amendments was the statement of Mr. M. Martin Rom, Chairman of the Board of International Precious Metals Corporation. Mr. Rom described leverage contracts as a "type of commodities futures

contract." He further explained that the form of leverage or margin accounts and the terms and methods of sale vary from company to company, but that his company offered a ten-year contract to meet the demands of long-term traders. Hearings on S. 2485, S. 2578, S. 2837, and H.R. 13113 before the Senate Committee on Agriculture and Forestry, 93d Cong., 2d Sess., pt. 3, 749 (1974).

Shortly after the Commission began operations in 1975, it established an Advisory Committee on the Regulation and Definition of Market Instruments to study and recommend, among other things, appropriate restrictions or prohibitions for gold or silver leverage transactions. See 40 Fed. Reg. 32866 (August 5, 1975). In its Report to the Commission the Advisory Committee explained its understanding of leverage contracts, in pertinent part, as follows:

"A 'leverage transaction,' as it is known in the trade, involves a contract to purchase gold or silver bullion or bulk gold or silver coins. The contract is a standardized agreement prepared by the seller -- the leverage transaction merchant (hereinafter referred to as "LTM"). Under the contract, the purchaser pays a portion of the purchase price at the outset, and agrees to buy and the LTM agrees to deliver a specified amount of the particular commodity at a given price, at a specified time in the future. The purchase price

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for the commodity is determined by the LTM in its discretion. The amount of the initial payment required varies among LTM firms. The term of the contract also varies, but may be as long as 10 years. There may be prior 'spot' delivery on demand by the customer upon satisfaction of the balance due on the contract.

"In addition to the initial payment, a customer must also pay at the outset a sales commission which is a percentage of the total purchase price. Usually, there is imposed also a 'maintenance,' 'interest,' 'finance,' or 'leverage' charge on the unpaid balance which is required to be paid over the term of the contract.

* * * *

"Ordinarily, the LTM does not own or acquire bullion or coins for a customer at the time the customer makes the initial payment. Rather, the LTM "covers" its obligations to its customers primarily by maintaining a long position in commodity futures markets and, to a lesser extent, by forward contracts and ownership of the physical commodities (which usually are hypothecated to financial institutions) To the extent that LTMs cover in futures, forwards and physical commodities, they may be subject to margin calls or similar demands for payments on such coverage. These requirements often are met by the LTM making a margin call upon the purchaser of the leverage contract

"While there is limited experience as to the frequency of delivery upon leverage contracts, available data indicate that delivery occurs in only a small percentage of transactions. Rather, most contracts are liquidated prior to maturity either through the failure of a customer to make required payments or through the LTM's repurchase of the customer's interest." Report of the Advisory Committee on Market Instruments to the Commodity Futures Trading Commission, pp. 13-15 (July 16, 1976).

It should be noted that this description does not include "short" sales whereby public customers would become obligated to deliver gold or silver to a leverage firm. In this connection, the Advisory Committee was unwilling to take a position on whether "short" sales were within those transactions described in Section 217.

Between 1975 and 1977 the Commission continued to study leverage contracts in order to determine whether they were futures contracts or, if not futures contracts, the appropriate regulatory scheme to govern their offer and sale. At the beginning of 1978 the Commission recommended to Congress that Section 217 be repealed. The Commission had determined that no separate statutory provision was necessary to regulate leverage transactions under the Act if they were in fact futures contracts. And to the extent that leverage contracts were not futures contracts, the Commission did not believe its limited resources should be diverted from futures regulation in order to establish a separate program to regulate transactions in only two commodities. Hearings on H.R. 10285 before the Subcommittee on Conservation and

Credit of the House Committee on Agriculture, 95th Cong. 2d. Sess., 69-71 (1978).

Nevertheless, as part of the Futures Trading Act of 1978, Congress repealed Section 217 of the 1974 Act and replaced it with Section 19 of the Commodity Exchange Act. Section 19 expanded the definition of leverage transaction generally to include, in addition

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to the existing definition, any contract or other arrangement that the Commission determines serves the same function as or is marketed in the same manner as a standardized leverage contract. Section 19 also banned leverage transactions in the agricultural commodities enumerated in Section 2(a)(1) of the Act and continued the Commission's authority over gold and silver leverage transactions. In addition, with a companion amendment to Section 2(a)(1) of the Act, Section 19 granted the Commission exclusive regulatory authority to prohibit or regulate leverage transactions in all other commodities. Finally, Section 19 again provided that if the Commission determines that any transaction under Section 19 is a contract for future delivery within the meaning of the Commodity Exchange Act, such transaction shall be regulated in accordance with the applicable provisions of the Act.

In its Report on the 1978 amendments, the Senate Committee on Agriculture, Nutrition, and Forestry, S. Rep. 850, 95th Cong., 2d Sess. 26 (1978), explained its understanding of leverage contracts as follows:

"Generally, the leverage contract currently in use is an agreement for the purchase or sale of a contract for the delivery at a later date of a specified commodity in a standard unit and quality, or the close-out of the contract by an offsetting transaction. The principal characteristics of the contract include: (1) standard units, quality, and terms and conditions; (2) payment and maintenance of 'margin'; (3) close-out by an offsetting transaction or by delivery, after payment in full; and (4) no right or interest in a specific lot of the commodity. The leverage dealer is the principal to every transaction and functions as a market maker. The leverage dealer, however, does not guarantee a repurchase market and further reserves the right to cease operating as a market maker or broker for the customer. Most customer commitments are covered or 'hedged' in futures, forwards, or physical inventory; most physical inventory, however, is encumbered through bank loans. Leverage contract bid/ask prices are determined by dealer adjustments to spot and futures market quotations."

Significantly, this description of leverage transactions included "short" sales.

On November 30, 1978, the Commission adopted a temporary moratorium on persons entering the business of offering or selling gold or silver leverage transactions who were not engaged in such a business on June 1, 1978. 17 C.F.R. § 31.1 (1981). This moratorium was imposed during a period of explosive growth in the marketing of these types of leverage transactions in order to provide the Commission an opportunity to make an informed determination of the character of those transactions and the appropriate scheme of regulation for them. Similarly, on September 25, 1979, the Commission adopted a temporary moratorium on the entry of new firms into the business of offering or selling leverage transactions involving commodities other than gold or silver who were not engaged in such a business on February 2, 1979. 17 C.F.R. § 31.2 (1981).

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On May 28, 1980, the Commission announced its intention to determine, effective October 1, 1982, that leverage transactions for the delivery of silver and gold bullion or bulk coins are contracts for future delivery within the meaning of the Commodity Exchange Act and therefore are required to be regulated as such. n1 Earlier this year, however, the Commission, as presently constituted, with three relatively new members, voted to forego making such a determination on October 1, 1982. Rather, the Commission believes that it requires additional time in order to make an informed determination whether any of the leverage transactions that are the subject of Section 19 of the Act are futures contracts; whether leverage transactions should be prohibited; whether this form of business activity is imbued with a sufficient national public interest, if any, to override any State interest in their regulation or to warrant regulation solely by the

Commission; and, if so, what type of permanent regulatory structure would be appropriate to protect the public. Accordingly, in H.R. 5447 the Commission has recommended an amendment to Section 19 that would require the Commission to study leverage transactions and report to Congress within two years on those questions.

n1 Shortly before the 1978 amendments were enacted; the Office of the General Counsel of the Commission had concluded that leverage contracts of the type referred to in Section 217 of the 1974 Act are contracts for future delivery within the meaning of the Commodity Exchange Act. See 44 Fed. Reg. 13494, 13494-13501 (March 12, 1979). This conclusion was based in part on the Office's extensive analysis of the Commodity Exchange Act. The Commission's Division of Economics and Education, as well, concluded in May of 1978 that the leverage transactions then being offered were essentially futures contracts. That Division's conclusion was based upon information gathered in a survey of leverage trading, which had been conducted by the Division of Enforcement of the Commission. See also 43 Fed. Reg. 23729, 23730 (June 1, 1978) (discussing the survey of leverage trading).

Moreover, the Commission has recommended to Congress that Section 19 be amended to codify, until September 30, 1984, the Commission's existing moratoria prohibiting new firms from engaging in the leverage business and new products from being the subject of leverage contracts. It is anticipated that during the interim period, the Commission would adopt regulations governing the offer and sale of leverage contracts by those firms that are not subject to the statutory moratoria. It bears emphasis that without the moratoria in place it could be expected that new firms may begin to market leverage contracts. See 43 Fed. Reg. 56885, 56886 and n.3 (Dec. 5, 1978). As the Senate Committee on Agriculture, Nutrition, and Forestry recognized in its Report on the 1978 amendments to the Act (S. Rep. No. 850, 95th Cong., 2d Sess. 27 (1978)), leverage contracts are off-exchange instruments of a type which may be susceptible to schemes to defraud the public. Moreover, the moratoria will assure that new firms do not enter the business at considerable expense, and then face the possibilities of being banned or otherwise adversely affected by the Commission's ultimate decision or recommendations.

Most recently, representatives of firms who are now permitted under the Commission's moratoria to sell leverage contracts in certain commodities testified before the Subcommittee on Conservation, Credit and Rural Development that leverage contracts differ from exchange-traded futures contracts in a variety of ways. For example, they assert that leverage contracts do not serve any commercial

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hedging function, as do futures contracts. Rather, they contend, in essence, that leverage contracts are basically oriented to speculation on the price of the underlying commodity. Further, Louis Carabini, President of Monex International, Ltd., testified that leverage contracts differ from futures in terms of, among other things, their duration and the frequency of margin calls. As the foregoing shows, differing opinions exist over the nature of leverage contracts and their distinction, if any, from futures contracts even though they are off-exchange instruments.

2. Congressman Steven Gunderson requested that the Commission provide a brief description of the Reparations Program.

The Reparations Program was established within the Commodity Futures Trading Commission in April 1975 in order to provide a process through which people may seek relief in the event they have been wronged by conduct violating the Commodity Exchange Act. The concept of reparations in the futures field is set forth in Section 14 of the Act. Under that Section, any person may file a complaint seeking damages for alleged violations of the Act, or any CFTC rule or regulation, by any person required to be registered with the Commission. A reparations proceeding may be brought before an administrative law judge or any presiding officer designated by the Commission to hear evidence on the complaint, to determine if a respondent has committed violations of the Act and if and to what extent damages have been sustained.

The present CFTC Reparations System is organized into three separate units: the Complaints Section, the Hearings Section, and the Opinions Section. The three organizations work on the same cases, to a considerable extent, but at different points in the process.

The Complaints Section serves as a clearinghouse for all complaints of customers against any person or entity required to register with the Commission, and determines if petitions have been filed in accordance with the Commission's reparations rules and if a valid cause of action has been stated. Once such a determination has been made, complaints are forwarded to the appropriate party respondent for an answer or settlement. If there is no settlement or satisfaction of the complaint, the matter is then forwarded for proceedings before an Administrative Law Judge or Hearing Officer in the Hearings Section.

The Hearings Section conducts all formal evidentiary hearings required by the Commodity Exchange Act. Hearings are held in connection with disciplinary proceedings brought by the Division of Enforcement at the Commission's request against individuals, firms, or other organizations for alleged breaches of the Act or the rules and regulations of the Commission, as well as in connection with reparations proceedings brought by aggrieved customers against commodity professionals for alleged violations of provisions of the Act.

The Opinions Section manages the Commission's appellate docket of adjudicatory matters. The Section prepares, with the advice and concurrence of the General Counsel, background memoranda, opinions and orders related to adjudicatory cases that come before the Commission on petitions for review of the decisions of the Administrative Law Judges or Hearing Officers. Under the reparations

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rules, whether the Commission will take review of an appeal is a matter committed to the Commission's discretion. Final decisions in reparations are appealable to the United States Courts of Appeal.

The CFTC has just restructured the Complaints Section to include the Hearing Clerk's Office. This, plus other changes we have included in our legislative proposals, will enable the reparation complaints to be processed to completion on a much more timely basis.

Despite large numbers of reparation complaints received, the processing time has steadily improved:

n1 From initial filing to deposition by the Complaints Section.

n2 After forwarding by Complaints Section to assignment to a presiding officer (administrative law judge or hearing officer).

For fiscal year 1981, the reparation cases disposed of were:

Reparations cases disposed of in fiscal year 1981 by Complaints Section

At the same time the number of reparation cases received by the Hearings Section and the number pending has increased:

REPARATION CASES FORWARDED FOR HEARINGS

Reparation cases disposed of in fiscal year 1981 by Hearings Section

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OPINIONS SECTION REPARATIONS STATISTICS

The Commission is pleased to submit this information for inclusion in the record. If you or members of your staff have additional questions, I would be pleased to provide such information, as you request.

Sincerely,

PHILIP MCB. JOHNSON, *Chairman.*

Technical amendment

Sec. 235. This section corrects a legislative oversight by redesignating as section 20, section 19 of the Commodity Exchange Act that was added by section 302 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2673), and that relates to certain bankruptcy issues. This section inadvertently now has the same section designation as the section relating to leverage contracts.

Private rights of action

Sec. 236. This section amends the Commodity Exchange Act to provide a new section 22 governing private rights of action.

Subsection (a) governs private rights of action against any person (other than a contract market, clearing organization of a contract market, licensed board of trade, or registered futures association) who violates the Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act. It provides that such person shall be liable for actual damages resulting from one or more of the transactions referred to in the following clauses (A) through (D) and caused by such violation to any other person:

(A) who received trading advice from such person for a fee;

(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity) on or subject to the rules of any contract market or other board of trade; or who deposited with such person money, securities or property (or incurred debt in lieu thereof) in connection with any order to make such contract;

(C) who purchased or sold or placed an order for the purchase or sale of: (i) an option subject to section 4c(d) of the Act; (ii) an option subject to section 4c(b) of the Act (other than an option purchased or sold on a contract market or other board of trade); (iii) a contract subject to section 19 of the Act; (iv) an interest or participation in a commodity pool; or

(D) who purchased or sold a contract referred to in clause (B) if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

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It also provides that the rights of action authorized by subsection (a) and the reparations provisions in section 14 of the Act shall be the exclusive remedies under the Act available to any person that sustains loss as a result of any alleged violation of this Act. This section, however, does not limit or abridge the rights of the parties to agree in advance of a dispute upon the forum for resolving claims under this section, including arbitration.

Subsection (b)(1) authorizes a private right of action against (A) a contract market or clearing organization of a contract market that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of the designation of the contract market under section 5 of the Act or any amendment to such bylaw, rule, regulation or resolution, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of its license or any amendment to such bylaw, rule, regulation or resolution, or (C) any contract market, clearing organization of a contract market or licensed board of trade that in enforcing any such bylaw, rule, regulation or

resolution violates this Act or any Commission rule, regulation or order. It provides that such persons shall be liable for actual damages sustained by a person that engaged in transactions on or subject to the rules of such contract market or licensed board of trade to the extent of the actual losses that resulted from such transactions and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations or resolutions.

Subsection (b)(2) provides that a registered futures association that fails to enforce any bylaw or rule that is required under section 17 of the Act or in enforcing any such bylaw or rule violates this Act or any Commission rule, regulation or order shall be liable for actual damages sustained by a person that engaged in transactions specified in subsection (a) of this section to the extent of such person's actual losses resulting from such transactions and caused by such failure to enforce or enforcement of such bylaw or rule.

Subsection (b)(3) authorizes a private cause of action against any individual who, in the capacity as an officer, director, governor, committee member or employee of a contract market, licensed board of trade, or a registered futures association willfully aids, abets, counsels, induces or procures any failure by such contract market, clearing organization, or registered futures association to enforce (or any violation of the Act in enforcing) any bylaw, rule, regulation or resolution referred to in paragraph (1) or (2) of this subsection. Such person shall be liable for actual damages sustained by a person that engaged in transactions specified in subsection (a) of this section on, or subject to the rules of, such contract market, licensed board of trade, or in the case of an officer, director, governor, committee member or employee of a registered futures association, transactions specified in subsection (a) of this section. In either case the liability would be to the extent of the actual losses resulting from such transactions caused by such failure or violation.

Subsection (b)(4) provides a condition to recovery under the subsection that a person seeking to enforce liability under this section must establish that the person against whom an action is brought

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acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

Subsection (b)(5) provides that the rights of action authorized by this subsection shall be the exclusive remedy under this Act available to any person that sustains a loss as a result of (A) the alleged failure by the person against whom recovery is sought to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action that is alleged to have violated this Act, or any Commission rule, regulation or order.

Subsection (c) confers on the United States district courts exclusive jurisdiction of actions brought under this section. Any such action must be brought within two years after the date the cause of action accrued.

Subsection (d) makes the provisions of this section effective with respect to causes of action accruing on or after the date of enactment of the bill. The enactment of the bill does not affect any right of any parties which may exist with respect to causes of action accruing prior to such date.

Special study of the commodity futures industry

Sec. 237. This section amends the Commodity Exchange Act to add as new section 23.

Subsection (a) requires the Commission to organize and lead, with the assistance of the Securities and Exchange Commission, the Federal Reserve, and the Department of the Treasury, a study and investigation of the structure, participation, uses and effects of trading of futures and related instruments, such as options, on the economy. Among those areas to be studied are (i) the number, types, and characteristics of futures market speculators, arbitrageurs, and hedgers, the purposes for which these participants utilize futures markets, and the financial resources devoted to each of

these activities; (ii) the impact of futures market speculation on the accuracy, liquidity, and stability of cash and futures prices and the conditions under which speculation may have adverse effects on these objectives, particularly with respect to the increased volume of financial futures and other nontraditional futures; (iii) the consequences that present and anticipated volumes of trading in futures have, if any, on formation of real capital in the economy, particularly that of a long-term nature, the structure of liquidity in credit markets, interest rates and inflation; and (iv) the sufficiency of the public policy tools available to the Commission or other agencies to limit or curtail any activity which is found likely to have a harmful effect on national economic goals. The report of the results of this study must be transmitted to Congress not later than September 30, 1984, and include an assessment of the impacts of these activities and recommendations for any legislative and regulatory changes. There is included specific authorization of appropriations for such funds as may be necessary to carry out the study since it is expected that the study will be a comprehensive effort that may require additional resources for the Commission.

Subsection (b) provides for a pilot program relating to stock index futures contracts. It requires that for the period beginning with the date of enactment of the bill and ending September 30,

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1984, all stock index futures contracts approved by the Commission, either prior or subsequent to the date of enactment of the bill, shall be subject to a pilot program. Such pilot program shall, at a minimum, include close monitoring by the Commission of the contracts, including the assessment of the impact if any of such contracts on the markets in the underlying securities and the effect if any of the contracts on the capital formation process. Not later than 120 days following the expiration of the pilot program, the Commission must report to the Committee on Agriculture of the House of Representatives and Committee on Agriculture, Nutrition, and Forestry of the United States Senate its findings and conclusions with respect to the economic purposes being served by the contracts and any effect of such contracts on underlying markets in securities or capital formation. If such report concludes that the adverse effects on the underlying markets in securities or capital formation resulting from trading in the stock index futures contracts outweigh any benefits provided by the contracts' hedging or risk-management function, the Commission must include in the report its plans for the orderly withdrawal of approval for all stock index futures contracts.

National Futures Association study and transaction fees

Sec. 238. This section amends section 26 of the Futures Trading Act of 1978 to require a study of the operations of the National Futures Association during the period beginning January 1, 1983, and ending December 31, 1984, and submission to Congress of a report on the results of the study. During the period of the study and for the balance of the session of Congress in which the report is submitted, no user fees could be recommended by the Commission pursuant to section 26 of the Futures Trading Act of 1978 (the 1978 reauthorization law) or implemented pursuant to any law. Under this amendment the Commission can continue to charge appropriate fees for services currently rendered such as registration, reparations, adjudication or informational activities or services.

The report must be submitted not later than March 1, 1985, and must include (but not be limited to) the following --

- (1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission under section 17 (p) and (q) of this Act and the effectiveness of the operation of such program;
- (2) the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;
- (3) the actual and projected costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;
- (4) problem areas, if any, encountered by the Association;

(5) the nature of the working relationship between the Association and the Commission;

(6) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Association; and

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(7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

If the Commission should recommend the imposition of user fees at any time after the end of the session in which the Commission has submitted the report to Congress on the National Futures Association, such recommendation at a minimum must be accompanied by data and studies measuring the relative benefit to commodity professionals, as well as to the general public, of the functions of the nation's commodity markets and of Federal commodity regulation, and the effect of the proposed fee or tax on United States contract market liquidity.

COMMITTEE CONSIDERATION

A. HEARINGS

Introduction

On February 23, 1982, Chairman Ed Jones of the Subcommittee on Conservation and Credit convened three days of hearings to consider H.R. 5447, legislation introduced by request to reauthorize the Commodity Futures Trading Commission (CFTC). Reauthorization of this agency was necessary because of the sunset provision in section 12(d) of the Commodity Exchange Act.

After brief opening statements, the Subcommittee heard testimony from the Chairman of the CFTC, Philip Johnson, the Comptroller General of the United States, Charles Bowsher, Representative Neal Smith, leaders of a number of commodity exchanges, representatives of various trade associations, spokesmen from several futures commission merchants and leverage contract firms and representatives of State securities commissions.

Most witnesses supported extension of the authority of the CFTC, while differing on how the reauthorization should be accomplished. Industry witnesses, for example, suggested that only fine tuning of the statute was needed; many, in fact, advocated an alternative proposal to accomplish this purpose, the Futures Trading Regulatory Improvements Act of 1982, which had been developed by a consortium of industry representatives. The CFTC, on the other hand, suggested its more comprehensive amendments, embodied in H.R. 5447, were necessary so that the agency could streamline its operations and more effectively perform its regulatory functions.

Subsequent to the hearings, the Subcommittee received correspondence from the Treasury Department endorsing the provisions of H.R. 5447. The Department of Agriculture also indicated general support for the legislation.

Several witnesses focused on specific provisions in the Commodity Exchange Act, such as the leverage contract section or the provisions regarding exclusive jurisdiction, while others testified about a broad range of topics. The testimony was both informative and illustrative of the kinds of issues the Subcommittee was asked to deal with during the reauthorization process.

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Reauthorization of the CFTC

While most witnesses agreed with the basic premise that the CFTC should be reauthorized, there was some disagreement as to how long the extension should be. H.R. 5447 calls for a four year renewal of the agency, and the

American Cotton Shippers Association advocated a reauthorization period of not more than five years in order to assure continuity of Congressional oversight. Representatives of the Kansas City Board of Trade, however, suggested that a six to ten year reauthorization would conserve the time and energy of both the industry and government. The National Association of Futures Trading Advisors agreed that the agency should be given a longer mandate in order to allow it to marshal its resources more effectively to improve protection of the public.

Jurisdictional agreement with SEC

Chairman Johnson outlined the CFTC's agreement with the Securities and Exchange Commission (SEC), which ended eight years of bickering between the two regulators. He noted that under the agreement, the CFTC would retain exclusive jurisdiction over all futures trading and all options on futures. The SEC would be given exclusive jurisdiction to regulate options on securities, while the two agencies would share responsibilities for options on foreign currencies.

While a number of witnesses seemed willing to go along with the two agencies' accord, reaction to the proposal was not wholly favorable. The President of the Chicago Board of Trade, Robert Wilmouth, for example, expressed the following concerns:

The rationale for maintaining the CFTC and SEC as two separate agencies has always been that the regulation of futures trading is the "horizontal regulation" of a function -- that is, the trading of risk-shifting instruments The function of the SEC since its formation has been to regulate and preserve the capital formation markets. The CFTC-SEC agreement to divide jurisdiction over certain risk-shifting instruments blurs this distinction . . . and . . . lays the foundation for attempts to merge the two agencies, which we think would be very unwise . . . and particularly dangerous to American agriculture.

This theme was echoed by Dr. Clayton Yeutter of the Chicago Mercantile Exchange who suggested that the "accord should be modified by Congress to preserve the traditional and logical distinctions between the agencies." John Conheaney of Merrill Lynch expressed similar sentiments when he urged that the SEC's role over commodity pools should be limited to capital formation activities. In a statement submitted for the record by ContiCommodity Services, that organization expressed opposition to any jurisdictional sharing of responsibility between the CFTC and the SEC.

Several witnesses expressed concern that the SEC role in reviewing stock index futures, as was provided for in the CFTC-SEC proposal, would serve to lengthen and complicate contract approval time. Moreover, a number of those appearing before the Subcommittee suggested that before it approved the jurisdictional accord,

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the Subcommittee should seek assurances from those House committees with jurisdiction over the securities industry that they, too, would endorse the agreement.

Exclusive jurisdiction -- the role of the States

Chairman Johnson outlined two revisions in H.R. 5447 designed to provide for a greater enforcement role for the States while preserving the CFTC's exclusive jurisdiction over futures trading: an "open season" provision and an information sharing section. Under the open season provision, "every Federal and State law enforcement agency would be empowered to use any available law, regulation, ordinance or other tool . . . to attack off-exchange frauds masquerading as 'commodity' investments" Additionally, the States would be authorized to proceed against persons who failed to register with the CFTC. The information sharing section would allow the CFTC to share, for law enforcement purposes only, confidential data the States might use in policing commodity frauds. Chairman Johnson made clear, however, that these provisions were not intended to alter the existing exclusive jurisdiction of his agency with respect to the regulation of registered firms, such as registered commodity pool operators.

The Commission's proposal garnered some support. Particularly with regard to commodity pools, several witnesses

agreed that the CFTC should be given explicit exclusive jurisdiction. The agency's suggestions were criticized by a panel of State securities commissioners, however, who suggested that Congress should go further in defining an enforcement role for the States, to include authority over exchange as well as off-exchange transactions. This panel also urged Congress to give the States concurrent jurisdiction over registration of persons dealing in leverage contracts.

The State securities commissioners' proposal was opposed by at least one industry organization, ContiCommodity Services, which argued that "[a]ny regulation of the industry by the states would merely duplicate existing regulation and would likely subject the industry to conflicting standards governing the same conduct." Additionally, the President of the International Futures Exchange (INTEX) of Bermuda asked the Subcommittee to modify the language in the open season provision of H.R. 5447 to make clear that foreign futures would be subject to CFTC's exclusive jurisdiction and not to State oversight. A witness speaking on behalf of several London exchanges reiterated this view, suggesting that the open season provision could "raise serious problems of extraterritoriality" and "create a significant barrier to free international trade." The London exchanges also took the position that the information sharing section of the bill should be deleted because the problems in protecting confidentiality of trade information were too serious to outweigh any of the proposal's benefits.

User fees

By far, the issue which engendered the most debate was the topic of user fees. The CFTC proposed a transaction fee to be paid by market users. The rate of the assessment would vary, however, depending on whether or not the user is a member of a self-regulatory organization, such as the National Futures Association (NFA).

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For each futures contract or option made for the benefit of any person who is not a member of a self-regulatory group, the fee would be 12 cents per side; for each contract or option made for the benefit of any person who is a member of a self-regulatory group, the fee would be 6 cents per side. For dealer options and leverage contracts, the fees would be \$ 3 for each. Under the CFTC plan, all fees would be remitted directly to the U.S. Treasury.

The agency asked for authority to suspend the assessment of these fees when the amounts collected exceed the Commission's current budget for the fiscal year or if the Commission finds that the fees are having a significant adverse effect on the operations of either the markets or any person. Additionally, the agency plans to establish an advisory committee of affected market users to study the user fee system and report to Congress about it by June 30, 1985.

There was some support for the concept of user fees, although not necessarily for the agency's proposal. While he made no recommendations on the CFTC's user fee proposal, the Comptroller General, testifying on the basis of a General Accounting Office audit, recommended that a one-time charge be assessed against exchanges for contract approvals. The American Farm Bureau Federation presented a statement favoring a modified user fee. A witness speaking on behalf of this organization suggested that:

We will support a user fee schedule for the CFTC in which there is a more direct relationship between the fee and the benefit, i.e., a fee on contract registration, company and individual registration, and audits. We will also support a user fee on each transaction if it is designed to recover the regulatory cost of the transaction only, and if a cap is placed on the total amount of collections.

Officials from the Kansas City Board of Trade made a similar suggestion when they urged Congress to consider:

[S]egregating the CFTC's budgeted expenditures which relate to market surveillance in the "public interest" and funding those expenditures through congressional appropriation, at the same time establishing realistic users fees which relate solely to specific services provided by the CFTC, such as registration of brokers and associated persons, new contract proposals by exchanges, etc.

The National Cattlemen's Association argued that user fees should be phased in and that a portion of the amount collected should be ear-marked for research of importance to the contract on which the fees were collected.

Most other witnesses were vehement in their opposition to the notion of users fees. Speaking for the newly-created National Futures Association (NFA), Leo Melamed argued that the user fee proposal would "deprive the NFA of its funding base, destroying the underlying reasons for its creation . . . and remove the single most effective incentive of a self-regulatory organization -- to prevent duplicative oppressive regulation." Other witnesses argued that user fees would have serious repercussions, discouraging traders from the markets and thus reducing the effectiveness of the

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markets' functions. Several witnesses argued that the ultimate costs of user fees would be borne by producers who can ill-afford this additional burden. Additionally, several people pointed out that since the general public benefits from futures markets, the public should share the costs of regulating.

Regulatory powers: Margins, speculative limits, contract approvals, emergency authority to intervene

A number of witnesses addressed issues concerning the regulatory weapons of the CFTC, including margin setting authority, power to set speculative limits and the process by which contracts are approved for trading.

Although the CFTC did not ask for margin setting authority, several witnesses discussed this power. The Chairman of the National Affairs Committee of the Independent Bakers Association (IBA), for example, urged Congress to give the CFTC authority to set margins for nonbusiness-related speculation in order to protect smaller market users. The IBA also recommended that the CFTC be empowered to curb hedgers from buying and selling futures in excess of their business-related needs. The group did suggest that professional traders whose actions are required for orderly markets be exempt from this curb. The Futures Industry Association, on the other hand, argued that no Federal agency should be given margin setting authority since the exchanges were best suited to exercise this authority. A witness for COMEX suggested that shifting margin setting authority to a Federal agency "could only lead to drastically increased costs and disastrous effects on futures markets."

The American Agriculture Movement presented a statement arguing that the CFTC has failed to perform its regulatory mission because it has "defaulted in its responsibility to effectively limit or to abolish speculative short selling of the commodities as required by the Act of Congress."

Chairman Johnson of the CFTC noted that while the Commission has required by rulemaking that contract markets adopt speculative position limits on the contracts they trade, the agency was asking Congress to approve both the authority of the CFTC to set position limits by rulemaking and language specifying that the limits set by exchanges may not differ from those set by the Commission, unless the CFTC approves. Under the CFTC's proposal, a violation of an exchange position limit would also be a violation of the Commodity Exchange Act.

Many of the exchange witnesses agreed with one characterization of this proposal as "dubious at best." They argued that giving the CFTC this power would be an unwarranted expansion of agency powers at a time when deregulation rather than increased agency intervention should be the goal.

The CFTC did not ask Congress for language delimiting the time within which new contracts must be approved, but such a time limit was advocated by a number of witnesses, particularly those representing the exchanges. The President of the Chicago Board of Trade also suggested that new contracts be approved on the basis of a "hedging or risk management" test, rather than on the basis of a "public interest" test. Representative Neal Smith questioned

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the current approval process and suggested that Congress may want to make clear that the CFTC has the authority to

turn down new contracts, particularly any which do not involve significant amounts of bona fide hedging. The GAO also made suggestions to improve the contract approval process. The agency advocated, for example, that the CFTC should undertake a systematic review of existing contracts to determine that they provide for price discovery or risk shifting and protect against price manipulation and market congestion.

On another issue, most of the industry witnesses suggested that Congress should specifically provide for judicial review of CFTC decisions which make use of the agency's emergency powers. The CFTC, on the other hand, did not seek any change in current law under which courts have held that such decisions are not subject to judicial review. Some other witnesses, agreed with the CFTC's position. The National Farmer's Union, for example, likened the imposition of judicial review on the emergency power authority to "passing a 55 mile per hour speed limit with no violation penalty."

Reparations

While there appeared to be agreement that the commodity reparations program has not functioned as intended, the witnesses who addressed this point indicated some disagreement on how the program should be restructured. The Commission asked to delete from the coverage of reparations those commodity professionals not registered with the Commission although "required to be registered" under the Act because of severe problems it has had in obtaining jurisdiction over such "outlaw firms." The agency also sought to eliminate the need for full evidentiary hearings for claims in excess of \$ 5,000 and to delete the requirements of the Administrative Procedure Act which governs the conduct of reparation hearings. Concurrently, the agency proposed that the \$ 15,000 limit on disputes subject to arbitration be lifted to encourage the use of this dispute resolution mechanism.

The GAO also advocated that the CFTC make arbitration a more attractive alternative to reparations, but under its proposal, the dollar limit for arbitration claims would not be lifted, but merely increased to \$ 25,000. The GAO, however, would give the CFTC authority to raise the limit to reflect changes in the Consumer Price Index to a maximum of \$ 50,000. The GAO also urged Congress to clarify whether a private right of action exists under the Commodity Exchange Act while representatives of COMEX opposed any attempt by Congress to resolve this issue, at least until the Supreme Court rules on four pending cases which raise the question.

A representative of a subcommittee of the Committee on Commodities Regulation of the Association of the Bar of the City of New York, argued for a two-tiered reparations program. Under this program, claims under \$ 10,000 would be handled through an agency-administrated arbitration forum at least until the National Futures Association could assume the duties involved in such a program. For claims in excess of \$ 10,000, however, full hearings before an administrative law judge would be required.

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Agricultural options

Several witnesses testified on the issue of whether the ban on agricultural options trading should be revoked. The CFTC made no recommendation on this issue. The National Grain and Feed Association indicated that while they might support agricultural options at some future time, "at this particular time . . . we believe it would not be appropriate to introduce such legislation." This concern was echoed by the National Farmers Union, although the American Farm Bureau Federation indicated support for an options program for farm commodities. The Department of Agriculture advised the Subcommittee that it endorsed a removal of the existing ban on agricultural options, provided that no new program be initiated until after the CFTC and the commodity exchanges have completed their pilot program on options trading in other commodities. The Department believes that if that pilot program is successful and if procedures are developed to control trading abuses, agricultural options might be a benefit to producers, particularly small and medium size operators.

Leverage contracts

The CFTC's proposal for reauthorization includes a provision which would extend for two years the existing moratorium on the entry of new leverage firms and the introduction of new leverage contracts, until the completion of a study of the issue. Several witnesses appeared specifically to challenge this section of the agency's bill, arguing that the additional two year moratorium is unwarranted and an abuse by the CFTC of a clear mandate from Congress to regulate these instruments.

Standards of liability

In H.R. 5447, the CFTC asked Congress for authority to make clear that any person who controls, directly or indirectly, any other person or entity which violates the Act, would himself be liable as a principal unless he did not know nor had reason to know of the facts constituting a violation. This proposal met with strong resistance from many witnesses who argued that the imposition of liability should not be allowed for mere negligence or inadvertence and that the section would cause serious problems for parent companies who could be held liable for activities by their separate subsidiaries.

Introducing brokers

The agency has also asked Congress for authority to require persons who act as agents for futures commission merchants in making sales to the public or accepting orders for transactions on exchanges but who do not handle customer funds to register as associated persons of futures commission merchants (FCMs). A number of individuals spoke in opposition to the agency's change in status for these people, arguing that the revision is not only anticompetitive, but that it would eliminate many small businesses from the industry.

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B. SUBCOMMITTEE MARKUP

The Subcommittee on Conservation, Credit, and Rural Development on March 30, 31 and April 1, 1982, held three days of markup sessions on a bill to reauthorize the Commodity Futures Trading Commission (CFTC).

At the time of markup the Subcommittee had before it a Committee Print which contained the provisions of H.R. 5447 (the bill recommended by the Commodity Futures Trading Commission and introduced on request by Mr. Jones (Tenn.)) and the legislative proposals of each of the witnesses that had testified at the hearings. Following is a summary of the proceedings during markup and the position taken by the Subcommittee on each of the issues contained in the Committee Print. The reference to the industry proposal is to legislation proposed jointly by the major commodity exchanges, the National Futures Association and several futures commission merchants.

Reauthorization

The Subcommittee considered two proposals. The first contained in H.R. 5447 would reauthorize the CFTC for four years and the second would reauthorize the Commission for six years. The CFTC supported the first proposal. The six-year proposed authorization was supported by the National Futures Association. Mr. English offered an amendment for a six-year reauthorization. Mr. Glickman moved to amend the English amendment to provide instead for a four-year reauthorization period. By voice vote the Subcommittee approved reauthorization for a term of four years.

Jurisdiction

1. Futures contracts and commodity options

The next issue dealt with by the Subcommittee concerned the jurisdiction of the CFTC. Two amendments were considered. The provisions contained in H.R. 5447 codifies a jurisdictional accord recommended jointly by the CFTC

and the Securities and Exchange Commission (SEC). This amendment would continue CFTC exclusive jurisdiction over commodity futures contracts (including options on futures) except as provided below.

Under the accord, there would be no CFTC jurisdiction over options on securities. However, it specifically continues CFTC exclusive jurisdiction over futures contracts (and options on such contracts) on a group or index of securities, and sets forth specific standards applicable to such contracts which must be met before designation. (Settlement must be by cash or by means other than a security (except an exempted security); trading could not be readily susceptible to price manipulation; and the index must be broad-based.) It also provides for public comment and SEC consultation on applications. If the SEC objects to designation, it provides for SEC oral hearing before the CFTC, and if there should be CFTC designation over SEC objection, it gives SEC the right of judicial review.

It continues CFTC exclusive jurisdiction on futures and options on futures involving exempted securities (other than municipal securities).

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It prohibits futures (or options on futures) on individual corporate bonds or securities, or municipal securities. (No such futures are presently traded, and none would be permitted until the appropriate allocation of regulatory authority is determined.)

It specifically provides that nothing in the Act applies to options on foreign currency traded on a national securities exchange. (The effect of the proposal is to permit trading of options on foreign currency on both commodity exchanges and stock exchanges.)

The second proposed amendment was supported by the North American Securities Administrators Association. The amendment as proposed by NASAA limits the scope of CFTC exclusive jurisdiction to (1) option transactions within section 4c of the Act and (2) registration and designation of contract markets and clearing organizations and of sales personnel where accounts, agreements, and transactions involve futures contracts traded or executed on a contract market designated by CFTC.

Mr. Glickman questioned Mr. Johnson, Chairman of the Commodity Futures Trading Commission, whose comments reflected the position of the Commission, about the effect of a Seventh Circuit Court of Appeals decision in the case of *Board of Trade of the City of Chicago v. Securities and Exchange Commission and Chicago Board of Options Exchange*. That case held that the SEC had no jurisdiction of its own to permit trading in Government National Mortgage Association (GNMA) options, that such trading was under the exclusive jurisdiction of the CFTC. Its opinion indicated that this view extended to options in nontraditional securities such as GNMA's which were exempt from many of the provisions of the Federal Securities Acts that apply to traditional stocks. Mr. Johnson stated that the CFTC supported the jurisdictional accord notwithstanding the Court of Appeals decision. Mr. Bedell expressed his concern over the possibility that CFTC might allow the trading of futures on individual securities. Mr. Johnson of the CFTC stated that the proposal before the Subcommittee does not allow for the trading of futures on individual securities.

The proposed amendment would grant the SEC an oral hearing in which to voice its views on proposed designations of futures contracts. Mr. Panetta questioned Mr. Johnson on the characteristics of such a hearing. Mr. Johnson responded that the hearing would not be an adversary proceeding but rather a hearing that resulted in a transcript and a record that would be available to a court of appeals if the SEC wished to seek judicial review of a CFTC designation over SEC objection.

Mr. Glickman moved the adoption of the CFTC proposal as contained in H.R. 5447. The proposed amendment was adopted by voice vote.

2. Commodity pools

Two proposed amendments concerned with the CFTC's jurisdiction over commodity pools were then considered by the Subcommittee. The proposed amendments contained in H.R. 5447 and supported by CFTC would make explicit that the Act, including CFTC exclusive jurisdiction, does not affect the applicability of the pertinent provisions of the Federal Securities laws of 1933 and 1934 governing securities issued to the public by commodity pools. In their

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joint explanatory statement the SEC and CFTC indicated that this provision "would not affect the exclusive jurisdiction granted by the Commodity Exchange Act with respect to State regulation."

The second proposed amendment suggested by the New York Bar differed from the CFTC amendment in that it would add a proviso that would expressly preclude qualification or substantive regulation of commodity pools by the States under their Blue Sky laws.

Mr. Johnson, when questioned by the Subcommittee, stated that under the proposed amendment supported by CFTC, the Commission had exclusive jurisdiction over commodity pools even without the proviso suggested by the New York Bar. Mr. Bedell then offered the amendment contained in H.R. 5447. Mr. Coleman offered an amendment to the amendment which added the proviso recommended by the New York Bar Association. Mr. Glickman commented that the Coleman amendment would take away certain presently existing States' rights to require registration of commodity pool operators. The Coleman amendment was defeated by a show of hands vote.

It was then suggested that support for the Bedell amendment would be inconsistent with the CFTC intention to deny States the right to register commodity pools in view of the negative vote on the Coleman amendment. Mr. English stated that such would not be the case because the members could be voting on a language preference rather than intent. The Bedell amendment was passed by a voice vote.

3. Role of the States

The Committee next dealt with proposals by the CFTC, as contained in H.R. 5447, and by the North American Securities Administrators Association. The CFTC proposal would permit any Federal or State law to be applied to activities and persons who do not obtain required registration or designation by the CFTC or who otherwise unlawfully engage in commodity transactions outside the Act's regulatory structure such as off-exchange futures or other commodity investments. This provision does not apply to exchange-traded futures, authorized commodity options, and regulated leverage contracts which remain subject to exclusive CFTC regulation.

The North American Securities Administrators Association proposal consisted of two provisions. The first adds a section 12(e) to the Act similar to section 19(b) of H.R. 5447, except that it permits application of State law to any person who "but for his failure or refusal to obtain registration or designation" would be under exclusive jurisdiction of CFTC, unless such person were a floor broker, clearinghouse, or contract market, therefore eliminating any need for inquiry as to whether such person is required to register with CFTC.

The second provision expands section 6d(7) of the Act to permit a State, notwithstanding any provision in the Act, to proceed in a State administrative proceeding as well as State court, under a commodities or securities antifraud statute as well as a general antifraud statute, except with respect to a contract market, clearinghouse, or floor broker over which CFTC would retain exclusive jurisdiction.

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Mr. English then offered the amendment proposed in H.R. 5447 with a modification to recognize that legitimate activities by boards of trade, exchanges or markets outside the United States would not be affected by this provision. Mr. English's amendment was adopted, and Mr. Glickman then moved to add language to insure that criminal prosecution under Federal statutes would not be impaired. The Glickman insertion was unanimously adopted. The

entire proposed amendment contained in H.R. 5447 as amended by Mr. English and Mr. Glickman was then adopted by voice vote.

Agricultural options

Mr. Fithian and Mr. Evans offered an amendment which would allow the trading of options on agricultural commodities. Mr. Fithian stated that the amendment would provide authorization for a pilot program in options on agricultural commodities limited to one per exchange. Mr. Evans stated that after the testing period of options in the agricultural market, the amendment would allow for a lifting of the ban on options trading in agricultural commodities.

Mr. Johnson was asked as to how the pilot program would be administered. He responded that the exchanges would select their own commodities and that it was presently contemplated that an exchange would not be allowed to trade options unless futures contracts in the underlying commodity were traded on the exchange. The amendment was adopted by a unanimous voice vote.

Definition of commodity trading advisor

The Subcommittee next considered the proposal in H.R. 5447 which excludes from the definition of a commodity trading advisor any person who gives advice or issues reports or analyses only with respect to cash commodities or their value although it may include within or exclude from the definition of commodity trading advisor persons as necessary to effectuate the purposes of the provision.

It also extends the current exclusions from the definition of a commodity trading advisor to the electronic media and to trustees of certain pension plans subject to the Employee Retirement Income Security Act of 1974 if the furnishing of trading advice by such persons is solely incidental to the conduct of their business or profession.

Mr. Glickman offered the amendment as proposed. Mr. Evans offered an amendment to the Glickman amendment also to exclude individual bank loan officers. Mr. Evans' amendment was unanimously adopted. Mr. Glickman then moved the adoption of his amendment, as amended. The motion was unanimously approved.

The Subcommittee moved on to consider a proposal in H.R. 5447 which combines and simplifies the cited provisions of section 4 and 4h(1) of the Act, and expressly authorizes CFTC to promulgate regulations governing the offer and sale of foreign futures by any person located in the United States.

Mr. English offered an amendment to this CFTC proposed amendment. The English amendment provides authority for the Commission to adopt rules proscribing fraud, requiring the keeping of books and records, safeguarding of customer funds, and registration of any person in the United States trading in futures on a foreign exchange. The Commission could not, however, impose requirement

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on any contracts traded on foreign exchanges or require approval of any such contract. Mr. English then requested unanimous consent to include the language which would allow the Commission to distinguish in its rules between different foreign markets. Mr. Glickman moved the adoption of the English amendment as amended. The amendment was unanimously adopted by voice vote.

Legislative findings

The Subcommittee next considered a proposed amendment by the industry to section 3 that the legislative findings that futures contracts are affected with a national public interest also applies to transactions in commodity options. It also would delete findings that transactions and prices of commodities on boards of trade are susceptible to speculation, manipulation, and control which cause sudden or unreasonable detrimental price fluctuations constituting a burden on

interstate commerce, and render regulation imperative for protection of such commerce and the public interest.

Members supported extension of the findings to apply to options transactions. Discussion then ensued concerning the balance of the provision. The legislative findings proposal was adopted by voice vote.

Speculative limits

The Subcommittee next considered proposals by the CFTC and the industry. The proposal in H.R. 5447 would authorize the CFTC to establish speculative limits by rulemaking, as well as by order, after notice and hearing. It expressly permits contract markets and other licensed exchanges to set speculative limits for futures or options transactions. If the CFTC has established such limits, exchange limits may not be different except with CFTC approval. It would make a violation of speculative limits set by an exchange a violation of the act if an exchange limit has been approved by the CFTC.

The industry proposal would limit CFTC authority regarding speculative limits to requiring contract markets to amend their rules regarding such limits if necessary to prevent or diminish manipulation, corners, or squeezes. Under this proposal, the CFTC may require such amendments by order after notice and a hearing on the record, and in connection therewith, CFTC must consider volume of trading, open interest, and opportunity for arbitrage between futures and other markets and make findings that, with respect to each such factor, such limit is necessary to prevent manipulation, corners, or squeezes.

Mr. Evans offered an amendment to the proposal in H.R. 5447 that would permit the Commission to vary its speculative limits according to time remaining in the final month of a contract until final expiration of the contract. The Evans amendment would not change the conditions under which speculative limits are established but would allow different speculative limits to be set during the life of the contract. In response to a question, Mr. Evans made clear that his amendment would not allow for setting speculative limits retroactively. Mr. Johnson in response to a question stated

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that the Commission would favor the granting of such authority. The Evans amendment was unanimously adopted by voice vote.

Mr. Glickman then offered an amendment to grant the Commission the power to set speculative limits retroactively during an emergency. Mr. Johnson expressed the support of the CFTC for such an authorization. The amendment was unanimously adopted by voice vote. Mr. Jeffords moved that the CFTC proposed amendment as amended by the Glickman and Evans amendments be adopted. The motion was adopted by voice vote.

Large trader reports

The Subcommittee next considered a proposal in H.R. 5447 that clarifies that even if CFTC eliminates routine reporting requirements for large traders, persons whose trades or positions in any cash commodity or futures equal or exceed levels set by CFTC must keep books and records and allow inspection of books and records relating to futures and related cash transactions. The amendment was approved by voice vote.

The Subcommittee later returned to this issue at which time Mr. Harkins proposed a two-part amendment. First, he sought to allow contract markets to set speculative limits lower but not higher than those set by the Commission so that contract markets would have the authority to reduce speculative limits quickly if necessary. The Harkin amendment was in response to the Hunt silver episode. The second part of Mr. Harkin's amendment would prevent inadvertent speculative limit violations from being classified as criminal violations. Mr. Harkins sought to accomplish this objective by classifying as criminal only those violations where there was an attempt to manipulate, corner, or squeeze the market. Mr. Evans was of the view that Mr. Harkin's objective could be achieved without so broad a limitation on

criminal liability and to that end offered language which would make only "knowing" violations of speculative limits subject to criminal penalties.

Mr. Harkin agreed to the Evans language as a substitute for the second part of his proposal. The Harkin amendment was then unanimously adopted by voice vote.

Registration

1. Extension of associated person category

The Subcommittee considered a proposal in H.R. 5447 which requires registration of principals and employees of commodity pool operators and commodity trading advisors as associated persons of such entities when the principals or employees are involved in solicitation of funds, securities or property for participation in a commodity pool or the supervision of persons so engaged.

Mr. Johnson recommended including within the provisions at issue persons acting as consultants to a commodity pool operator or a trading advisor. Mr. English offered an amendment which would include consultants. It was unanimously accepted. The registration section as amended was adopted by voice vote.

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2. Term of registration of associated persons

The Subcommittee next considered a proposal in H.R. 5447 that would allow the Commission to prescribe the effective period for registration of associated persons of futures commission merchants instead of having the registration for a term not to exceed 2 years as in current law. Mr. Johnson stated that the Commission would like to have authority to make registration of associated persons permanent so long as such persons remain with the same employer. This would allow the Commission to avoid the duty and expense of reregistering periodically. Mr. Richmond moved the amendment, and it was adopted by voice vote.

3. Registration of agents as associated persons

Under current law, futures commission merchants may conduct sales efforts through agents. These agents are not required to register with the Commission. H.R. 5447 contained an amendment which would require such agents to register with the Commission as associated persons of futures commission merchants. The effect of this registration would make the futures commission merchants responsible for the conduct of their agents. The industry and commodity section of the American Bar Association would provide for registration of agents, not as associated persons, but as a separate category of persons called "introducing brokers". Employees of the agents would register as associated persons of introducing brokers. Mr. Glickman stated that if the Subcommittee decided to create an "introducing broker" category as requested by industry the effect might be to insulate a futures commission merchant from liability for acts committed by the introducing brokers. Such an effect he added might not be in the public interest.

Mr. Johnson agreed with Mr. Glickman's assessment. He added that the introducing broker approach requested by industry would make the agent an independent contractor. As an independent contractor an agent would be liable for his own acts. Under the CFTC approach of registering agents as associated persons, the futures commission merchant would be responsible as if the agent were operating as a branch office employee. Mr. Glickman moved the CFTC amendment, and it was unanimously adopted by voice vote.

4. Testing

Under current law CFTC has specific authority to establish a proficiency examination for futures commission merchants, floor brokers and persons associated with them. H.R. 5447 contained a proposal for an extension of this

authority to all persons who are required to register with the CFTC. The General Accounting Office (GAO) made a similar proposal but limited its suggested extension of testing authority to commodity pool operators and commodity trading advisors. Mr. Richmond suggested that it might be worthwhile to indicate in the language of the bill that the National Futures Association should test salesmen.

Mr. Glickman indicated that he would offer a later amendment to mandate testing by the National Futures Association. He also pointed out that the proposed amendment was necessary because some people required to register with CFTC would not be covered

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by the National Futures Association. Mr. Johnson stated that floor brokers were an example of such individuals because they would not be likely to join the National Futures Association. Mr. Glickman moved the adoption of the amendment contained in H.R. 5447. The amendment was agreed to by voice vote.

The Subcommittee next considered a proposal offered by the North American Securities Administrators Association. The proposal would add a new section 4q to the Act which requires all registered or regulated futures commission merchants, commodity pool operators, commodity trading advisors and associated persons thereof to indicate to CFTC the States in which they are operating, and for CFTC to notify appropriate State official of registration. It would give the appropriate State official standing to petition the Commission to suspend or revoke the registration of such registrants, in which event the CFTC must promptly determine if cause to revoke or suspend exists.

Mr. Jeffords then inquired of Mr. Johnson as to the CFTC position with regard to the States' proposal. Mr. Johnson indicated that it would put an enormous administrative burden on the Commission.

Mr. Jeffords offered a substitute amendment as a compromise. It removed the requirement that the Commission notify States of registered persons operating within a State. In place of this requirement, the Jeffords amendment would make the information available only upon request.

In its discussion the Subcommittee made clear that the Commission should cooperate fully with the States and assist them in their problems when matters are brought to their attention that require action. The Subcommittee agreed to emphasize its intent in the report. The Jeffords amendment was unanimously adopted by voice vote.

5. Delegation of functions

Amendments considered included proposals in H.R. 5447 and those proposed by the GAO and industry. The amendment in H.R. 5447 would authorize the Commission to provide for the performance by any person of any portion of the CFTC's registration functions subject to the Act; authorize the CFTC to require any registered futures association to undertake this responsibility, thereby enabling the processing of registration applications to be performed by the National Futures Association; and delete current section 4k(3) of the Act to reflect the proposed amendments.

The GAO proposal would authorize the CFTC to delegate its registration functions to a registered futures association, and provide for appeals to the Commission of adverse decisions with the appellant accorded an opportunity for a hearing on the record.

The industry proposal would, except in the case of floor brokers, authorize a registered futures association, upon request by the association, to perform all registration functions required under the Act, generally in accordance with the rules of the association. It would not, however, authorize the CFTC to require the association to undertake this function.

The GAO proposal was similar to the CFTC proposal. The industry proposal differed from the CFTC proposal in two respects. First,

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a registered futures association would not have authority to register floor brokers. Second, delegation of the registration function could only occur on request by the NFA and as such the Commission would not have the authority to require the NFA to undertake any registration. The Committee discussion centered around the issue of whether or not to give the Commission the authority to require the NFA to take over the Commission's registration functions.

Mr. Richmond expressed the view that not requiring the National Futures Association to take over the registration function would be to authorize a weak NFA. He stated that if the Committee decided not to impose user fees then a strong NFA should be developed to take over Commission functions. Mr. Coleman expressed doubts as to whether the Congress should require the NFA to take over this function. He felt that a threatened enactment of user fees was sufficient incentive to believe that the NFA would wish to take over this function.

Mr. Hineman of the Commission stated that the registration function was the most logical one for the NFA to handle and pointed out that the industry had indicated a willingness for this function to be handled by the NFA, and that the Commission wanted to "nail down" this commitment. Mr. English expressed the belief not requiring the NFA to handle functions it did not request was more in keeping with Congress' desire that the industry regulate itself. Mr. Glickman pointed out that the Commission under the CFTC proposal was authorized to require, not mandated to require that such functions be performed by the CFTC. This would mean that the Commission would have the discretion to require the NFA to pick up registration functions if the Commission made a finding that the NFA was capable of assuming those functions.

Mr. Glickman then moved the adoption of the Commission proposal. Mr. Coleman offered a substitute amendment which would delete from the amendment language authorizing the CFTC to require the NFA to assume registration duties. The Coleman amendment was defeated 7-8 by show of hands vote. Mr. Glickman's amendment to adopt the CFTC proposal was then adopted by voice vote.

6. Statutory disqualifications

A. Denial, suspension or revocation of registration. -- The proposal in H.R. 5447 would establish statutory disqualifications for registration. It would authorize the CFTC to deny, condition, suspend, or restrict registration without a hearing or revoke registration after a hearing if any of 8 enumerated conditions are present, such as suspension or revocation of prior registration, a court order barring specified conduct involving securities or commodities, or a recent conviction for felonies such as bribery or bankruptcy fraud. It would also authorize the Commission to deny or condition registration after opportunity for hearing if any of 14 other less serious enumerated conditions are present, such as a previous violation of the Act, Federal securities laws or similar State or foreign law, conviction of certain commodity or securities related offenses, and failure to reasonably supervise another person. Finally, it authorized

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the CFTC to condition registration or place restrictions on registrations.

Mr. Fithian expressed concern over the fact that a firm who hired someone unknowing that he was of bad character or that he had an intent to engage in fraud could be automatically penalized. A Commission representative spoke to Mr. Fithian's concern and stated that where a broker hires someone subject to a statutory disqualification, the broker has a right to a hearing before the broker's registration would be jeopardized.

Mr. Glickman moved the adoption of the CFTC proposed amendment. The amendment was approved by voice vote.

B. Responsibility for associated persons. -- H.R. 5447 also contained an amendment that would prohibit a registrant

from permitting a person to be an associated person of the registrant if he knows or should have known that the person is subject to a statutory disqualification. It also established as a ground for denial of or conditional registration that the applicant has associated with him a person who is subject to a statutory disqualification.

Mr. Fithian offered an amendment to this proposal which would prohibit the futures commission merchants from hiring as an associated person any person subject to a statutory disqualification, but would not penalize the futures commission merchant for a violation of the requirement. Mr. Panetta offered a substitute amendment which reinstated the penalty language and added language to exempt a futures commission merchant from penalties for intentional or negligent association with persons subject to statutory disqualification if the merchant (1) notified the Commission of such facts and (2) the Commission determines that such person should be registered or temporarily licensed. The Panetta substitute to the Fithian amendment was agreed to.

7. Fingerprinting

The General Accounting Office had proposed an amendment that would specifically authorize a registered futures association to collect the fingerprints of its members and submit those fingerprints to the Federal Bureau of Investigation for processing. In discussion, Mr. Glickman amended the GAO proposal to allow the NFA to require any applicant for membership to be fingerprinted and to authorize the FBI to report back to the association on the results of the fingerprint identification and processing.

The Glickman amendment was agreed to by voice vote.

8. Temporary license

The Subcommittee considered a proposal in H.R. 5447 that would authorize the Commission to grant a six-month provisional license to applicants for registration. The license would permit applicants for registration to begin work or to conduct business prior to completion of the fitness checks required for registration. The amendment was unanimously agreed to by voice vote.

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Contract market rules

1. Enforcement of rules by contract markets

Proposals considered included those made by the Commission as contained in H.R. 5447 and those of the industry. Both proposals would require contract markets to enforce all bylaws, rules, regulations and resolutions which must be enforced pursuant to any CFTC rule, regulation, or order, thereby codifying CFTC regulation 1.53, requiring enforcement of bylaws and rules in effect as of July 18, 1974, which have not been disapproved by the CFTC, and conform section 5a(8) to the changes proposed to section 5a(12).

Mr. Glickman moved the adoption of the amendment which was agreed to by voice vote.

2. Approval of rules of self-regulatory organizations

A. Contract markets. -- The Subcommittee considered a proposal in H.R. 5447 which would streamline rule review process by limiting the rules which are required to be submitted for prior CFTC approval to those that (1) are "of major economic significance" or (2) relate to contract terms and conditions. It also would require submission of all other rule proposals but permits implementation of those proposals after 10 days notice unless the Commission determines that the rule merits review or the contract market itself requests review. It would retain existing time periods for approval of rules which is required or requested under amendments made by H.R. 5447; provide for publication in the Federal Register of a notice of economically significant rule proposals in lieu of the full text thereof; continue CFTC's authority

to review any rule (except margin levels) and to disapprove any rule at any time; and eliminate separate category of operational and administrative rules. It does not affect the contract markets' authority to take emergency action or to set levels of margin.

The industry proposal would limit the rule review requirement to rules of general applicability to market participants, thereby excluding actions which implement or interpret rules. It provides that if CFTC has approved a proposed rule or instituted disapproval proceedings within 60 days after the filing of a proposed rule, or if disapproval proceedings have been instituted with 60 days but have not been completed within 180 days of institution, a contract market may put such rule into effect. It would require the Commission, in disapproving a rule, to specify the section(s) of the Act that the rule would violate and to furnish the contract market with a hearing on the record, and continue CFTC's right to disapprove any rule (except margin levels) after implementation. It would eliminate the category of rules of major economic significance and the publication requirement for such rules, and retain exemption for operational and administrative rules. It also does not affect the contract markets' authority to take emergency action or to set levels of margin.

Mr. English offered an amendment to the Commission proposal to require the Commission to react to proposals for rule changes within 180 days; and if the Commission did not act, the change would go into effect on the condition that the Commission could later disapprove the rule change. The Commission indicated it had

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no objection to the English amendment. Mr. Johnson then requested the Subcommittee to consider an addition to the English amendment which would authorize the Commission to exempt from required review those rules enacted by contract markets of a housekeeping nature. Mr. Johnson gave as an example rules relating to the election of the chairman of the board of an exchange and other administrative provisions that had no economic or market significance. The English amendment with the Johnson addition was agreed to by unanimous voice vote.

B. Margins. -- The Kansas City Board of Trade proposed to replace the word "margin" wherever the term appeared in the Act with "Customer deposit" to avoid confusion with margins as used in connection with securities transactions. The Commission indicated it did not support the word change because the term "margin" while often misunderstood had been in use for over 100 years. The Subcommittee determined not to change "margin" for "customer deposit".

C. Registered futures associations. -- The Subcommittee considered a proposed amendment in H.R. 5447 that would require a registered futures association to submit proposed rules or amendments to CFTC for review. The rules would go into effect within 10 days of receipt, unless the CFTC requests to review the rule, or the association requests that it conduct such review. The Commission would be required to approve the rules within 30 days of receipt unless it notifies the association. The CFTC would approve proposed rules if consistent with section 17 and not in violation of the Act, and disapprove rules, after opportunity for hearing, if the rules were inconsistent with section 17 or violate the Act. Mr. Glickman moved the adoption of the amendment. The amendment was passed by voice vote.

Later in its deliberations, Mr. Glickman offered an amendment which would place statutory requirements upon the National Futures Association and any other registered futures association. These associations would be required to adopt rules that establish training standards and proficiency testing for personnel of members and supervisory officials; provide for a program of audit and compliance with such standards; establish minimum capital, segregation, and other financial requirements; and establish minimum standards governing sales practices of its members and associated persons. Finally, the Glickman amendment would require implementation of these requirements within a two-year period and a report to Congress 90 days thereafter on the extent to which the association fully implemented these rules and the effectiveness of its program. The Glickman amendment was agreed to by voice vote.

3. Contract market designations

The Subcommittee considered a proposal by the industry for elimination of the "public interest" test for contract

market designation; and substitution of a requirement that the board of trade demonstrate that the proposed futures contract can be used to perform a hedging or risk-management function. The proposal specified that the CFTC would have 6 months to approve new contract applications or to deny the application and specify grounds for

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denial of designation, and provided the affected exchange 90 days after denial to request a hearing on the record, which must commence within 30 days of such request.

Mr. Coleman offered an amendment in lieu of the industry proposal which would require that the Commission approve or disapprove an application for designation as a contract market within one year of the filing of the application. The running of the one-year period would be stopped where a board of trade submits a materially incomplete application. Mr. Johnson expressed the desire to have the one-year time limit run not from the date of the filing of the application but from the date the documentation is complete. In response to the Commission's request, Mr. Jeffords offered an amendment which would assure the Commission a 60-day period of review upon final submission of all required documentation.

Mr. English stated that the Jeffords' amendment could result in giving the Commission too long a period of review and offered an amendment which cut back the additional time granted to the Commission in the Jeffords amendment to 30 days. The English amendment was agreed to by voice vote. The Coleman amendment, as amended was then agreed to by voice vote. Subsequently, after conferring with Commission members, the Subcommittee agreed to change the 30-day period to a 60-day period as offered originally by Mr. Jeffords. The change was agreed to because of the time required by the Act to conduct a public hearing on new contract designations.

Mr. Bedell then offered an amendment which would require the Commission to consider, in determining whether to designate a contract, the extent to which trading in the commodity for which designation is sought is likely to (1) divert capital away from the capital formation process, (2) cause price manipulation, (3) cause price destabilization in the commodity. Mr. Johnson expressed the view that such considerations were already made and that the effect of the Bedell amendment would be to codify existing procedure. Mr. Jeffords moved the question and the Bedell amendment was adopted by voice vote.

Disclosure of information/confidentiality

1. Investigative information

The Subcommittee considered a proposal of the Commission in H.R. 5447 that would extend the prohibition on publication of confidential information to include information resulting from the Commission's investigation of any person.

The industry had proposed, instead, to exempt from disclosure all trade secrets, confidential or proprietary information and any information the Commission had undertaken to keep confidential.

Mr. English introduced an amendment that would require as an alternative to both proposals that the Commission notify the submitter of information that a request for disclosure has been made under the Freedom of Information Act and afford the submitter an opportunity to submit written arguments regarding the request. Under the English amendment there would be three instances where the CFTC would not have to notify the submitter, i.e., where the CFTC decided to deny the request for information; where there

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is a law requiring the disclosure of information; and where the information has been made public. The English amendment was adopted by voice vote.

2. Authorized disclosure of certain market information

The Subcommittee next considered additional proposals of the Commission in H.R. 5447 and the industry regarding disclosure of confidential information. The proposal in H.R. 5447 would permit its disclosure in connection with certain judicial receivership or bankruptcy proceedings.

The industry proposal would require the Commission to follow specified procedures before furnishing information in response to a subpoena or summons served on the CFTC and would provide to registrants, contract markets, registered futures associations and other persons notice and opportunity to challenge such a subpoena. The procedures specified are similar to those afforded by the Right of Financial Privacy Act of 1978 (*12 U.S.C. 3401 et seq.*) when an agency seeks certain financial information pertaining to individuals and partnerships of five or fewer individuals who are customers of financial institutions. Also, it would limit disclosure of protected information in administrative or judicial proceedings to those to which the Commission is a party.

The CFTC proposal was adopted by voice vote. Mr. Jeffords moved the adoption of the CFTC proposal and Mr. Bedell then offered an amendment similar to the industry proposal that would require the Commission to disclose information in its possession pursuant to a subpoena or summons only if a copy of the subpoena or summons had been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, and 14 days have expired from the date of mailing of the subpoena or summons. The Bedell amendment was agreed to by voice vote.

3. Sharing information with State and foreign governments

The Subcommittee considered proposals made by the Commission in H.R. 5447 and the National Association of State Securities Administrators concerning sharing information in the possession of the Commission. The Commission proposal would clarify that any information in its possession may be disclosed to any appropriate Federal department or agency, including independent agencies. It would also extend the current authority of section 8(e) of the Act to permit the Commission to provide any agency of a State (or political subdivision) or foreign government with any information if used solely for bona fide law enforcement purposes.

The proposal of the State Securities Administrators would authorize the Commission to share investigative information with the States and amend section 12(a) by requiring the CFTC to furnish enforcement information to departments or agencies of the Federal Government and of any State, territory, possession, or political subdivision thereof.

Mr. Glickman questioned Mr. Johnson as to whether the use of the term political subdivision would allow county attorneys to obtain information from the Commission. Mr. Johnson indicated in the affirmative. Mr. Glickman moved the adoption of the amendment

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contained in H.R. 5447. The amendment was agreed to by voice vote.

4. Sharing information with contract markets and other self-regulatory organizations

Two proposals were considered by the Subcommittee. The proposal supported by the Commission and contained in H.R. 5447 would broaden section 8a(6) of the Act to authorize disclosure of information concerning any transaction or market operation to a registered futures association or to a regulatory organization recognized under the Federal securities laws as well as to contract markets as "necessary or appropriate to effectuate the purposes" of the Act. It would permit such information in turn to be disclosed only in a self-regulatory action or proceeding.

A comparable proposal by GAO would authorize CFTC to disclose certain information to contract markets for

market surveillance purposes and requires that any information so furnished shall not be disclosed by such contract market except in a self-regulatory action or proceeding.

Mr. Johnson stated that the proposal in H.R. 5447 was another piece of the jurisdictional accord with the Securities and Exchange Commission. Mr. Glickman moved the adoption of the proposal in H.R. 5447. The amendment was agreed to by voice vote.

Enforcement

1. Restraining order

A proposal considered by the Subcommittee contained in H.R. 5447 would allow the Commission to obtain ex parte orders to prevent destruction of evidence, dissipation of assets, or for obtaining access to books and records. The CFTC proposal was agreed to by voice vote.

The Bar Association of the City of New York had a proposal which would limit the issuance of any restraining orders by the Commission to knowing and willful violations of the Act.

Mr. Jeffords asked Mr. Johnson to give his opinion of the Bar Association's proposal. Mr. Johnson stated that the Bar's proposal would weaken the Commission's powers by making it difficult to get restraining orders because of the need to meet the burden of establishing actual intent. The proposal was not advanced by any member.

2. Embezzlement

The Subcommittee continued its markup session on H.R. 5447. Mr. Evans introduced three amendments. The Evans amendments provided that any person convicted of embezzlement or manipulation or exceeding the speculative limits shall be suspended from registration under the Act and denied reregistration for at least a five-year period. Mr. Johnson was concerned that an automatic suspension of registration might have a disruptive effect on the market and asked for some flexibility in order that the Commission might insure an orderly withdrawal from the market. Mr. Evans responded there would be a considerable lapse of time between when the offense occurs and when the conviction takes place.

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Mr. Glickman offered an amendment to all the Evans amendments which would require the minimum penalty *unless* the Commission determines that the imposition, suspension or reregistration is not required to protect the public interest. The language offered by Mr. Glickman was adopted without objection. Mr. Glickman moved the adoption of the first Evans amendment dealing with embezzlement as amended. It was adopted by voice vote.

Mr. Evans then brought up his second amendment dealing with manipulation of prices. Mr. Evans stated that the purpose of his amendment is to bar persons from registration under the Act if convicted of manipulating the market or otherwise of a violation of section 9(b) of the act. Mr. Glickman asked whether the ban proposed by Mr. Evans included prohibiting someone from buying or selling a futures contract. Mr. Evans indicated that CFTC already had that power and Mr. Johnson agreed. The Chairman of the CFTC again expressed the Commission's desire to have some flexibility in liquidation operations. Mr. Evans agreed to include in his amendment language which would allow the barring of a convicted felon from the market on terms and conditions set by the Commission. The Evans amendment was agreed to by voice vote.

Mr. Evans then proceeded to discuss his third amendment which would provide denial of registration or reregistration for a two-year period for a knowing violation of any speculative limits or otherwise of section 4a of the Act. The Evans amendment was agreed to by voice vote.

The Subcommittee then considered a CFTC proposal which would expand current section 9(a) of the Act to make it a felony for any person registered or required to be registered under the Act, or any employee or agent thereof, to embezzle or steal customer assets, Mr. Bedell moved adoption of the CFTC proposal. The amendment was agreed to by voice vote.

3. Secondary responsibility; controlling person

The Subcommittee considered next the provision in H.R. 5447 which would add a new section 13(b) providing that a person who directly or indirectly controls another person (or entity) which violates the Act is liable as a principal unless he did not know or, in the exercise of reasonable care, have reason to know of the violation. It also would amend section 13(a) so that aiders and abettors may be held liable in administrative or judicial proceedings brought pursuant to the Act, and not merely in administrative proceedings as in current law.

Mr. Richmond offered an amendment to the first proposal which would require that the Commission establish that a controlling person acted in bad faith and directly or indirectly induced the violation. Mr. Bedell quizzed a representative of the Commission as to whether the chairman of the board of a conglomerate who had no knowledge of an employee violation could be convicted under the amendment. The response was in the affirmative. Mr. Bedell then inquired as to whether a supervisor doing a poor job managing personnel with no knowledge of employee violations would be liable. A similar response was given. The Richmond amendment was agreed to by voice vote, and the provision in H.R. 5447 as amended was then agreed to by voice vote.

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4. Technical amendments

(a) Misrepresentation. -- The Committee took up a proposal in H.R. 5447 that would extend the prohibition against misrepresentation of a person's status to apply to any registrant under the Act, including the representative or agent of any registrant, and extend the antifraud provisions of section 4o to apply to the associated persons of commodity trading advisors and of commodity pool operators.

The proposal of the Association of the Bar of the City of New York would limit the behavior proscribed by section 4o to willful and knowing conduct.

Mr. Jeffords moved the CFTC proposal which was agreed to by voice vote. The Bar proposal was not pressed by any member.

(b) Appellate venue. -- The Subcommittee next considered a CFTC proposal contained in H.R. 5447 which would clarify the law governing appellate venue for review of CFTC orders by providing that in the case of an order denying registration, the petitioner may obtain review in the circuit in which the petitioner's principal place of business listed on its application for registration is located.

Mr. Panetta moved the adoption of the section. The motion was agreed to by voice vote.

5. Administrative enforcement/double jeopardy

The next proposal considered was an industry proposal that would limit section 6(b) proceedings against any person for conduct in violation of the Act or regulations, if that person had previously been disciplined for such violation by a contract market or registered futures associations, to cases in which the Commission finds that the discipline already imposed was inadequate.

A proposal of the New York City Bar Association would amend section 6(b) and 6(c) so that only knowing violations may be the basis for administrative action.

The Subcommittee did not adopt either proposal. The Subcommittee did agree that in determining whether to bring enforcement action against a person, the Commission should consider previous disciplinary actions by a contract market or a registered futures association which was based on the same conduct.

Remedies

1. Arbitration

On the issue of arbitration, there was discussed proposals contained in H.R. 5447 and proposals of GAO and the industry. The proposal in H.R. 5447 would eliminate the current \$ 15,000 ceiling on claims for which arbitration must be provided; retain the existing right of a customer to elect arbitration; eliminate the "no compulsory payment" provision; and broaden the term "customer" to include futures commission merchants who are not members of the contract market.

The GAO proposal would raise the current \$ 15,000 limitation to \$ 25,000 and authorize the CFTC to increase the limit to \$ 50,000 in both sections 5a(11) and 17(b)(10) to reflect changes in the Consumer Price Index.

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The industry proposal would also eliminate the current \$ 15,000 ceiling and other specific requirements in section 17(b)(10), require a national arbitration system by a registered futures association; eliminate any provision for contract market arbitration in section 5a(11) if a registered futures association provides for arbitration of disputes between customers and members of the association who do business directly with the public.

In discussion, it was agreed that by raising the dollar limitation on arbitration cases it would relieve the backlog of reparation cases. Mr. Glickman moved the adoption of the CFTC proposal. The amendment was agreed to by voice vote.

2. Reparations

Three proposals were considered on the issue of reparations. H.R 5447 would limit reparation claims to cases where the respondent is registered with the Commission; eliminate statutorily required procedures, including the requirement that claims over \$ 5,000 must be heard by an administrative law judge; authorize the CFTC to issue rules for the administration of the reparations programs; and extend the automatic prohibition on trading upon failure to pay a final reparations award to any party not just a registrant.

The second by the industry would bar the filing of most reparation claims following the establishment of a uniform national arbitration system by a registered futures association and the declaration by the CFTC of the effectiveness of the arbitration procedures; reparations claims against floor brokers would still be heard by the CFTC.

The third by the Association of the Bar of New York City would amend section 14 to --

Change the beginning of the limitation period for filing a complaint from "the date the cause of action accrues" to "the date of loss";

Limit damages recoverable to actual damages;

Allow the CFTC to dismiss a complaint against a registrant in bankruptcy or receivership.

Require the CFTC to notify respondent of any complaint made against the respondent; Require that the CFTC forward the complaint to an administrative law judge within 90 days after answer if it appears that the matter should be forwarded.

Designate as summary proceedings complaints where the amount in controversy does not exceed \$ 10,000, or such greater amount as determined by the CFTC. If a complaint is designated as a summary proceeding, no discovery, no findings of fact, no written opinion or conclusions of law, and no review or appeal would be allowed.

Provide that the Administrative Procedure Act does not apply where damages claimed do not exceed \$ 10,000; and make the determination of the administrative law judge a CFTC determination in such cases.

Mr. Glickman stated he had no objection to the Commission proposal but was concerned that no statutory right of action was provided. He added that he believed arbitration and reparation procedures would be useful only if there was a private right to sue.

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Mr. Glickman then moved the adoption of the Commission proposal. The amendment carried by voice vote.

3. Private rights of action

The Subcommittee next considered the issue of private rights of action. The General Accounting Office had recommended that Congress clarify its intent on this issue and if a private right of action is intended to supplement reparations proceedings it recommended a provision authorizing a private right of action against any person registered or required to be registered for violation of the Act.

Mr. Glickman offered an amendment that would allow a participant in a commodity transaction, options transaction, leverage contract, and a person having an interest in a commodity pool to institute a private right of action for actual damages against any person who violated the Act (other than a contract market, clearing house, or registered futures association). Certain limitations were prescribed in his amendment. Under his proposal, a customer of a futures commission merchant could sue another commodity customer who manipulated the market. In addition, his amendment authorized an action for damages by a person who engaged in the transactions listed above against (a) a contract market (or clearing organization) that failed to enforce rules that served as a basis for its designation, (b) a registered futures association that failed to enforce a rule required under the Act or (c) any of its directors, officers, or employees, if bad faith in failing to take such action is shown and the failure to take action caused the loss. Any such actions must be brought in Federal district court within two years after the cause of action accrued.

The amendment would not preclude the use of arbitration and reparations. It was explained that the amendment essentially would authorize private rights of action by market participants but not by members of the public who did not participate in the market and claimed to be injured in their commercial transactions by declines in commodity prices.

Mr. Jeffords offered a substitute amendment on behalf of the CFTC. The Jeffords amendment embodied the Glickman amendment with two exceptions. First, the amendment would make a suit in a Federal court against a self-regulatory organization the exclusive remedy available to an unjust party. Next, the amendment would apply only to injuries occurring after the effective date of the Act.

The Jeffords amendment was not accepted and the Glickman amendment was agreed to by voice vote.

Emergency powers

The Subcommittee next considered a proposal by the industry that would expressly provide for judicial review of CFTC determinations that an emergency exists and of the action ordered by the CFTC.

It was pointed out in discussion that the Seventh Circuit had ruled that the merits of the Commission's emergency determinations are not subject to judicial review.

Mr. Jeffords offered a substitute amendment. The Jeffords amendment would allow limited judicial review by the

Federal

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courts of appeals but would not allow the issuance of a stay, mandamus, or similar order to be entered by the court of appeals without considering arguments of all parties at a hearing examining the record before the agency and determining that the agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In addition, it provided that any action must be taken by a panel of the court of appeals and not a single member.

The Jeffords amendment also specifically gave the Commission authority to set temporary margin levels and, at the request of Mr. Glickman, authority to set retroactive speculative limits.

Mr. Hineman of the CFTC stated that the Commission could operate effectively within the framework of the Jeffords amendment. Mr. Glickman moved the adoption of the Jeffords amendment which was agreed to by voice vote.

Leverage transactions

With respect to leverage transactions, the Subcommittee considered amendments proposed in H.R. 5447 and by First National, and North American Securities Administrator's Association. The proposal in H.R. 5447 would ratify and extend until September 30, 1984, existing moratoria established by CFTC rules on the entry of new firms into the leverage business and on the introduction of new leverage contracts; direct the CFTC to study the issue of leverage transactions and to submit the results of that study to Congress in two years together with recommendations on the manner in which such transactions should be regulated, if at all.

The First National proposal would repeal section 19(d) of the Act which authorizes the Commission to regulate as a futures contract any leverage transaction considered to be futures contracts. It also opposed the proposal contained in H.R. 5447.

The NASAA proposal would authorize the States to require the registration of persons soliciting or accepting orders for the purchase or sale of leverage contracts and issue rules with respect thereto so long as the State jurisdiction did not conflict with the Act or any regulation or order thereunder.

Mr. Glickman then offered an amendment which would require the Commission to adopt regulations for leverage transactions and repeal section 19(d) of the Act. The Commission voiced opposition to the Glickman amendment because the new Commissioners claimed to need the benefit of a study to deal adequately with the problem. Mr. Fithian stated there would always be a turnover of personnel at CFTC with little experience in some areas. Mr. Jones spoke up to voice support for the amendment. He stated that the delay in issuance of regulations dealing with the issue had been too long. The amendment was agreed to by voice vote.

User fees

A user fee proposal contained in H.R. 5447 supported by the Commission was then considered by the Subcommittee.

The proposal would repeal section 26 of the 1978 legislation which authorizes the Commission to implement a user fee program to cover the cost of its regulatory program after obtaining approval

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of the Congressional Agriculture Committees. The proposal would --

Assess each exchange a transaction fee of 6 cents per side (long or short) for each futures or option contract made

on the exchange for the account of a member of either the exchange or a registered futures association (such as the National Futures Association);

Assess a 12-cent fee for each futures or option contract which is not for the account of an exchange member or a member of a registered futures association;

Assess each leverage transaction merchant and dealer option grantor \$ 3 for each leverage contract or dealer option. All fees would be remitted annually to the United States Treasury;

Authorize the Commission to suspend the assessment of fees if amounts collected exceed its current budget and to reduce, suspend, or waive the fee to prevent or correct a significant adverse effect upon any market or person; and

Require the Commission to establish an Advisory Committee of affected market users which would report to the Congress on the user fee program by June 30, 1985.

The industry proposal, on the other hand, would repeal section 26 of the 1978 legislation; authorize the Commission pursuant to sections 8a(4) and 17 of the Act and section 501 of the Independent Offices Appropriation Act of 1952 (*31 U.S.C. 483a*) to prescribe fees and charges for any work or service performed taking into consideration the cost of the government and the direct benefit and value to the recipient.

Mr. English offered an amendment which would require a report from the Commission on the effectiveness of the National Futures Association in saving costs to the government. Under the amendment the report would cover the period ending December 31, 1984, and no user fee proposal could be recommended or implemented until one session of Congress had expired after the study had been presented to Congress. Administrative fees currently charged by the Commission for registration activities and other administrative services would not be affected.

Mr. Evans offered a substitute amendment which would charge a user fee to traders who were not members of the National Futures Association. The Evans substitute was defeated by voice vote and the English amendment was then adopted by voice vote.

Conflicts of interest

1. "Revolving door" provision

The Subcommittee considered a proposal in H.R. 5447 that would repeal the "revolving door" provision contained in section 2(a)(7)(B) of the Act since subsequently enacted government-wide ethics legislation, the Ethics in Government Act of 1978 (*18 U.S.C. 207(c)*), makes comparable restrictions applicable to former Commissioners and most Senior Executive Service employees.

Mr. Jeffords moved the adoption of the proposal. The amendment was agreed to by voice vote.

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2. Inside trading

The Subcommittee also agreed then to provisions in H.R. 5447 that would extend to leverage contracts the prohibition on insider trading that applies to Commission members and employees and to increase the exemptions that are included in section 9 (d) and (e). The newly exempted transactions would include transactions by independent trustees of trusts established by Commission members or employees to engage in hedging transactions in connection with permitted farming or ranching operations and to lease oil, gas, or mineral rights owned by a Commissioner or employee; investments in government securities and other financial instruments if the instrument is not regulated by the CFTC and non-public information is not used in making the investment decision.

Regulatory efficiency and economy; limitation on Commission functions; reports to Congress

The Subcommittee next considered an industry proposed amendment that would declare the purpose of the Act to be a comprehensive system of self-regulation; direct the Commission to promote self-regulation to the maximum extent feasible, and to limit CFTC functions and resources to monitoring, oversight and review of selfregulation except to the extent that Congress has specifically directed otherwise; and require annual reports to the Senate and House Agriculture Committees on CFTC's compliance therewith.

The Commission did not support the proposal because it would relegate the Commission to a mere oversight function and, in any event, was premature until the effectiveness of the National Futures Association is established. The industry proposal was not adopted.

The Subcommittee also reviewed an industry proposed amendment which would prohibit State and local governments from imposing transaction, excise, privilege, or related taxes on commodity futures or option transactions or on services rendered directly in effecting such transactions.

This proposal also was not adopted.

Dealer options

Another proposal that was considered but not accepted was a proposal by Dowdex Corporation that would expand authority for off-exchange transactions in options on physical commodities. The proposal would --

Limit restrictions and requirements applicable to "dealer option" grantors to those specifically set forth in the Act;

Permit off-exchange options of physical commodities to be offered, granted and sold by nondealers;

Make the \$ 5,000,000 net worth requirement only an alternative to a capital requirement that total assets exceed total liabilities, if the dealer gives notice that its net worth is less than \$ 5,000,000;

Limit disclosure of costs, mark-ups and commissions to the extent "practicable and known";

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Permit termination of right to grant, offer or sell dealer options only after a hearing thereby eliminating right to suspend pending completion of termination hearing; and

Repeal CFTC authority to ban dealer options.

The proposal did not have Commission support.

Export sales reporting

The Committee next reviewed a proposal embodied in H.R. 624 sponsored by Congressman Neal Smith. The proposal would require exporters to report information daily, rather than weekly, concerning any sale for export or agreement to sell any agricultural commodity for export, directly or indirectly. Information must include, in addition to information now required, the identity of the buyer and buyer's relationship to exporter. Compilations of such report much be published within 48 hours of the sale or agreement. In addition to current remedies, the Secretary could assess civil penalties, or, in addition to or in lieu thereof (i) issue an order finding that the exporter had violated the section and refer the order to the CFTC which must then require exchanges to deny trading privileges to such person for a period up to one year for each violation, or (ii) issue a complaint to the CFTC which may direct exchanges to deny such trading privileges for up to one year.

Mr. Johnson expressed concern about the proposal because it would make the Commission an enforcement arm of the Department of Agriculture and create an unusual relationship between an independent agency and a department of government. The Subcommittee elected to pass over H.R. 624.

Two other bills, H.R. 5956, requiring similar reports to be made to the Commission, and H.R. 5917, requiring a producer referendum as a condition to the designation of certain livestock contract markets, were also passed over by the Subcommittee.

Study

The Committee next considered a proposal by Mr. Glickman to require the CFTC to conduct a comprehensive study of the industry and to make recommendations on regulatory and legislative changes. In particular, the study required investigation of the impact on futures market speculation in nontraditional instruments on cash and futures prices, the consequences of futures trading on formation of real capital in the market, the liquidity of credit markets and inflation, and the sufficiency of public policy tools to limit any harmful effect. Members agreed on the importance of the study but concern was expressed as to whether the Commission would be able to afford to do such a study. Mr. Johnson stated that he thought the study critical. Mr. Jeffords stated that it should be understood that the Commission was under no such obligation until such time as funds for the study were appropriated. The amendment was agreed to by voice vote.

Coordination of regulations

In the discussion, Mr. Richmond emphasized the importance of the Commission and the Securities and Exchange Commission coordinating their respective regulations of commodity trading advisers and investment advisers and of commodity pools and investment

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companies so as to minimize duplicative regulations of such entities. He stated that "where joint regulation of such entities is necessary, the Commission and the Securities and Exchange Commission shall avoid adoption of conflicting rules and procedures and unnecessary overlapping rules and procedures." The Commission voiced support for this position and it was concurred in by the Subcommittee.

Stock index futures contract

1. Pilot program

The Subcommittee next considered an amendment offered by Mr. Bedell. Mr. Bedell's amendment would restrict stock index futures contracts to a pilot project basis for a period of two years. At the end of that period the Commission would report to Congress its findings as to whether or not such contracts were adverse to the national interest. The amendment was agreed to by voice vote.

2. Moratorium

The Committee also considered a proposal by Mr. Bedell that called for the Subcommittee to request the Commission to place a moratorium on Commission approval of new stock index futures contracts until deliberations on the bill are completed. Mr. Richmond expressed the view that such an instruction would be inequitable because one exchange already had received approval for trading in a stock index futures contracts and the Bedell directive would prevent others from having the same opportunity.

It was suggested, instead, that a letter be drafted to the Commission to this effect and the letter could be signed by those members so inclined. This suggestion was agreed to without objection.

Trading activities of large hedgers

The Subcommittee next considered an amendment by Mr. Evans which would require the Commission to monitor the trading activities of large hedgers to determine the role that large hedgers in industries, such as meat, play in causing price movements.

The amendment was adopted by unanimous voice vote.

Delivery points

Mr. Evans then asked the Subcommittee to agree to include in the Committee report a recommendation that the Commission should take action to discourage situations where in the delivery of live animals for slaughter, provisions are made for the sequential delivery of a single contract lot to settle more than one futures contract and also to minimize the need to move animals long distances to point of slaughter subsequent to delivery. Mr. Evans stated that the "certificate of delivery" approach that the Commission had indicated it would institute as to live cattle addressed the problem nicely. He asked that the Commission undertake similar efforts if problems should arise in other live animal markets. Mr. Johnson gave the necessary assurance.

Mr. Jeffords moved that the bill, as amended, be reported to the full Committee with a recommendation that it do pass. The motion was agreed to by voice vote in the presence of a quorum.

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C. Full Committee markup. -- On April 22, 1982, the Agriculture Committee met to mark up H.R. 5447.

Mr. Jeffords offered an amendment to the provision in the Committee Print that amended section 13 of the Act to impose liability on a person who controls a person liable for a violation of the Act if the Commission establishes that the controlling person did not act in good faith and induced the acts constituting the violation. The Jeffords amendment reflected the position of the Commission. It would have shifted the burden of proof to the controlling person to establish that he acted in good faith and did not induce the violation.

Mr. Glickman offered a substitute which would have left the burden of proof on the Commission, as in the Committee Print, but would have differed by enabling the Commission to meet its burden by establishing either that the controlling person did not act in good faith or induced the violation. After considerable debate the substitute was agreed to by a show of hands.

Mr. English then expressed concern that the Commission might attempt to achieve the effect of the Jeffords amendment by attempting to establish liability of a controlling person for acts of those under his control by making use of a provision in section 2(l)(1) of the Commodity Exchange Act. That provision provides for the acts of a person acting for another in the scope of his employment to be deemed the act, omission, or failure of the other person. Mr. Johnson assured Mr. English that the Commission would not make such an attempt.

Another amendment offered related to the provision in H.R. 5447, as reported out of Subcommittee, which would have required agents who solicit or accept futures orders but who do not handle customer funds to register with the Commission as associated persons of futures commission merchants, thereby making futures commission merchants responsible for the conduct of their agents. Mr. Coleman introduced an amendment that reflected the position of the American Bar Association commodity section and the industry. It would create a new registration category called "introducing brokers". The introducing brokers would register directly with the Commission rather than registering as associated persons of the futures commission merchants. The amendment was agreed to by voice vote.

Mr. English then offered a technical amendment to the provisions of H.R. 5447 that amend section 8(e) of the Act to authorize sharing of information by the Commission with State and foreign governments. The provision adopted by

the Subcommittee restricted those governments to using the information in any action or proceeding brought under their laws.

Mr. Glickman offered an amendment to clarify the intent in the amendment made by the Subcommittee to section 3 of the Act relating to legislative findings. Mr. Glickman's amendment provided for reduction in excessive speculation as a purpose of the Act. The amendment was adopted by voice vote.

Mr. Richmond then called attention to one of the amendments relating to jurisdiction which was adopted to implement that portion of the CFTC-SEC jurisdictional accord which recognizes the jurisdiction of the SEC over options on foreign currencies. Mr. Richmond

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stated that the amendment fails to define the term "foreign currency" and at least one witness expressed concern that "foreign currency" could be interpreted to include gold coins such as South African Krugerrands. The Committee agreed that gold coins are not comparable to other foreign currencies; that such coins are not used in every day commerce as, for example, the British Pound is used, and their true value derives from their gold content and not from the minimal currency value which may be attributed to them. The Committee took the position that gold coins should be considered as nothing more than another form of gold bullion subject to the exclusive jurisdiction of the CFTC.

During the Committee markup several Members of the Committee expressed concern about the delivery points specified in domestic agricultural contracts. While many contracts specify a Chicago delivery point (or a delivery point at another location), in actual practice the agricultural commodity is delivered, for export, marketing or processing, to a location different from the one specified in the contract. This actual practice has resulted in cash discounts over and above the normal "basis" between futures prices and cash prices paid at local warehouses, elevators or similar facilities. Depending on the location of the local facility, these cash discounts have been significant.

At the request of Mr. Huckaby the Committee asked the Commission to review delivery points specified in domestic agricultural contracts, including the "basis" and the variance of the "basis" during a marketing year. The Commission's review should emphasize whether delivery points specified in agricultural commodity contracts should be established at locations where the majority of an agricultural commodity is actually delivered for export, marketing or processing, or the location where delivery of the agricultural commodity is taken by the final purchaser. The Commission's review should consider alternative changes in delivery specifications besides delivery points, as recommended to the Commission in the "Report of the Commodity Futures Trading Commission Advisory Committee on the Economic Role of Contract Markets," dated July 17, 1976. The Committee expects the Commission to report to the Committee its results of this review within one year after the date of enactment of this bill. the Committee also expects the Department of Agriculture to cooperate and assist the Commission, if necessary.

At the request of Mr. Glickman, the Committee reviewed the amendment to section 19 of the Act relating to leverage contracts agreed to by the Subcommittee. It agreed with the intent expressed by Mr. Glickman as set forth in detail in the section by section analysis.

Similarly, the Committee concurred in the views expressed by Mr. Jeffords as to the amendment to section 4m of the Act relating to commodity pools and the views of Mr. Foley and Mr. Jeffords regarding sale in the United States of futures on a stock index that are traded on a foreign board of trade. These likewise are discussed in detail in the section by section analysis.

The Committee then agreed by voice vote in the presence of a quorum to order reported H.R. 5447 as amended with a recommendation that it do pass.

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ADMINISTRATION POSITION

The Committee received the following communication from the Commodity Futures Trading Commission setting forth the Commission's support of H.R. 5447, as reported by the Committee.

COMMODITY FUTURES TRADING COMMISSION,
Washington, D.C., May 13, 1982.

HON. E DE LA GARZA,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Commodity Futures Trading Commission congratulates you and the members of the Committee for the hard work and sound judgment reflected in H.R. 5447 as reported by the Committee. The Commission also commends Representative Ed Jones for the professional and thorough hearings he provided the Commission and interested members of the public on H.R. 5447 and the Commission's reauthorization. The Commission also wishes to acknowledge the substantial time and effort contributed to this process by the staff of the Committee, particularly Messrs. Robert M. Bor, Robert A. Cashdollar, and Minority Counsel, John E. Hogan.

The Commission supports H.R. 5447, as reported by the Committee, which would reauthorize the Commission and strengthen and improve upon certain provisions of the Commodity Exchange Act. H.R. 5447 is a further indication of the Committee's long standing recognition of the important role of the futures markets and the need for a strong, independent Commission with the necessary statutory tools to oversee those markets, to provide efficient and prompt services to the public and to ensure that vigorous action will be taken against those who would violate the law.

In particular, the Commission is pleased with the Committee's efforts to codify the jurisdictional accord reached with the Securities and Exchange Commission. Enactment of the amendments to the Act contained in H.R. 5447, together with those being considered for the federal securities laws, should permit the marketplace to fulfill the growing need for financial trading instruments. Similarly, the Commission endorses the Committee's decision to repeal the total statutory ban on agricultural commodity options and to authorize the Commission to permit these options to be traded in a strictly regulated environment. These options may prove to be a highly important marketing and trading vehicle for the Agricultural community.

The Commission is also pleased with the emphasis H.R. 5447 places on law enforcement, both by the Commission and the States. The Commission's enforcement capability will be enhanced by the explicit authority contained in the bill to proceed in court against aiders and abettors of violations and to obtain ex parte orders freezing assets and books and records. Moreover, the authority of the States to apply their laws against those who would ignore federal requirements and to obtain otherwise confidential information from the Commission to assist their investigations and case preparation should encourage an active enforcement role by the States. In addition, the new direct regulatory authority provided by H.R.

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5447 over employees and other personnel of commodity trading advisors and pool operators and over introducing brokers and their employees should increase the public's confidence in the commodity professionals with whom they deal.

The Commission's ability to utilize its limited resources more efficiently has also been increased by H.R. 5447. The provisions establishing a streamlined contract market rule approval process, a scheme of statutory disqualifications for entrants into the industry and a new framework in which the Commission may refashion the reparations process should all help the Commission to provide better service to the public.

Finally, the Commission supports the Committee's recognition of the important role that can be played by registered futures associations. Both the public and the industry should benefit from the provisions in H.R. 5447 which empower the Commission to require an association to perform Commission registration functions with respect to its membership and which mandate the association to adopt rules establishing training standards and proficiency testing, minimum capital and other financial requirements and appropriate sales practices.

The Commission does have some concern, however, over certain of the provisions of H.R. 5447. The Commission hopes that the members of the Committee and the House will study carefully the following comments and either reconsider or clarify these provisions. We offer these comments consistent with our mutual desire to provide a sound statutory scheme for the fair and effective regulation of the futures markets.

1. National Futures Association Study and Transaction Fees. The Commission continues to advocate adoption of its proposal for transaction fees contained in Section 22 of H.R. 5447, as introduced. Transaction fees are needed to solve in part the Commission's perennial resource problems. To delay imposition of these fees for the two years necessary to complete the National Futures Association Study called for by H.R. 5447 would greatly exacerbate those problems. Furthermore, as stated in our responses to questions from various members that appear in the Committee's hearing record, the Commission remains confident that its transaction fee proposal will not impede development of the National Futures Association. Our confidence in this conclusion is buttressed by the fact that SEC transaction fees and the National Association of Securities Dealers Inc. have coexisted for many years. Moreover, any adverse impact that transaction fees might have on the National Futures Association could easily be rectified by the Commission's authority under its proposal to reduce, suspend or waive the fee.

Apart from the transaction fee issue, the Commission sees no need for a mandated National Futures Association study to be included in the bill. Section 17(n) of the Act already requires the Commission to include in its annual reports to Congress information concerning the effectiveness of registered futures associations in regulating the practices of their members. The information called for by the study required by H.R. 5447 could easily be incorporated in the Commission's annual reports.

2. Speculative Limits. The Commission supports those provisions of H.R. 5447 which confirm the ability of exchanges to set speculative

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trading and position limits and which make a breach of those limits a violation of the Act, so as to permit the Commission to take appropriate enforcement action. However, the Commission wishes to set forth its understanding of the Committee's intent in approving the limitation in new Section 4a(5) of the Act which would make the criminal provisions of Section 9(c) of the Act applicable only to those who "knowingly" violate exchange limits. This limitation is apparently designed to ensure that those who violate exchange limits will not be criminally prosecuted except for deliberate violations. The Commission does not understand the Committee to have intended by this provision to require the government, in establishing a "knowing" violation in a criminal case, to prove any additional level of intent beyond the requisite criminal intent necessary to establish a violation of any other criminal provisions of the Act. The Commission suggests that appropriate language might be included in the Committee Report to reflect this point.

The Commission also supports the Committee's decision to confirm the Commission's authority to establish speculative limits through rulemaking procedures. The Commission is concerned, however, over the proviso in amended Section 4a(3) of the Act which specifies that, in defining bona fide hedging transactions and positions, the Commission "shall" permit producers, purchasers, sellers, middlemen and users of a commodity or product derived therefrom to hedge anticipated business needs. The Commission of course recognizes the legitimate hedging needs of producers and others, and its present hedging definition and procedures ensure that legitimate anticipated hedging exemptions from speculative position requirements can be received. By directing that the Commission "shall" permit such hedging activity, however, the bill could arguably be read by some to diminish the Commission's flexibility to

establish different hedging terms and conditions for different classes of dealers, processors and others and for different commodities and markets. Accordingly, in order to avoid any ambiguity, the Commission strongly recommends that this proviso be deleted from H.R. 5447. If this is not acceptable to the Committee, the Commission urges that, at a minimum, the word "shall" in the proviso be replaced by the word "may".

3. Contract market rule review. H.R. 5447 would streamline the Commission's rule approval process under Section 5a(12) of the Act. The amendment recognizes that contract market rules concerning contract terms and conditions must be submitted for Commission approval and that all "other rules" must be submitted to the Commission and may be placed into effect within ten days, unless the contract market requests Commission approval or the Commission determines to review the rule for approval. The amendment also authorizes the Commission to exempt classes of these "other rules" from the prior submission requirement. The Commission understands that this provision would permit the Commission, for example, to exempt by regulation ministerial or administrative-type rules from having to be submitted to the Commission before they might be implemented by the contract market.

4. Contract Market Designation Procedures. H.R. 5447 would impose a one year time period in which the Commission must either approve or deny an application for designation as a contract

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market. The bill also provides that if the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one year period is stayed. The Commission suggests that this provision be modified or the Committee clarify its intent that the new procedures do not apply to contract market designation applications that may be pending before the Commission on the effective date of H.R. 5447 and that if an application is incomplete, the running of the one year time period shall not recommence until the Commission notifies the board of trade that the application has been resubmitted in completed form.

5. Commission Emergency Authority. Although the Commission did not and does not support any amendment to Section 8a(9) that would provide for judicial review of its emergency actions, the Commission is pleased that the committee has recognized the importance and necessity of prompt and effective Commission emergency action by providing only a limited form of judicial review. In particular the Commission notes that H.R. 5447 confines review to a court of appeals and precludes the issuance of any stay or order of mandamus against the Commission unless a panel of the court has made the required statutory findings. The Commission understands the reference to a "stay or order of mandamus" to include any preliminary or permanent injunction of the Commission's emergency action. Nevertheless, the Commission would suggest that H.R. 5447 be amended or the Committee report explicitly reflect its intent in this regard.

6. Controlling Person. H.R. 5447, as introduced, contained the Commission's proposal for imposing secondary liability on controlling persons. While the Committee has also approved this concept in new Section 13(b) of the Act, the Commission is concerned that the Committee's version of H.R. 5447 is not the best way to achieve the purposes that are to be served by the controlling person provision. The Commission notes that under both the Commission's proposal and the Committee's provision the Commission would have to prove that a person violated the Act and that another person controlled the activities of the violator. Under the Committee's bill, however, the Commission must also bear the burden of showing either that the controlling person did not act in good faith or that he directly or indirectly induced the act or acts constituting the violation. Thus, the Commission in effect will be forced to prove the absence of one or the other of these affirmative defenses. Having established a violation and control, however, the Commission believes that the controlling person should bear the burden of showing an absence of bad faith and a lack of inducement of the acts constituting the violation, as he is required to do under the Securities Exchange Act of 1934. Requiring the Commission to show not only that a violation occurred, not only that a person was in a controlling position, but also that that person did not act in good faith or in fact that he induced the violation, will diminish the value of this provision as a supplemental enforcement tool. Thus, in order for the controlling person provision to serve fully its intended purpose, the Commission urges that the Committee's version be amended to require the controlling person to prove as affirmative

defenses a lack of bad faith and of inducement.

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7. Special Study of the Commodity Futures Industry. The Commission believes that this study called for by H.R. 5447 could be a valuable educational document for producers, manufacturers, financial institutions, other commercial interests, and the public. The Commission notes that the bill authorizes appropriations of the funds necessary to carry out the study. The Commission therefore understands the Committee to have intended that the study be undertaken and completed when in fact funds are appropriated specifically for the study.

8. Private Rights of Action. Section 236 of H.R. 5447, as reported by the Committee, provides for an express statutory scheme of private rights of action for aggrieved persons to sue in federal court to recover actual damages for violations of the Act committed by commodity professionals, exchanges, and others. This scheme also sets forth standards of proof to establish recovery in the case of claims against self-regulatory organizations and their officials.

Throughout the reauthorization process the Commission has supported private rights of action, but in view of cases pending before the Supreme Court, the Commission did not offer any legislative proposals. As you know, on May 3, 1982, after the Committee had completed its work on H.R. 5447, the Supreme Court affirmed the existence of private rights of action under the Act. As a result, the Commission believes that the recent Supreme Court decision suffices to establish basic rights in this area and that no additional statutory rights or remedies are necessary based on the Commission's understanding of the Court's decision. Accordingly, while the Commission is pleased that the Committee shares the Commission's position regarding the salutary benefits of private rights of action, the Commission has decided not to undertake to develop statutory language for private rights of action.

9. Leverage Transactions. The Commission is extremely concerned over the amendments to Section 19 of the Act included in H.R. 5447. Requiring the Commission to regulate leverage transactions involving all commodities (other than the already prohibited transactions in the agricultural commodities) will prove to be a severe drain on the Commission's already strained resources. Furthermore, as the Commission's unfortunate experience in regulating London options makes clear, well-conceived and detailed regulations will not ensure that the public is not exposed to unacceptable risks by unscrupulous vendors of off-exchange instruments. The Commission is therefore fearful that H.R. 5447 will encourage rip-off artists to commence vending unlawful commodity futures contracts under the self-serving label of leverage transactions. (One firm has already asserted that it is selling leverage transactions as a defense in a civil injunctive action brought by the Commission alleging the unlawful sale of commodity futures contracts.) This will result in great financial losses to unwary customers, destroy public confidence in the legitimate commodity industry and consume countless hours of enforcement litigation by the Commission.

Accordingly, for the reason given in our testimony and statements to the Committee, the Commission urges enactment of its proposed new Section 19(e) of the Act, calling for the statutory codification of its regulatory moratoria and a study of leverage transactions, including a report to Congress on any public interests these

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transactions may serve and the proper governmental authority to regulate these transactions. In the alternative, the Commission would urge that H.R. 5447 be amended to limit its mandate for regulation of leverage transactions to those first addressed by Congress in 1974 -- transactions for the delivery of gold and silver coins or bullion -- and to retain the Commission's existing authority to prohibit leverage transactions involving all other commodities or to declare them to be commodity futures contracts. The Commission sees no public interest to be served by encouraging an off-exchange industry to develop these transactions. Indeed, such action by the Committee would be consistent with the 1978 Congressional judgment banning leverage transaction in agricultural commodities.

Very truly your,

PHILIP MCBRIDE JOHNSON, *Chairman.*

During the Committee's consideration of H.R. 5447, the following communication was received from the Office of Management and Budget.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 21, 1982.

HON. E DE LA GARZA,
House of Representatives,
Washington, D.C.

DEAR KIKI: It has come to my attention that there is some uncertainty about the Administration's position on user charges for the Commodity Futures Trading Commission. I would like to take this opportunity to clear up any confusion about our position on this very important Administration proposal.

This Administration assigns very high priority to enactment of a number of user charge proposals transmitted as part of the fiscal year 1983 budget. We believe that the case for full cost recovery user charges for the CFTC is particularly persuasive. Enclosed are several tables which clearly shows that the Administration's proposed user charges are insignificant when compared with a number of measures of the cash requirements and costs associated with trading in the futures market. The proposed differential in the member and non-member transaction fees -- 6 cents as opposed to 12 cents -- gives adequate recognition in our view of the added costs of National Futures Association members for self regulation.

As I indicated in my letter of March 30, to Senator Lugar and others, this Administration views the CFTC user charge proposal as an essential part of its overall budget strategy. We see no justification for the general taxpayer to continue to shoulder the cost of the special benefits conferred upon the commodity futures market by the programs of the CFTC.

We believe that it is essential that the Administration's full cost recovery user charge proposal be enacted if there is to be assurance of Administration support for enactment of the CFTC reauthorization bill.

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I would very much appreciate your efforts on our behalf to obtain enactment of this user charge proposal.

Sincerely,

DAVID A. STOCKMAN, *Director.*

COST OF ADMINISTRATION USER FEE PROPOSAL AS A PERCENT OF DIFFERENT MEASURES OF
FUTURE'S TRADING COSTS

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ESTIMATED COST OF PROPOSED USER FEES BASED ON AVERAGE TRADING VOLUME OF
SELECTED CLASSES OF TRADERS (PER SIDE OF TRANSACTION)

Floor Traders and Pool Operators are assumed to be members of an exchange or NFA and thus subject to the lower rate.

ESTIMATED COST OF BROKER COMMISSION AND EXCHANGE AND CLEARINGHOUSE FEES

(COMEX) BASED ON AVERAGE TRADING VOLUME OF SELECTED CLASSES OF TRADERS (PER SIDE OF TRANSACTION)

DEPARTMENT OF THE TREASURY,
Washington, D.C., March 12, 1982.

HON. ED JONES,
Chairman, Subcommittee on Conservation, Credit and Rural Development, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to express the Administration's position on the reauthorization of the Commodity Futures Trading Commission (CFTC).

After careful consideration at the sub-Cabinet and Cabinet levels, the Administration recommends:

1. Reauthorizing the CFTC for a fixed period of at least four years;
2. Offsetting the costs of the CFTC through user fees without discouraging membership in the National Futures Association;
3. Retaining the CFTC's exclusive regulatory jurisdiction over national exchange trading and pool operators;
4. Authorizing the CFTC to share information with State governmental authorities in connection with legal actions or investigations conducted by States; and
5. Incorporating the resolution of the SEC/CFTC jurisdictional dispute approved by Chairmen Shad and Johnson in the CFTC reauthorization bill.

These recommendations are consistent with the provisions of S. 2109 and H.R. 5447 as introduced at the request of the Chairman of the Commodity Futures Trading Commission.

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I respectfully request that a copy of this letter be included in the appropriate records of the CFTC reauthorization hearings recently conducted by the Subcommittee on Conservation, Credit and Rural Development. Thank you for your cooperation on this matter.

Sincerely,

ROGER W. MEHLE.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures) are not considered applicable. The estimate and comparison prepared by the Director of the Congressional Budget Office under clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 29, 1982.

HON. E DE LA GARZA,
Chairman, Committee on Agriculture, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 5447, the Futures Trading Act of 1982.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE -- COST ESTIMATE

APRIL 29, 1982.

1. Bill Number: H.R. 5447.

2. Bill title: Futures Trading Act of 1982.

3. Bill status: As ordered reported by the House Committee on Agriculture, April 22, 1982.

4. Bill purpose: H.R. 5447 authorizes appropriations to carry out the activities of the Commodity Futures Trading Commission (CFTC) through 1986. It also makes a number of changes affecting CFTC jurisdiction, registration requirements, and enforcement procedures. In addition, the CFTC would be required to study and report to the Congress on the commodity futures industry.

The President has requested an appropriation of \$ 23.0 million in 1983 to carry out the activities of the CFTC. The proposed 1983 budget also recommends user fees be collected to cover the full cost of the CFTC regulatory operations. Fiscal year 1982 appropriations to date for the CFTC are \$ 19.9 million.

5. Cost estimate:

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Including outlays from prior years' budget authority, outlays for the CFTC would be approximately \$ 20.9 million in 1983.

The costs of this bill fall within budget subfunction 376.

6. Basis of estimate: For purposes of this estimate, CBO's baseline projections were assumed for the estimates of authorization level in 1983 through 1986, since no specific authorization level was provided in the bill. Outlays reflect historical spending patterns.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 6, 1982, CBO prepared a cost estimate for S. 2109, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry on March 31, 1982. S. 2109 reauthorized the CFTC only through 1984. Since no specific authorization was provided in that bill, the same estimated authorization level was assumed for fiscal years 1983 and 1984.

9. Estimate prepared by: Mary B. Maginniss (226-2860).

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 5447, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

Prior to reporting of this legislation, the Subcommittee on Conservation, Credit, and Rural Development held a number of oversight hearings -- on February 12, 1980, May 21, 22, and 29, 1980, and October 9, 1981 with respect to silver; and on March 28, 1979 with respect to the March wheat emergency action of the CFTC. In addition, the Subcommittee held three days of hearings on February 23, 24, and 25, 1981 with respect to this legislation. The Committee also has reviewed a special report that was submitted on the silver situation jointly by the CFTC and other regulatory agencies, in reponse to the requirments of section 21 of the Commodity Exchange Act. It secured outside consultants to assist in analyzing the material it had developed on silver and March wheat.

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Finally, it has reviewed the report of the Committee on Government Operations dated December 11, 1981, on Silver Prices and the Adequacy of Federal Actions in the Marketplace, 1979-80.

The legislation reported by the Committee responds to its consideration of the testimony and information referred to above. Specific comments concerning the various issues covered by the Subcommittee as a result of its analysis of the foregoing is described in other sections of this report.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

Act of September 21, 1922, 42 Stat. 998, 7 *U.S. Code 1*, as amended by Act of October 23, 1974, Public Law 93-463, 88 Stat. 1389, and Act of September 30, 1978, Public Law 95-405, 92 Stat. 865

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

SEC. 1. This Act may be cited as the "Commodity Exchange Act."

SEC. 2. (a)(1) (A) For the purposes of this Act, "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "commodity" shall mean wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85-839, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in: *Provided*, That the

Commission shall have exclusive jurisdiction, *except to the extent otherwise provided in subparagraph (B) of this paragraph*, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call," "advance guaranty", or "decline guaranty"), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated pursuant to section 5 of this Act or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 19 of this Act; *And provided further*, That, except as hereinabove provided, nothing contained in this section shall (i) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (ii) restrict the

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Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State. Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade. The term "future delivery" as used herein, shall not include any sale of any cash commodity for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia. The words "cooperative association of producers" shall mean any cooperative association, corporate or otherwise, not less than 75 per centum in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with an Act of Congress of February 18, 1922 (U.S.C. 1934 ed., title 7, secs. 291 and 292), as now or hereafter amended, including any organization acting for a group of such associations and owned or controlled by such associations provided that business done for or with the United States of America, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with said Act of Congress of February 18, 1922. The words "member of a contract market" shall mean and include individuals, associations, partnerships, corporations, and trusts owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon. The words "futures commission merchant" shall mean and include individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. *The term "introducing broker" shall mean any person, except any individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase*

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or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result there from. The words "floor broker" shall mean any person who, in or surrounding any "pit", "ring", "post", or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market. The

words "the Commission" shall mean the Commodity Futures Trading Commission established under paragraph (2) of this subsection. [The term "commodity trading advisor" shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications or writings, as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities; but does not include (i) any bank or trust company, (ii) any newspaper reporter, newspaper columnist, newspaper editor, lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation including their employees, (v) any contract market, and (vi) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession.] *The term "commodity trading advisor" shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract for future delivery of a commodity made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, of this Act, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation or order: Provided, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: Provided further, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such*

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rule or regulation will effectuate the purposes of this provision. The term "commodity pool operator" shall mean any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

(B) Notwithstanding any other provision of law --

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

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

Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

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

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

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(c) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof or shall be comparable to such measure.

(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) hereof, and shall consult with the Securities and Exchange Commission with respect to such designation. If, within fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of clause (ii) hereof is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. In the event that such an oral hearing is held and the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(b) of this Act. In the event that, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

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

(2)(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners,

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who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for

appointment, the President shall seek to establish and maintain a balanced Commission, including, but not limited to, persons of demonstrated knowledge in futures trading or its regulation and persons of demonstrated knowledge in the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights and interests covered by this Act. Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other legal duties and functions as the Commission may direct.

(5) The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6)(A) Except as otherwise provided in this paragraph and in paragraphs (4) and (5) of this subsection, the executive and administrative

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functions of the Commission, including functions of the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

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

[(B) No Commissioner or employee of the Commission classified as a GS-16 or higher in a position excepted from the competitive service by reason of being of a confidential or policymaking character shall, for a period of one year beginning on the last day of service as such Commissioner or employee --

(i) make any appearance before the Commission, or

(ii) make any written or oral communication to the Commission, or any Commissioner or employee of the Commission, on behalf of any person (other than the United States) on any particular matter that is before the Commission,

if such last day of service is more than four months after the date of enactment of this subparagraph. The restrictions in this subparagraph shall not apply to an appearance or response under a subpoena issued by the Commission, or any matter of an exclusively personal and individual nature.]

(8)(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively such

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liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission. The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keeping such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation as a contract market involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate a board of trade as a contract market based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In

designating, or refusing, suspending, or revoking the designation of a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, suspension, revocation, or emergency action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(9)(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Agriculture

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and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(10) The Commission shall have an official seal, which shall be judicially noticed.

(11) The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(b) For the purpose of this Act (but not in anywise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and byproducts thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

[SEC. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements

thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of commodities on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the

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producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in commodities and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest there-in.]

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

[SEC. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of any commodity for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in any commodity or the products or byproducts thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, except, in any of the foregoing cases, where such contract is made by or through a member of a board of trade which has been designated by the Commission as a "contract market", as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the United States Department of Justice.]

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SEC. 4. (a) It shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of or to conduct any office or business anywhere in the United States or its territories or possessions for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange or market located outside the United States, its territories or possessions) unless: (1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity, (2) such contract is executed or consummated by or through a member of such contract market, and (3) such contract is evidenced by a record in writing which shows the date, the

parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each contract market member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the United States Department of Justice.

(b) The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk and reporting requirements, the keeping of books and records, the safeguarding of customer funds, and registration with the Commission by any person located in the United States, its territories, or possessions who engages in the offer and sale of any contract of sale of a commodity for future delivery which is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions. Such rules and regulations may impose different requirements for such persons depending upon the particular foreign board of trade or market on which such contracts are made. No rule or regulation shall be adopted by the Commission under this subsection that (1) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or clearinghouse for such market; or (2) requires Commission approval of any contract, rule, regulation, or action of any such market or its clearinghouse.

SEC. 4a. (1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by order, proclaim and fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly

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controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, *or for different number of days remaining until the last day of trading in a contract*, or different trading limits for buying and selling operations, or different limits for the purposes of subparagraphs (2) (A) and (B) of this section, or from exempting transactions normally known to the trade as "spreads" or "straddles" or "arbitrage" or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word "arbitrage" in domestic markets shall be defined to mean the same as a "spread" or "straddle". The Commission is authorized to define the term "international arbitrage".

(2) The Commission shall in such order fix a reasonable time (not to exceed ten days) after the [order's promulgation] *promulgation of the rule, regulation, or order*, after which, and until such *rule, regulation, or order* is suspended, modified, or revoked, it shall be unlawful for any person --

(A) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the *rule, regulation, or order* applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such *rule, regulation, or order* for or with respect to such commodity; or

(B) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market in excess of any position limit fixed by the Commission for or with

respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such *rule, regulation, or order*.

[(3) No order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission within one hundred eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this Act.]

(3) No rule, regulation, or order issued under subsection (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this Act: Provided, That such terms shall permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an

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exchange. For the purpose of determining the adequacy of this Act and the powers of the Commission acting thereunder to diminish, eliminate or prevent unwarranted price pressures by very large hedgers operating under this subsection, the Commission shall monitor the trading activities of large hedgers selected by the Commission and shall report its findings and recommendations to the Senate Agriculture, Nutrition, and Forestry Committee and the House Committee on Agriculture in its annual report for each of the four years following the date of enactment of the Futures Trading Act of 1982.

(4) This section shall apply to a person that is registered as a futures commission merchant, *an introducing broker* or [as] a floor broker under authority of this Act only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof.

(5) Nothing in this section shall prohibit or impair the adoption by any contract market or by any other board of trade licensed or designated by the Commission, of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market, or under options on such contracts or commodities, traded on or subject to the rules of such contract market or such board of trade: Provided, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, the bylaws, rules, regulations, and resolutions adopted by such contract market or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this Act for any person to violate any bylaw, rule, regulation, or resolution of any contract market or other board of trade licensed or designated by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission: Provided, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits.

SEC. 4b. It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity

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sold, shipped, or received in interstate commerce for the fulfillment thereof --

(A) to cheat or defraud or attempt to cheat or defraud such other person;

(B) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

Nothing in this section or any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month, from executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

SEC. 4c. (a) It shall be unlawful for any person to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof --

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

[(B) if such transaction involves any commodity specifically set forth in section 2(a) of this Act, prior to the enactment of the Commodity Futures Trading Commission Act of 1974, and if such transaction is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or]

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

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

[(b) No person shall offer to enter into or confirm the execution of, any transaction subject to the provisions of subsection (a) of this section involving any commodity regulated under this Act, but not specifically set forth in section 2(a) of this Act, prior to the enactment of the Commodity Futures Trading Commission Act of 1974, which is of the

character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe within one year after the effective date of the Commodity Futures Trading Commission Act of 1974 unless the Commission determines and notifies the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture that it is unable to prescribe such terms and conditions within such period of time: *Provided*, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: *And provided further*, That the Commission may set different terms and conditions for different markets.]

(b) No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe: Provided, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: And provided further, That the Commission may set different terms and conditions for different markets.

(c) Notwithstanding the provisions of subsection (b) of this section, no person may, after the enactment of the Futures Trading Act of 1978, offer to enter into, enter into, or confirm the execution of any commodity option transaction involving any commodity regulated under this Act but not specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974, until (1) the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry documentation of its ability to regulate successfully such transactions, including a copy of the Commission's proposed rules and regulations, and (2) the expiration of thirty calendar days of continuous session of Congress after the date of such transmittal. With respect to any commodity regulated under this Act and specifically set forth in section 2(a) of this Act prior to the date of enactment of the Commodity Futures Trading Commission Act of 1974, the Commission may, pursuant to the procedures set forth in this subsection, authorize a pilot program for a

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period not to exceed three years to permit such commodity option transactions if such authorization does not apply to more than one such commodity at any contract market designated therefor by the Commission, and beginning three years following the authorization of such pilot program, the Commission may authorize transactions in such commodities at contract markets designated therefor without regard to the restrictions in the pilot program after the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the documentation required under clause (1) of the first sentence of this subsection and the expiration of sixty calendar days of continuous session of Congress after the date of such transmittal. The Commission is not precluded from transmitting, at any time, documentation relating to its ability to regulate such transactions regarding individual commodities, classes of commodities, or regulation of such transactions on specific boards of trade. Nothing in this subsection shall affect any rights or obligations arising out of any transactions subject to the provisions of this subsection entered into, or the execution of which was confirmed, prior to October 1, 1978: Provided, That this prohibition shall not apply to any transaction expressly permitted under rules or regulations prescribed by the Commission, before or after the date of enactment of the Futures Trading Act of 1978, to be offered to be entered into, entered into, or confirmed, in which the purchaser is a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or byproducts thereof.

(d) Notwithstanding the provisions of subsection (c) of this section --

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August

17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection: *Provided*, That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity subject to the provisions of subsection (b) of this section if --

(A) the grantor is a person domiciled in the United States who --

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least \$ 5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

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(iii) notifies the Commission and every futures commission merchant offering the grantor's option if the grantor knows or has reason to believe that the grantor's net worth has fallen below \$ 5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (*15 U.S.C. 78c(a)(12)*), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who --

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer's name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission.

The Commission may permit persons not domiciled in the United States to grant options under this subsection under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including

a finding that the continuation of such right is contrary to the public interest: *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest.

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(e) The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest.

(f) *Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.*

SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant *or introducing broker* in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless --

(1) such person shall have registered, under this Act, with the Commission as such futures commission merchant *or introducing broker* and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, *if a futures commission merchant*, whether a member or nonmember of a contract market, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however*, That such money, securities and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearinghouse organization of such contract market, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers or resulting market positions, with the clearinghouse organization of such contract market or with any member of such contract market, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage and other charges, lawfully accruing in connection with such contracts and trades: *Provided further*, That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: *Provided further*, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in

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obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

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

SEC. 4e. It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery on or

subject to the rules of any contract market unless such person shall have registered, under this Act, with the Commission as such floor broker and such registration shall not have expired nor been suspended nor revoked.

SEC. 4f. [(1) Any person desiring to register as futures commission merchant or as floor broker hereunder shall be registered upon application to the Commission, which application shall be made in form and manner to be prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged including, in the case of applications of futures commission merchants, the names and addresses of the managers of all branch offices and of all correspondents and agents engaged in soliciting or accepting on behalf of such applicants any orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any board of trade, and including also the names of its officers and partners, if a partnership, and of its officers, directors, and stockholders, as the Commission may direct, if a corporation. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to his business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked after notice and hearing as prescribed in this Act.]

(1) Any person desiring to register as a futures commission merchant, introducing broker or floor broker hereunder shall be registered upon application to the Commission, which application shall be made in form and manner to be prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged including, in the case of an application of a futures commission merchant and introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockholders, if a corporation, as the Commission may direct. Such person, when registered hereunder, shall likewise continue to report

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and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this Act.

(2) Notwithstanding any other provisions of this Act, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligations as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: *Provided*, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market and conforms to minimum financial standards and related reporting requirements set by such contract market in its bylaws, rules, regulations or resolutions and approved by the Commission as adequate to effectuate the purposes of this paragraph (2).

SEC. 4g. (1) Every person registered hereunder as futures commission merchant, *introducing broker* or floor broker shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customers thereof, in commodities for future delivery on any board of trade in the United States or elsewhere; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

(2) Every clearinghouse and contract market shall maintain daily trading records. The daily trading records shall

include such information as the Commission shall prescribe by rule.

(3) Floor brokers, *introducing brokers* and futures commission merchants shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (2).

(4) Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission. Reports shall be made from the records maintained at such times and at such places and in such form as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures.

(5) Before the beginning of trading each day, the exchange shall, insofar as is practicable and under terms and conditions specified by the Commission, make public the volume of trading on each type of contract for the previous day and such other information as the Commission deems necessary in the public interest and prescribes by rule, order, or regulation.

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

[SEC. 4h. It shall be unlawful for any person --

(1) to conduct any office or place of business anywhere in the United States or its territories for the purpose of soliciting or accepting any orders for the purchase or sale of any commodity for future delivery, or for making or offering to make any contracts for the purchase or sale of any commodity for future delivery, or for conducting any dealings in commodities for future delivery, that are or may be used for --

(A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or

(B) determining the price basis of any such transaction in interstate commerce, or

(C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, if such orders, contracts, or dealings are executed or consummated otherwise than by or through a member of a contract market; or

(2) falsely to represent such person to be a member of a contract market, or the representative or agent of such member, or to be a futures commission merchant registered under this Act, or the agent of such registered futures commission merchant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through any member of, any contract market.]

SEC. 4h. It shall be unlawful for any person falsely to represent such person to be a member of a contract market, or the representative or agent of such member, or to be a registrant under this Act, or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through any member of, any contract market.

[SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Commission (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity,

during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Commission. Such person shall keep books and records of all futures transactions

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and positions coming within the provisions of (1) and (2) hereof, and shall keep books and records of such cash or spot transactions in such commodity entered into, and inventories and purchase and sale commitments of such commodity held, in any month in which such person is required to make any report under the provisions of (1) or (2), as the Commission may require. Such books and records shall show complete details concerning all such transactions, positions, inventories and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the United States Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.]

SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market --

(1) if such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless, such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions within the provisions of (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and purchase and sale commitments of, such commodity.

Such books and records shall show complete details concerning all such transactions, positions, inventories and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the United States Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

SEC. 4j. (1) The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required, make a determination, after notice and opportunity for hearing, whether or not a floor broker may trade for his own account or any account in which such broker has trading discretion, and also execute a customer's order for future delivery and, if the Commission determines that such trades and such executions shall

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be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades and such executions shall be conducted: *Provided*, That any such determination shall, at a minimum, take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

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

[SEC. 4k. (1) It shall be unlawful for any person to be associated with any futures commission merchant or with any agent of a futures commission merchant as a partner, officer, or employee (or any person occupying a similar status of performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person shall have registered, under this Act, with the Commission and such registration shall not have expired nor been suspended (and the period of suspension has not expired) nor revoked, and it shall be unlawful for any futures commission merchant or any agent of a futures commission merchant to permit such a person to become or remain associated with him in any such capacity if such futures commission merchant or agent knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or revoked: *Provided*, That any individual who is registered as a floor broker or futures commission merchant (and such registration is not suspended or revoked) need not also register under these provisions.

(2) Any such person desiring to be registered shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire two years after the effective

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date thereof or at such other time, not less than one year from the date of issuance thereof, as the Commission may by rule, regulation, or order prescribe and shall be renewed upon application therefor, unless the registration has been suspended (and the period of such suspension has not expired) or revoked after notice and hearing as prescribed in section 6(b) of this Act; *Provided*, That upon initial registration, unless the Commission otherwise prescribes by rule, regulation, or order, the effective period of such registration shall be not more than two years nor less than one year from the effective date thereof.

(3) The Commission may authorize a registered futures association to perform any portion of the registration functions under this section, in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission.]

SEC. 4k. (1) It shall be unlawful for any person to be associated with a futures commission merchant or with an introducing broker as a partner, officer, or employee (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked, and it shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked:

Provided, That any individual who is registered as a floor broker, futures commission merchant or introducing broker (and such registration is not suspended or revoked) need not also register under these provisions.

(2) It shall be unlawful for any person to be associated with any commodity pool operator as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered as an associated person of such commodity pool operator, under this Act, with the Commission and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked, and it shall be unlawful for any commodity pool operator to permit such a person to become or remain associated with him in any such capacity if such commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked: Provided, That any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another

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category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: Provided further, That the Commission may exempt any person or class of persons from having to register under this provision by rule, regulation, or order.

(3) It shall be unlawful for any person to be associated with any commodity trading advisor as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered as an associated person of such commodity trading advisor, under this Act, with the Commission and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked, and it shall be unlawful for any commodity trading advisor to permit such a person to become or remain associated with him in any such capacity if such commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked: Provided, That any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: Provided further, That the Commission may exempt any person or class of persons from having to register under this provision by rule, regulation, or order.

(4) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

(5) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

SEC. 41. It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things --

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their

contracts, solicitations, subscriptions, agreements, and other arrangements with clients take place and are negotiated and performed by the use of the mails and other means and instrumentalities of interstate commerce;

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

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets.

SEC. 4m. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided*, That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 14 of this Act.

(2) Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

SEC. 4n. (1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator may register under this Act by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the applicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions, or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant

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and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

(2) Each registration under this section shall expire on the 30th day of June of each year, or at such other time, not less than one year from the effective date thereof, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(3)(A) Every commodity trading advisor and commodity pool operator registered under this Act shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients subscribers, or participants.

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

[(5) The Commission is authorized, without hearing, to deny registration to any person as a commodity trading advisor or commodity pool operator if such person is subject to an outstanding order under this Act denying to such person trading privileges on any contract market, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.]

[(6) The Commission after hearing may by order deny registration, revoke or suspend the registration of any commodity trading advisor or commodity pool operator if the Commission finds that such denial, revocation, or suspension is in the public interest and that --

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(A) the operations of such person disrupt or tend to disrupt orderly marketing conditions, or cause or tend to cause sudden or unreasonable fluctuations or unwarranted changes in the prices of commodities;

(B) such commodity trading advisor or commodity pool operator, or any partner, officer, director, person performing similar function, or controlling person thereof --

(i) has within ten years of the issuance of such order been convicted of any felony or misdemeanor involving the purchase or sale of any commodity or security, or arising out of any conduct or practice of such commodity trading advisor or commodity pool operator or affiliated person as a commodity trading advisor or commodity pool operator; or

(ii) at the time of the issuance of such order, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or as an affiliated person or employee of any of the foregoing, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale

of commodities or securities; or

(C) any partner, officer, or director of such commodity trading advisor or commodity pool operator, or any person performing a similar function or any controlling person thereof is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract.]

[SEC. 4o. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly --

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor or commodity pool operator registered under this Act to represent or imply in any manner whatsoever that he has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof: *Provided*, That this section shall not be construed to prohibit a statement that a person is registered under this Act as a commodity trading advisor or commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented.]

SEC. 4o. (1) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator or associated person of a commodity pool operator by

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use of the mails or any means or instrumentality of interstate commerce, directly or indirectly --

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator or associated person of a commodity pool operator registered under this Act to represent or imply in any manner whatsoever that he has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof: Provided, That this section shall not be construed to prohibit a statement that a person is registered under this Act as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented.

SEC. 4p. The Commission may specify by rules and regulations appropriate standards with respect to training experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of [futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers] *persons registered with the Commission*. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration [as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers] and the establishment of reasonable fees to be charged to such applicants to cover the administration of such

examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this Act or contract markets may adopt written proficiency examinations to be given to applicants for registration [as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers] and charge reasonable fees to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated, through training and experience, the degree of proficiency and skill necessary to protect the interests of [the customers of futures commission merchants and floor brokers] *customers, clients, pool participants, or other members of the public with whom such persons deal.*

SEC. 4q. The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines

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that such information may be helpful to any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

SEC. 5. The Commission is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

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

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

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

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

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

trade, any

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

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

(g) When such board of trade demonstrates that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest. *In determining whether designation of such board of trade as a contract market for any commodity would be contrary to the public interest, the Commission shall consider, among other things, the extent to which trading in the commodity for which such designation is sought is likely to divert investment capital away from the capital formation process, to cause price manipulation, and to cause price destabilization in that commodity.*

SEC. 5a. Each contract market shall --

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

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

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

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by any representative of the Commission or United States Department of Justice;

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

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

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

(7) require that receipts issued under the United States Warehouse Act (U.S.C. 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however*, That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes; *And provided further*, That this subsection shall apply only to futures contracts for those commodities which may be delivered from a warehouse subject to the United States Warehouse Act;

[(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any

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committee, which relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relate to other trading requirements, and which have been approved by the Commission pursuant to paragraph (12) of section 5a of this Act; and revoke and not enforce any such bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, which has been disapproved by the Commission;]

(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, which (1) have been approved by the Commission pursuant to paragraph (12) of this section, (2) have become effective under such paragraph, or (3) must be enforced pursuant to any Commission rule, regulation or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, which has been disapproved by the Commission;

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

(10) permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this

subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives: *Provided*, That any order issued under this paragraph shall not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open: *And provided further*, That no requirement for an additional delivery point or points shall be promulgated following hearings until the contract market affected has had notice and opportunity to file exceptions to the proposed order determining the location and number of such delivery point or points;

[(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers claims and grievances against any

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member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary, (ii) the procedure shall not be applicable to any claim in excess of \$ 15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties, and (iv) the term "customer" as used in this subsection shall not include a futures commission merchant or a floor broker; and]

(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers claims and grievances against any member or employee thereof: Provided, That (i) the use of such procedure by a customer shall be voluntary and (ii) the term "customer" as used in this subsection shall not include another member of the contract market; and

[(12) except as otherwise provided in this subsection, submit to the Commission for its approval all bylaws, rules, regulations, and resolutions made or issued by such contract market, or by the governing board thereof or any committee thereof which relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relate to other trading requirements except those relating to the setting of levels of margin. At least thirty days before approving any such bylaws, rules, regulations, and resolutions of major economic significance, as determined by the Commission, the Commission shall publish in the Federal Register such bylaws, rules, regulations, and resolutions. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such bylaws, rules, regulations, or resolutions are of economic significance shall be final and not subject to judicial review. The Commission shall approve, within thirty days of their receipt (or within sixty days of their receipt if the Commission determines them to be of major economic significance) unless the Commission notifies the contract market of its inability to make such determination within such period of time, such bylaws, rules, regulations, and resolutions upon a determination that such bylaws, rules, regulations, and resolutions are not in violation of the provisions of this Act or the regulations of the Commission and thereafter the Commission shall disapprove, after appropriate notice and opportunity for hearing, any bylaw, rule, regulation, or resolution which the Commission finds at any time is in violation of the provisions of this Act or the regulations of the Commission. The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, adopt a temporary rule dealing with trading requirements without prior Commission approval. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may place into immediate effect without prior Commission approval a temporary rule dealing with such emergency if it notifies the Commission of such action with a

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complete explanation of the emergency involved. The Commission may adopt a regulation exempting enumerated types of contract market operational and administrative rules from the requirement that they be submitted to the Commission for its approval.]

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

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effect by the contract market until such time as the Commission disapproves such rule in accordance with this subsection. The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, make effective a rule on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under this paragraph, or during any period of review by the Commission. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may place into effect immediately a temporary rule dealing with such emergency if it notifies the Commission of such action with a complete explanation of the emergency involved.

SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of the Act or any of the rules, regulations, or orders of the Commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract market" in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements. *The Commission shall approve or deny an application for designation as a contract market within one year of the filing of the application. If the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one-year period shall be stayed from the time of such notification until the application is resubmitted in completed form. Provided, That the Commission shall have not less than sixty days to*

approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate as a "contract market" any board of trade that has made application therefor, such board of trade shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in paragraph (a) of this section.

(a) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 5 of this Act or that such board of trade, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after

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such suspension or revocation by the Commission such board of trade appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in *section 2112 of title 28, United States Code*. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(b) If the Commission has reason to believe that any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to such person, until further notice of the Commission, and to show cause why the registration of such person, if registered [as futures commission merchant or any person associated therewith as described in section 4k of this Act, commodity trading advisor, commodity pool operator, or as floor broker hereunder] *with the Commission in any capacity*, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission or before an Administrative Law Judge designated

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by the Commission which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. For the purpose of securing effective enforcement of the provisions of this Act

and for the purpose of any investigation or proceeding under this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Upon evidence received, the Commission may prohibit such person from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered [as futures commission merchant or any person associated therewith as described in section 4k of this Act, commodity trading advisor, commodity pool operator, or as floor broker hereunder] *with the Commission in any capacity*, may suspend, for a period not to exceed six months, or revoke, the registration of such person, and may assess such person a civil penalty of not more than \$ 100,000 for each such violation. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, *or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located*, a written petition, within fifteen days after the notice of such order is given to the offending person, praying that the order of the Commission

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be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in *section 2112 of Title 28, United States Code*. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission, as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

(c) If any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in paragraph (b) of this section, make and enter an order directing that such person shall cease and desist therefrom, and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of misdemeanor and, upon conviction thereof, shall be fined not more than \$ 100,000, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph 9(a) or 9(b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under section 6(b) of this Act. Each day during which such failure or refusal to obey or comply with such order continues

shall be deemed a separate offense.

(d) In determining the amount of the money penalty assessed under paragraph (b) of this section, the Commission shall consider, in the case of a person whose primary business involves the use of the commodity futures market -- the appropriateness of such penalty to the size of the business of the person charged, the extent of such person's ability to continue in business, and the gravity of the violation; and in the case of a person whose primary business does not involve the use of the commodity futures market -- the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation. If the offending person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

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SEC. 6a. (1) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the Commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such Commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said Commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

(2) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any contract market is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 5 of this Act, or if any contract market, or any director, officer, agent, or employee of any contract market otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such contract market, director, officer, agent, or employee

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shall cease and desist from such violation, and assess a civil penalty of not more than \$ 100,000 for each such violation. If such contract market, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such contract market, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$ 100,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending contract market or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the appropriateness of such penalty to the net worth of the offending person and the gravity of the offense, and in the case of a contract market shall further consider whether the amount of the penalty will materially impair the contract market's ability to carry on its operations and duties.

SEC. 6c. Whenever it shall appear to the Commission that any contract market or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (*other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating or disposing of any funds, assets or other property*) or injunction for violation of the provisions of this Act shall be issued ex parte by said Court. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take such action as is necessary to remove the danger of violation of this Act or any such rule, regulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued ex parte. Any action under this section may be brought in the district

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wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found. In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action. Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

SEC. 6d. (1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, clearinghouse, or floor broker) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this Act, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(2) The district courts of the United States, the United States courts of any territory, and the District Court of the

United States for the District of Columbia, shall have jurisdiction of all suits in equity and actions at law brought under this section to enforce any liability or duty created by this Act or any rule, regulation, or order of the Commission thereunder, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder, including the requirement that the defendant take such action as is necessary to remove the danger of violation of this Act or of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Immediately upon instituting any such suit or action, the State shall serve written notice thereof upon the Commission and provide the Commission with a copy of its complaint, and the Commission shall have the right to (A) intervene in the suit or action and, upon doing so, shall be heard on all matters arising therein, and (B) file petitions for appeal.

(4) Any suit or action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(5) For purposes of bringing any suit or action under this section, nothing in this Act shall prevent the attorney general, the administrator of the State securities laws, or other duly authorized State

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officials from exercising the powers conferred on them by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) For purposes of this section, "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(7) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Commission requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Commission in the manner herein provided for an original application.

SEC. 8. (a) For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this Act. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. *The Commission shall promulgate regulations, pursuant to notice and receipt of public comment, specifying procedures by which --*

(1) the Commission shall, when requested by a submitter at the time of submission of information to the Commission, notify the submitter, within five days of receipt of a request, that such a request for records containing such information has been made under the Freedom of Information Act;

(2) a submitter or requester may submit to the Commission written argument regarding a request made for disclosure of records; and

(3) the Commission is not required to notify a submitter of the receipt of a request under clause (1) of this subsection if --

(A) the Commission determines, prior to giving such notice, that the request for disclosure should be denied;

(B) the disclosure is pursuant to law or Commission rule which requires disclosure of specific records in such a manner as to leave no discretion on the issue; or

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(C) the information has been published or otherwise made available to the public.

(b) The Commission may disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, [or] in an administrative or judicial proceeding brought under this Act, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code.

(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any board of trade or to the transactions of any person found guilty of violating the provisions of this Act or the rules, regulations, or orders of the Commission thereunder in proceedings brought under section 6 of this Act. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this Act.

(d) The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

(e) The Commission may disclose and make public, where such information has previously been disclosed publicly in accordance with the provisions of this section, the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of commodities purchased or sold by each such trader. Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction, the Commission shall furnish to such committee the names and addresses of all traders on such boards of trade with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of any commodity purchased or sold by each such trader. Upon the request of any department or agency [of the Executive Branch] of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. However, any information furnished

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under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. *Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with any adjudicatory action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision, or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such department or agency except in connection with any adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party.*

(f) The Commission shall submit to the Congress a written report within one hundred and twenty days after the end of each fiscal year detailing the operations of the Commission during such fiscal year. The Commission shall include in such report such information, data, and legislative recommendations as it deems advisable with respect to the administration of this Act and its powers and functions under this Act.

(g) The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits the Comptroller General shall be furnished such information regarding the powers, duties, organizations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission except that in reports the Comptroller General shall not include data and information which would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction.

(h) The Commission shall disclose information in its possession pursuant to a subpoena or summons only if --

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, and

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(2) fourteen days have expired from the date of mailing of the subpoena or summons.

SEC. 8a. The Commission is authorized --

[(1) to register futures commission merchants and persons associated therewith as described in section 4k of this Act, commodity trading advisors, commodity pool operators, and floor brokers upon application in accordance with rules and regulations and in form and manner to be prescribed by the Commission, which may require the applicant, and any persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing; and]

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity

trading advisors, commodity pool operators, associated persons of commodity pool operators, and floor brokers upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registration and renewals thereof: Provided, That notwithstanding any provision of this Act, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations or orders as the Commission may adopt: Provided further, That the term of any such temporary license shall not exceed six months from the date of its issuance;

[(2) to refuse to register any person --

(A) if the prior registration of such person has been suspended (and the period of such suspension shall have not have expired) or has been revoked;

(B) if it is found, after opportunity for hearing, that the applicant is unfit to engage in the business for which the application for registration is made, (i) because such applicant, or, if the applicant is a partnership, any general partner, or, if the applicant is a corporation, any officer or holder of more than 10 percentum of the stock, at any time engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made any material false or misleading statement in his application or willfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown; or

(C) in the case of an applicant for registration as futures commission merchant, if it is found after opportunity for hearing, that the applicant has not established that he

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meets the minimum financial requirements under section 4f of this Act:

Provided, That pending final determination under clause (B) or (C), registration shall not be granted: and Provided further, That the applicant may appeal from a refusal of registration under clause (B) or (C) in the manner provided in paragraph (b) of section 6 of this Act; and]

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, to suspend, or to place restrictions upon the registration of, any person and with such a hearing as may be appropriate, to revoke the registration of any person --

(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice

concerning contracts of sale of a commodity for future delivery, or concerning activity subject to Commission regulation under section 4c or 19 of this Act or concerning securities;

(D) if such person has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony which (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 4c or 19 of this Act, or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment advisor, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement,

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theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343, or chapter 25, 47, 95, or 96 of title 18, United States Code;

(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(F) if such person is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, denying, suspending, or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a contract market or with a member of a registered futures association;

(G) if, as to any of the matters set forth in subparagraphs (A) through (F) of this paragraph, such person willfully made any material false or misleading statement or omitted to state any material fact in his application; or

(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph: Provided, That for the purposes of paragraphs (2) and (3) of this section, principal shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission: Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of

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this paragraph in the manner provided in paragraph (b) of section 6 of this Act;

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that --

(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated or has consented to findings of a violation of, any provision of this Act, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board; or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: Provided, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this paragraph if (i) there have been established procedures, and a system for applying such procedures which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

(D) such person was convicted of a felony other than a felony of the type specified in section 8a(2)(D) of this Act within ten years preceding the filing of the application or at any time thereafter, or was convicted of a felony, including a felony of the type specified in paragraph (2)(D) of this section, more than ten years preceding the filing of the application;

(E) such person was convicted within ten years preceding the filing of any application for registration or at any time

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thereafter of any misdemeanor which (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 4c or 19 of this Act or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, United States Code;

(F) such person was debarred by any agency of the United States from contracting with the United States;

(G) such person willfully made any material false or misleading statement or willfully omitted to state any material fact in such person's application or in any report required to be filed with the Commission by this Act or the regulations thereunder, or in any proceeding before the Commission;

(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been

committed under Federal jurisdiction;

(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this Act or under the rules or regulations of the Commission, such person has not established that he meets such minimum financial requirements;

(J) such person is subject to an outstanding order denying, suspending, or expelling him from membership in a contract market, a registered futures association, or in any other self-regulatory organization, or barring or suspending him from being associated with any member or members of such contract market, association, or self-regulatory organization;

(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities, or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

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(L) such person has associated with him any other person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

(M) there is other good cause; or

(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration;

Provided, That pending final determination under this paragraph (3), registration shall not be granted: Provided further, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to the provisions of this paragraph in the manner provided in paragraph (b) of section 6 of this Act;

[(3) in accordance with the procedure provided for in paragraph (b) of section 6 of this Act, to suspend or revoke the registration of any person registered under this Act if cause exists under subparagraph (2)(B) or (C) which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Commission under the provisions of paragraph (b) of section 6 of this Act and the period of denial specified in such order shall not have expired; and]

(4) in accordance with the procedure provided for in paragraph (b) of section 6 of this Act, to suspend, revoke, or to place restrictions upon the registration of any person registered under this Act if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or any introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Commission under the provisions of paragraph (b) of section 6 of this Act and the period of denial specified in such order shall not have expired: Provided, That such person may appeal from a decision to suspend, revoke, or to place restrictions upon registration made pursuant to the provisions of this subsection in the manner provided in paragraph (b) of section 6 of this Act;

[(4) to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof; and]

(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act;

(6) to communicate to the proper committee or officer of any contract market, *registered futures association, or self-regulatory*

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organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers [and consumers], consumers or investors, or which is necessary or appropriate to effectuate the purposes of this Act: Provided, however, That any information furnished by the Commission under this subsection shall not be disclosed by such contract market, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding; [and]

(7) to alter or supplement the rules of a contract market insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a contract market that such contract market effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such contract market has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such contract market, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such contract market. Such rules, regulations, or orders may specify changes with respect to such matters as:

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such contract market;

(B) the form or manner of execution of purchases and sales for future delivery;

(C) other trading requirements, excepting the setting of levels of margin;

(D) safeguards with respect to the financial responsibility of members;

(E) the manner, method, and place of soliciting business, including the content of such solicitations; and

(F) the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts; [and]

(8) to make and promulgate such rules and regulations with respect to those persons registered under this Act, who are not members of a contract market, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation; [and]

[(9) to direct the contract market, whenever it has reason to believe that an emergency exists, to take such action as, in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any

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act of the United States or a foreign government affecting a commodity or any other major market disturbance which

prevents the market from accurately reflecting the forces of supply and demand for such commodity: *Provided*, That nothing herein shall be deemed to limit the meaning or interpretation given by a contract market to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions.]

(9) to direct the contract market, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including the setting of temporary emergency margin levels on any futures contract, and the fixing of position limits that may apply to a position acquired in good faith prior to the effective date of the Commission's action. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States court of appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the court of appeals for the District of Columbia circuit. Such review shall be based upon an examination of all of the information before the Commission at the time the determination is made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a contract market to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions; and

(10) to authorize any person to perform any portion of the registration functions under this Act, in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission.

SEC. 8b. It shall be unlawful for any person, against whom there is outstanding any order of the Commission prohibiting him from trading on or subject to the rules of any contract market, to make or cause to be made in contravention of such order, any contract for future delivery of any commodity, on or subject to the rules of any contract market.

SEC. 8c. (1)(A) Any exchange or the Commission if the exchange fails to act, may suspend, expel, or otherwise discipline any person who is a member of that exchange, or deny any person access to the exchange. Any such action shall be taken solely in accordance with the rules of that exchange.

(B) Any suspension, expulsion, disciplinary, or access denial procedure established by an exchange rule shall provide for written notice to the Commission and to the person who is suspended, expelled,

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or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission.

(2) The Commission may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange. In addition, the Commission may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

(3) The Commission may affirm, modify, set aside, or remand any exchange decision it reviews pursuant to subsection (2), after a determination on the record whether the action of the exchange was in accordance with the policies of this Act. Subject to judicial review, any order of the Commission entered pursuant to subsection (2) shall govern the exchange in its further treatment of the matter.

(4) The Commission, in its discretion, may order a stay of any action taken pursuant to subsection (1) pending review thereof.

SEC. 9. [(a) It shall be a felony punishable by a fine of not more than \$ 500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any futures commission merchant, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of \$ 100, which was received by such commission merchant to margin, guarantee, or secure the trades or contracts of any customer of such commission merchant or accruing to such customer as the result of such trades or contracts. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than \$ 100,000, together with the costs of prosecution.]

(a) It shall be a felony punishable by a fine of not more than \$ 500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person registered or required to be registered under this Act or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of \$ 100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts, or which otherwise was received from any customer, client or pool participant in connection with the business of such person. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than

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\$ 100,000, together with the costs of prosecution. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. Other provisions of this subsection notwithstanding, a person convicted of a felony under this subsection shall be suspended from registration under this Act and shall be denied reregistration for five years or such longer period as the Commission shall determine, unless the Commission determines that the imposition of such suspension or denial of reregistration is not required to protect the public interest.

(b) It shall be a felony punishable by a fine of not more than \$ 500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity, or knowingly to deliver or cause to be delivered for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce or knowingly to violate the provisions of section 4, section 4b, section 4c(b) through section 4c(e), section 4h, section 4o(1), or section 19 of this Act, or knowingly to make any false or misleading statement of a material fact in any registration application or report filed with the Commission, or knowingly to omit in any application or report any material fact that is required to be stated therein. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than \$ 100,000, together with the costs of prosecution. Other provisions of this subsection notwithstanding, a person convicted of a felony under this subsection shall be suspended from any registration under this Act, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest.

(c) Except as provided in subsections (a), (b), (d), and (e) of this section, it shall be a misdemeanor punishable by a

fine of not more than \$ 100,000 or imprisonment for not more than one year, or both, together with the costs of prosecution, for any person to violate any provisions of section 4a, section 4c(a), section 4d, section 4e, section 4i, section 4k, section 4m, section 4o(2), or section 8b, or to fail to evidence any contract mentioned in section 4 of this Act by a record in writing as therein required. *Other provisions of this subsection notwithstanding, a person convicted under this subsection of knowingly violating the provisions of section 4a shall be suspended from any registration under this Act, denied registration or reregistration for a period to two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for*

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two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest.

[(d) It shall be a felony punishable by a fine of not more than \$ 100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity: *Provided*, That such prohibition against any investment transaction in an actual commodity shall not apply to a transaction in which such person buys an agricultural commodity or livestock for use in his own farming or ranching operations or sells an agricultural commodity which he has produced in connection with his own farming or ranching operations nor to any transaction in which he sells livestock which he has owned at least three months. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public.]

(d) It shall be a felony punishable by a fine of not more than \$ 100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity. Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person's own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person's own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is

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entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, and (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit or similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the

Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public.

(e) It shall be a felony punishable by a fine of not more than \$ 100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution -- (1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", *or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract;* and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", *or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.*

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provisions to other persons and circumstances shall not be affected thereby.

SEC. 11. (Omitted as obsolete).

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SEC. 12. (a) The Commission may cooperate with any department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, or any person.

(b) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Commission may employ experts and consultants in accordance with *section 3109 of title 5 of the United States Code*, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS-18 under *section 5332 of title 5 of the United States Code*. The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectuate the purposes and provisions of this Act, including, but not limited to, the rental of necessary space at the seat of government and elsewhere.

(c) All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

[(d) There are hereby authorized to be appropriated to carry out the provisions of this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1978, and ending September 30, 1982.]

(d) There are hereby authorized to be appropriated to carry out the provisions of this Act such sums as may be

required for each of the fiscal years beginning October 1, 1982 and ending September 30, 1986.

(e) Nothing in this Act shall supersede or preempt --

(1) criminal prosecution under any Federal criminal statute;

(2) any Federal or State statute, including any rule or regulation thereunder, that is applicable to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 4c or 19 of this Act; or

(3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation. The Commission is authorized to refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action or proceedings as the department or agency shall deem appropriate.

SEC. 13. (a) Any person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of this Act, or any of the rules, regulations

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or orders issued pursuant to this Act, or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this Act or any of such rules, regulations, or orders may be held responsible [in administrative proceedings under this Act] for such violation as a principal.

(b) Any person who, directly or indirectly, controls any person who has violated any provision of this Act or any of the rules, regulations, or orders issued pursuant thereto may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person: Provided, That the Commission has the burden of proving that the controlling person did not act in good faith or directly or indirectly induced the act or acts constituting the violation.

[(b)] (c) Nothing in this Act shall be construed as requiring the Commission to report minor violations of this Act for prosecution, whenever it appears that the public interest does not require such action.

SEC. 14. [(a) Any person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered or required to be registered under section 4d, 4e, 4k, or 4m of this Act may, at any time within two years after the cause of action accrues, apply to the Commission by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Commission, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Commission to the respondent, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Commission.]

(a) Any person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding actual damages proximately caused by such violation.

[(b) If there appear to be, in the opinion of the Commission, any reasonable grounds for investigating any complaint made under this section, the Commission shall investigate such complaint and may, if in its opinion the facts warrant such action, have said complaint served by registered mail or by certified mail or otherwise on the respondent and afford such person an opportunity for a hearing thereon before an Administrative Law Judge designated by the

Commission in any place in which the said person is engaged in business: *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of \$ 5,000, a hearing need not be held and proof in support of the complaint and in support of the respondent's answers may be supplied in the form of depositions or verified statements of fact.]

(b) The Commission may promulgate such rules, regulations and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing and service

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of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

[(c) After opportunity for hearing on complaints where the damages claimed exceed the sum of \$ 5,000 has been provided or waived and on complaints where damages claimed do not exceed the sum of \$ 5,000 not requiring hearing as provided herein, the Commission shall determine whether or not the respondent has violated any provision of this Act or any rule, regulation or order thereunder.]

[(d)] *(c) In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Commission against the complainant on any counterclaim by respondent: Provided, That the Commission shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.*

[(e) If after a hearing on a complaint made by any person under subsection (a) of this section, or without hearing as provided in subsections (b) and (c) of this section, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Commission determines that the respondent has violated any provision of this Act, or any rule, regulation, or order thereunder, the Commission shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining, such amount on or before the date fixed in the order. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Commission under such rules and regulations as it shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Commission with respect to the undisputed sum.]

[(f)] *(d) If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he*

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resides or in which is located the principal place of business of the respondent, for enforcement of such reparation

award by appropriate orders. The orders, writs, and processes of such district court may in such case run, be served, and be returnable anywhere in the United States. The petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. Subject to the right of appeal under subsection [(g)] (e) of this section, an order of the Commission awarding reparations shall be final and conclusive.

[(g)](e) Any order of the Commission entered hereunder shall be reviewable on petition of any party aggrieved thereby, by the United States Court of Appeals for any circuit in which a hearing was held, or if no hearing was held, any circuit in which the appellee is located under the procedure provided in paragraph (b) of section 6 of this Act. Such appeal shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The appellee shall not be liable for costs in said court. If the appellee prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

[(h) Unless the registrant against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order, he shall be prohibited from trading on all contract markets and his registration shall be suspended automatically at the expiration of such fifteen-day period until he shows to the satisfaction of the Commission that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.]

(f) Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically

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from trading on all contract markets and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: Provided, That if on appeal the appellee prevails or if the appeal is dismissed the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

[(i)] (g) The provisions of this section shall not become effective until fifteen months after the date of its enactment: *Provided*, That claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such fifteen months period.

SEC. 15. The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and

purposes of this Act, in issuing any order or adopting any Commission rule or regulation, or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.

SEC. 16. (a) The Commission may conduct regular investigations of the markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and furnish reports of the findings of these investigations to the public on a regular basis. These market reports shall, where appropriate, include information on the supply, demand, prices, and other conditions in the United States and other countries with respect to such goods, articles, services, rights, interests, and information respecting the futures markets.

(b) The Commission shall cooperate with the Department of Agriculture and any other Department or Federal agency which makes market investigations to avoid unnecessary duplication of information-gathering activities.

(c) The Department of Agriculture and any other Department or Federal agency which has market information sought by the Commission shall furnish it to the Commission upon the request of any authorized employee of the Commission. The Commission shall abide by any rules of confidentiality applying to such information.

(d) The Commission shall not disclose in such reports data and information which would separately disclose the business transactions *or market positions* of any person and trade secrets or names of customers except as provided in section 8 of this Act.

SEC. 17. (a) Any association of persons may be registered with the Commission as a registered futures association pursuant to subsection (b) of this section, under the terms and conditions hereinafter provided in this section, by filing with the Commission for review and approval a registration statement in such form as the Commission

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may prescribe, setting forth the information, and accompanied by the documents, below specified:

(1) Data as to its organization, membership, and rules of procedure, and such other information as the Commission may by rules and regulations require as necessary or appropriate in the public interest; and

(2) Copies of its constitution, charter, or articles of incorporation or association, with all amendments thereto, and of its bylaws, and of any rules or instruments corresponding to the foregoing, whatever the name, hereinafter in this section collectively referred to as the "rules of the association".

(b) An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that --

(1) such association is in the public interest and that it will be able to comply with the provisions of this section and the rules and regulations thereunder and to carry out the purposes of this section;

(2) the rules of the association provide that any person registered under this Act, contract market, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this paragraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carry out the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated within the meaning of "associated person" as set forth in section 4k of this Act,

whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a contract market or has been and is barred or suspended from being associated with all members of such contract market, for violation of any rule of such contract market;

(3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall be admitted to or continued in membership in such association, if such person --

(A) has been and is suspended or expelled from a registered futures association or from a contract market or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such contract market, for violation of any rule of such association or contract market which prohibits any act or transaction constituting conduct

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inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade; or

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to section 6(b) of this Act, or expelling or suspending him from membership in a registered futures association or a contract market, or barring or suspending him from being associated with a futures commission merchant; or

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such contract market or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person who would be ineligible for admission to or continuance in membership under clause (A), (B), or (C) of this paragraph.

(4) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall become a member and no natural person shall become a person associated with a member, unless such person is qualified to become a member or a person associated with a member in conformity with specified and appropriate standards with respect to the training, experience, and such other qualifications of such person as the association finds necessary or desirable and in the case of a member, the financial responsibility of such a member. For the purpose of defining such standards and the application thereof, such rules may --

(A) appropriately classify prospective members (taking into account relevant matters, including type or nature of business done) and persons proposed to be associated with members.

(B) specify that all or any portion of such standard shall be applicable to any such class.

(C) require persons in any such class to pass examinations prescribed in accordance with such rules.

(D) provides that persons in any such class other than prospective members and partners, officers and supervisory employees (which latter term may be defined by such rules and as so defined shall include branch managers of members) of members, may be qualified solely on the basis of compliance with specified standards of training and such other qualifications as the association finds appropriate.

(E) provide that applications to become a member or a person associated with a member shall set forth such facts as

the association may prescribe as to the training, experience,

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and other qualifications (including, in the case of an applicant for membership, financial responsibility) of the applicant and that the association shall adopt procedures for verification of qualifications of the applicant, *which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing.*

(F) require any class of persons associated with a member to be registered with the association in accordance with procedures specified by such rules (and any application or document supplemental thereto required by such rules of a person seeking to be registered with such association shall, for the purposes of subsection (b) of section 6 of the Act, be deemed an application required to be filed under this section).

(5) the rules of the association assure a fair representation of its members in the adoption of any rule of the association or amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs.

(6) the rules of the association provide for the equitable allocation of dues among its members, to defray reasonable expenses of administration.

(7) the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, in general, to protect the public interest, and to remove impediments to and perfect the mechanism of free and open futures trading.

(8) the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules.

(9) the rules of the association provide a fair and orderly procedure with respect to the disciplining of members and persons associated with members and the denial of membership to any person seeking membership therein or the barring of any person from being associated with a member. In any proceeding to determine whether any member or other person shall be disciplined, such rules shall require that specific charges be brought; that such member or person shall be notified of and be given an opportunity to defend against, such charges; that a record shall be kept; and that the determination shall include --

(A) a statement setting forth any act or practice in which such member or other person may be found to have engaged, or which such member or other person may be found to have omitted.

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(B) a statement setting forth the specific rule or rules of the association of which any such act or practice, or omission to act, is deemed to be in violation.

(C) a statement whether the acts or practices prohibited by such rule or rules, or the omission of any act required thereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade.

(D) a statement setting forth the penalty imposed.

In any proceeding to determine whether a person shall be denied membership or whether any person shall be barred from being associated with a member, such rules shall provide that the person shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial or bar which are under consideration; that a record shall be

kept; and that the determination shall set forth the specific grounds upon which the denial or bar is based.

[(10) the rules of the association provide for a fair and equitable procedure through arbitration or otherwise for the settlement of a customer's claims and grievances against any member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary (ii) the procedure shall not be applicable to any claim in excess of \$ 15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties and (iv) the term "customer" as used in this subsection shall not include a futures commission merchant or a floor broker.]

(10) the rules of the association provide a fair and equitable expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: Provided, That (i) the use of such procedure by a customer shall be voluntary, and (ii) the term "customer" as used in this subsection shall not include another member of the association.

(c) The Commission may, after notice and opportunity for hearing, suspend the registration of any futures association if it finds that the rules thereof do not conform to the requirements of the Commission, and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements.

(d) In addition to the fees and charges authorized by section 8a (4) of this Act, each person registered under this Act, who is not a member of a futures association registered pursuant to this section, shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed by the Commission because such person is not a member of a registered futures association. The Commission shall establish such additional fees and charges by rules and regulations.

(e) Any person registered under this Act, who is not a member of a futures association registered pursuant to this section, in addition to the other requirements and obligations of this Act and the regulations thereunder shall be subject to such other rules and regulations

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as the Commission may find necessary to protect the public interest and promote just and equitable principles of trade.

(f) Upon filing of an application for registration pursuant to subsection (a), the Commission may by order grant such registration if the requirements of this section are satisfied. If, after appropriate notice and opportunity for hearing, it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration.

(g) A registered futures association may, upon such reasonable notice as the Commission may deem necessary in the public interest, withdraw from registration by filing with the Commission a written notice of withdrawal in such form as the Commission may by rules and regulations prescribe.

(h) If any registered futures association takes any disciplinary action against any member thereof or any person associated with such a member or denies admission to any person seeking membership therein, or bars any person from being associated with a member, such action shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection [(k)] (i) of this section unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments).

(i)(1) In a proceeding to review disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing,

upon consideration of the record before the association and such other evidence as it may deem relevant --

(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

(B) determines that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the determination of the association, the Commission shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

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(2) If, after appropriate notice and opportunity for hearing, the Commission finds that any penalty imposed upon a member or person associated with a member is excessive or oppressive, having due regard to the public interest, the Commission shall by order cancel, reduce, or require the remission of such penalty.

(3) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, if the Commission, after appropriate notice and hearing, and upon consideration of the record before the association and such other evidence as it may deem relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant to membership therein, or to permit such person to be associated with a member.

(j) Every registered futures association shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, copies of any changes in or additions to the rules of the association, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a) of this section. [Any change in or addition to the rules of a registered futures association shall be submitted to the Commission for approval and shall take effect upon the thirtieth day after such approval by the Commission, or upon such earlier date as the Commission may determine, unless the Commission shall enter an order disapproving such change or addition; and the Commission shall enter such an order unless such change or addition appears to the Commission to be consistent with the requirements of this section and the provisions of this Act.] *A registered futures association shall submit to the Commission any change in or addition to its rules and may place such rules into effect unless, within ten days of receipt by the Commission of such submission, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review for approval such rules. The Commission shall approve such rules, within thirty days of their receipt if Commission approval is requested hereunder or within thirty days after the Commission determines to review for approval any other rules, unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of the provisions of the Act or the regulations of the Commission.*

(k)(l) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice

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and opportunity for hearing, it appears to the Commission that such abrogation is necessary or appropriate to assure fair dealing by the members of such association, to assure a fair representation of its members in the administration of its affairs or effectuate the purposes of this title.

(2) The Commission may in writing request any registered futures association to adopt any specified alteration or supplement to its rules with respect to any of the matters hereinafter enumerated. If such association fails to adopt such alteration or supplement within a reasonable time, the Commission is authorized by order to alter or supplement the rules of such association in the manner theretofore requested, or with such modifications of such alteration or supplement as it deems necessary if, after appropriate notice and opportunity for hearing, it appears to the Commission that such alteration or supplement is necessary or appropriate in the public interest or to effectuate the purposes of this section, with respect to --

(A) the basis for, and procedure in connection with, the denial of membership or the barring from being associated with a member or the disciplining of members or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof;

(B) the method of adoption of any change in or addition to the rules of the association;

(C) the method of choosing officers and directors.

(1) The Commission is authorized, if such action appears to it to be necessary or appropriate in the public interest or to carry out the purposes of this section --

(1) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to revoke the registration of a registered futures association, if the Commission finds that such association has violated any provisions of this Act or any rule or regulation thereunder, or has failed to enforce compliance with its own rules, or has engaged in any other activity tending to defeat the purposes of this Act;

(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a registered futures association any member thereof, or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof, if the Commission finds that such member or person --

(A) has violated any provision of this Act or any rule or regulation thereunder, or has effected any transaction for any other person who, he had reason to believe, was violating with respect to such transaction any provision of this Act or any rule or regulation thereunder; or

(B) has willfully violated any provision of the Commodity Exchange Act, as amended, or of any rule, regulation, or order thereunder, or has effected any transaction for any other person who, he had reason to believe, was willfully

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violating with respect to such transaction any provision of such Act or rule, regulation, or order.

(3) after appropriate notice and opportunity for hearing, by order to remove from office any officer or director of a registered futures association who, the Commission finds, has willfully failed to enforce the rules of the association, or has willfully abused his authority.

(m) Notwithstanding any other provision of law, the Commission may approve rules of futures associations that, directly or indirectly, require persons eligible for membership in such associations to become members of at least one such association, upon a determination by the Commission that such rules are necessary or appropriate to achieve the

purposes and objectives of this Act.

(n) The Commission shall include in its annual reports to Congress information concerning any futures associations registered pursuant to this section and the effectiveness of such associations in regulating the practices of the members.

(o) The Commission is authorized to require any futures association registered pursuant to this section to perform any portion of the registration functions under this Act with respect to each member of the association other than a contract market and with respect to each associated person of such member, in accordance with the rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission.

(p) Notwithstanding any other provision of this section, each futures association registered under this section on the date of enactment of the Futures Trading Act of 1982, shall adopt and submit for Commission approval not later than ninety days after such date of enactment, and each futures association that applies for registration after such date shall adopt and include with its application for registration, rules of the association that require the association to --

(1) establish training standards and proficiency testing for personnel of members involved in the solicitation of transactions subject to the provisions of this Act, supervisory officials of such personnel, and all individuals for which it has registration responsibilities, and a program to audit and enforce compliance with such standards;

(2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission and implement a program to audit and enforce compliance with such requirements. Such requirements may not be less stringent than those imposed on such firms by this Act or by Commission regulation; and

(3) establish minimum standards governing the sales practices of its members and persons associated therewith as to transactions subject to the provisions of this Act.

(q) Each futures association registered under this section shall develop a comprehensive program that fully implements the rules approved by the Commission under this section as soon as practicable but not later than two years after the date of enactment of the Futures Trading Act of 1982, in the case of any futures association registered

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on such date, and not later than two years after the date of registration in the case of any other futures association registered under this section.

SEC. 18. (a) The Commission shall establish and maintain, as part of its ongoing operations, research and information programs to (1) determine the feasibility of trading by computer, and the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself for purposes of improving, strengthening, facilitating, or regulating futures trading operations; (2) assist in the development of educational and other informational materials regarding futures trading for dissemination and use among producers, market users, and the general public; and (3) carry out the general purposes of this Act.

(b) The Commission shall include in its annual reports to Congress plans and findings with respect to implementing this section.

SEC. 19. (a) No person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is

marketed or managed in substantially the same manner as such a standardized contract.

(b) No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, under a standardized contract described in subsection (a) of this section, contrary to any rule, regulation, or order of the Commission designed to ensure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing.

[(c) The Commission may prohibit or regulate any transactions, under a standardized contract described in subsection (a) of this section, involving any other commodities under such terms and conditions as the Commission shall initially prescribe by October 1, 1979: *Provided*, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: *Provided further*, That the Commission may set different terms and conditions for such transactions involving different commodities.]

(c) The Commission shall regulate any transactions under a standardized contract described in subsection (a) of this section involving commodities described in subsection (b) of this section or any other commodities (except those commodities described in subsection (a) of this section) under such terms and conditions as the Commission shall prescribe by January 31, 1983: Provided, That any such order, rule, or regulation may be made only after notice and opportunity for hearing; Provided further, That the Commission may set different terms and conditions for such transactions involving different commodities.

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[(d) If the Commission determines that any transaction under subsections (b) and (c) of this section is a contract for future delivery within the meaning of this Act, such transaction shall be regulated in accordance with the applicable provisions of this Act.]

SEC. [19.]20. (a) Notwithstanding title 11 of the United States Code, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule, or regulation --

(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property;

(2) that certain cash, securities, other property, or commodity contracts are to be specifically identifiable to a particular customer in a specific capacity;

(3) the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter;

(4) any persons to which customer property and commodity contracts may be transferred under *section 766 of title 11 of the United States Code*; and

(5) how the net equity of a customer is to be determined.

(b) As used in this section, the terms "commodity broker", "commodity contract", "customer", "customer property", "member property", "net equity", and "security" have the meanings assigned such terms for the purposes of subchapter IV of chapter 7 of title 11 of the United States Code.

SEC. 21. The Commission shall establish a joint working group with the Federal Reserve Board, Department of the Treasury, and Securities and Exchange Commission to analyze the various aspects of the events in the silver cash and futures markets during the period of September 1979 through March 1980. The joint working group will prepare a report of its findings that shall include, but not be limited to, a description of the causes of this situation, and appraisal

of the adequacy of consultation during this period between the members of the joint working group, and recommendations for legislative changes that could prevent a recurrence of these or similar events in any futures market. The joint working group shall submit its report to the appropriate committees of Congress by October 1, 1980.

SEC. 22. (a)(1) Any person (other than a contract market, clearing organization of a contract market, licensed board of trade, or registered futures association) who violates this Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act shall be liable for actual damages resulting from one or more of the transactions referred to in clauses (A) through (D) of this paragraph and caused by such violation to any other person:

(A) who received trading advice from such person for a fee;

(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity) on or subject to the rules of any contract market or other board of trade; or who deposited with such person money, securities or property (or incurred debt in lieu thereof) in connection with any order to make such contract;

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(C) who purchased or sold or placed an order for the purchase or sale of:

(i) an option subject to section 4c(d) of this Act;

(ii) an option subject to section 4c(b) of this Act (other than an option purchased or sold on a contract market or other board of trade);

(iii) a contract subject to section 19 of this Act;

(iv) an interest or participation in a commodity pool; or

(D) who purchased or sold a contract referred to in clause (B) hereof if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

(2) The rights of action authorized by this subsection and by section 14 of this Act shall be the exclusive remedies under this Act available to any person that sustains loss as a result of any alleged violation of this Act. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon the forum for resolving claims under this section, including arbitration.

(b)(1)(A) A contract market or clearing organization of a contract market that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of the designation of such contract market under section 5 of this Act or any amendment to such bylaw, rule, regulation or resolution, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation or resolution that was made a condition of its license or any amendment to such bylaw, rule, regulation or resolution, or (C) any contract market, clearing organization of a contract market or licensed board of trade that in enforcing any such bylaw, rule, regulation or resolution violates this Act or any Commission rule, regulation or order, shall be liable for actual damages sustained by a person that engaged in transactions on or subject to the rules of such contract market or licensed board of trade to the extent of such person's actual losses that resulted from such transactions and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations or resolutions.

(2) A registered futures association that fails to enforce any bylaw or rule that is required under section 17 of this Act or in enforcing any such bylaw or rule violates this Act or any Commission rule, regulation or order shall be liable for actual damages sustained by a person that engaged in transactions specified in subsection (a) of this section to the extent of such person's actual losses resulting from such transactions caused by such failure to enforce or enforcement

of such bylaw or rule.

(3) Any individual who, in the capacity as an officer, director, governor, committee member or employee of a contract market, licensed board of trade, or a registered futures association willfully aids, abets, counsels, induces or procures any failure by such contract market, clearing organization, or registered futures association to enforce (or any violation of the Act in enforcing) any bylaw, rule, regulation or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person that engaged in transactions specified in subsection (a) of this section on, or subject to the rules of, such contract market, licensed board of trade or, in the case of an officer, director, governor, committee

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member or employee of a registered futures association, transactions specified in subsection (a) of this section, in either case to the extent of such person's actual losses resulting from such transactions caused by such failure or violation.

(4) A person seeking to enforce liability under this section must establish that the contract market, licensed board of trade, clearing organization, registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

(5) The rights of action authorized by this subsection shall be the exclusive remedy under this Act available to any person that sustains a loss as a result of (A) the alleged failure by a contract market, licensed board of trade, clearing organization, or registered futures association or by any officer, director, governor, committee member or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action that is alleged to have violated this Act, or any Commission rule, regulation or order.

(c) The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action must be brought within two years after the date the cause of action accrued.

(d) The provisions of this section shall become effective with respect to causes of action accruing on or after the date of enactment of the Futures Trading Act of 1982: Provided, That the enactment of the Futures Trading Act of 1982 does not affect any right of any parties which may exist with respect to causes of action accruing prior to such date.

SEC. 23. (a) The Commission shall organize and lead, with the assistance of the Securities and Exchange Commission, the Federal Reserve, and the Department of the Treasury, a study and investigation of the structure, participation, uses and effects of trading of futures and related instruments, such as options, on the economy. Among those areas to be studied are (i) the number, types, and characteristics of futures market speculators, arbitrageurs, and hedgers, the purposes for which these participants utilize futures markets, and the financial resources devoted to each of these activities; (ii) the impact of futures market speculation on the accuracy, liquidity, and stability of cash and futures prices and the conditions under which speculation may have adverse effects on these objectives, particularly with respect to the increased volume of financial futures and other nontraditional futures; (iii) the consequences that present and anticipated volumes of trading in futures have, if any, on formation of real capital in the economy, particularly that of a long-term nature, the structure of liquidity in credit markets, interest rates and inflation; and (iv) the sufficiency of the public policy tools available to the Commission or other agencies to limit or curtail any activity which is found likely to have a harmful effect on national economic goals. The report of this study shall be transmitted to Congress not later than September 30, 1984, and shall include an assessment of the impacts of these activities and recommendations for any legislative and regulatory changes. There are authorized to be appropriated such funds as may be necessary to carry out the study.

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(b) For the period beginning with the date of enactment of the Futures Trading Act of 1982 and ending September

30, 1984, all stock index futures contracts approved by the Commission either prior or subsequent to the date of enactment of the Futures Trading Act of 1982 shall be subject to a pilot program for such contracts to be established by the Commission by rule, regulation or order. Such pilot program shall, at a minimum, include close monitoring by the Commission of the contracts, including the assessment of the impact if any of such contracts on the markets in the underlying securities and the effect if any of the contracts on the capital formation process. Not later than 120 days following the expiration of the pilot program, the Commission shall report to the Committee on Agriculture of the House of Representatives and Committee on Agriculture, Nutrition, and Forestry of the United States Senate its findings and conclusions with respect to the economic purposes being served by the contracts and any effect of such contracts on underlying markets in securities or capital formation. If such report concludes that the adverse effects on the underlying markets in securities or capital formation resulting from trading in the stock index futures contracts outweigh any benefits provided by the contracts' hedging or risk-management function, the Commission shall include in the report its plans for the orderly withdrawal of approval for all stock index futures contracts.

* * * *

FUTURES TRADING ACT OF 1978

* * * *

PLAN FOR USER FEES

SEC. 26. (a) Notwithstanding any other provision of law, the Commodity Futures Trading Commission may develop and implement a plan to charge and collect reasonable fees to cover the estimated cost of regulating transactions under the jurisdiction of the Commission. However, prior to implementing such a plan, the Commission shall report its intention to do so to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The Commission shall include in its report the feasibility and desirability of collecting such fees. Any plan developed under this section shall not be implemented until approved by the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. Fees collected under any plan approved under this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) *The Commodity Futures Trading Commission shall submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association during the period beginning January 1, 1983 and ending December 31, 1984. The report shall be submitted not later than March 1, 1985. The report shall include (but not be limited to) the following --*

(1) *the extent to which the National Futures Association has fully implemented the program provided in the rules approved*

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by the Commission under section 17(p) and (q) of this Act and the effectiveness of the operation of such program;

(2) *the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;*

(3) *the actual and projected costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;*

(4) *problem areas, if any, encountered by the Association;*

(5) *the nature of the working relationship between the Association and the Commission;*

(6) *an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as*

a result of the continuing regulatory activities of the Association; and

(7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

(c) Notwithstanding any provision of this Act or other law, no user fee, user tax, transaction tax or transaction fee on or involving a contract for the purchase or sale of a commodity for future delivery, commodity option traded on a contract market, other option pursuant to 4c(d) of this Act, or leverage contract pursuant to section 19 of this Act, shall be recommended pursuant to this section or implemented pursuant to any law until after the end of the session in which the Commission has submitted to Congress the study described in subsection (b) of this section. If the Commission should recommend at any time thereafter the imposition of a user fee, user tax, transaction fee, or transaction tax, such recommendation at a minimum shall be accompanied by data and studies measuring the relative benefit to commodity professionals as well as to the general public of the functions of the nation's commodity markets and of Federal commodity regulation, and the effect of the proposed fee or tax on United States contract market liquidity.

(d) Nothing in this section shall limit the ability of the Commission to continue to charge appropriate fees for services currently rendered by the Commission in conjunction with its registration, reparations, adjudication, or informational services and activities.

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ADDITIONAL VIEWS OF HON. DAN GLICKMAN

Futures trading has grown dramatically. Since 1978 when the Commodity Futures Trading Commission was last authorized, trading volume has increased by nearly 70 percent to almost 100 million contracts traded last year. No longer do agricultural commodities dominate the futures markets. Now anyone is more likely to trade a future on Treasury Bills, Ginnie Maes, or even stock indices than on pork bellies, oats, or cotton. This means that new investors are entering the market who may not have the expertise that the seasoned veterans already in the marketplace do.

Moreover, some dramatic events have occurred in the futures markets over the past four years, most notably, the crisis in the silver market. This, too, raises questions about the existing regulatory mechanism over futures trading.

As a general rule, current regulation by the CFTC has worked smoothly with the exception of the silver problem where the Commission's regulatory tools were inadequate. It is simply not practical, however, to hope that old regulatory schemes will meet new realities.

To insure the continued viability of the markets and the agency responsible for regulating them, I proposed the following amendments to strengthen CFTC's authority. The amendments are designed to reinforce public confidence in the markets and should provide CFTC with the tools it needs to respond effectively to this changing environment. The amendments would:

(1) Make explicit that CFTC's emergency authority includes the ability to limit excessive and unreasonable speculative activity. This proposal would insure that the Commission could act expeditiously under its emergency powers to order changes in speculative limits, as necessary.

(2) Strengthen the mandate of the National Futures Association (NFA), the self-regulatory organization of futures markets participants by requiring it to:

- (a) Administer testing programs for sales and supervisory personnel;
- (b) Establish uniform training standards for sales and supervisory personnel;
- (c) Implement minimum standards for sales practices; and

(d) Establish financial requirements for its members.

This structure puts the NFA on par with the way self-regulation is working in the securities industry.

(3) Allow commodity investors who suffer actual damages the right to sue both brokers and exchanges for violations of the Commodity Exchange Act. The Act is currently silent on whether such a right exists; however, the Supreme Court recently ruled that the Act implicitly provides such a right. Nonetheless, the law should be

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specifically amended to make the right to sue explicit and to clarify the extent of such right.

(4) Set up a "Special Study of the Futures Industry" modeled on the renowned "Special Study of Securities Markets" conducted by the Securities and Exchange Commission during the 1960's. That earlier study led to many significant changes both legislative and within the industry. With the futures industry growing and diversifying as it is, it should be the subject of such a comprehensive review.

My amendments which were adopted by the Committee provide an avenue to address the evolving nature of the futures markets. Without them, I feel that investors in futures markets will face potentially greater and greater uncertainty and risk. Likewise, excessive and unreasonable speculative activity without adequate control will disrupt the orderly operation of the market. That will only erode public confidence both in the futures markets and in the regulators responsible for overseeing the increasingly complex activity of futures trading. Since futures do play an important risk transfer role in our economy, we cannot afford to let them lose their credibility. And there is no question that any fate of the futures markets would ripple through and further undermine an already weak economy.

DAN GLICKMAN.

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SEPARATE VIEWS OF HON. GEORGE HANSEN

THE BASIC ISSUE

The Administration's proposed legislation forwarded to the Congress and introduced (by request) in the House as H.R. 5447 contained a provision for transaction fees that would be remitted to the Treasury of the United States to offset certain of the costs of services provided by the Commodity Futures Trading Commission (CFTC). The Committee Substitute for H.R. 5447 reported by the Committee does not contain any provision for user or transaction fees. However, a letter forwarded from the Director, Office of Management and Budget prior to the markup of this bill in the Full Committee raises real questions about a possible veto of this measure unless it (or some other measure such as a 1983 Budget Reconciliation Bill or a Debt Limit Bill) contains some provision for a CFTC transaction or user fee.

Therefore, it would appear to be wise to leave open the question of whether or not such a transaction fee, user fee, or other recovery of cost provision for functions performed by the CFTC should be included in this bill until the user fee provisions contained in the First Concurrent Budget Resolution for fiscal year 1983 are resolved. If the House Committee on Agriculture is directed to reduce appropriations for programs authorized by it, the user fee issue may have to be addressed at that time.

BACKGROUND OF USER OR TRANSACTION FEE

H.R. 5447, as introduced (by request) in the House, contained the following language as it relates to user or transaction fees:

USER FEES; TECHNICAL AMENDMENT

SEC. 25. Section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) is amended by striking out the existing language. In lieu thereof a new section 22 is added to read as follows:

"TRANSACTION FEES

"SEC. 22. (a) Each contract market, or other board of trade licensed by the Commission shall remit to the Treasury of the United States, with written verification thereof to the Commission, by March 15 of each year, a fee in the following amounts for each contract for the purchase or sale of a commodity for future delivery and for each commodity option subject to the provisions of section 4c of this Act entered on or subject to the rules of such contract market or board of trade during the preceding calendar year or portion thereof following the effective date of this section:

"(1) 12 cents for each such contract or option which is made or executed for the account or benefit of a person who is not a

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member of such contract market or board of trade or of a registered futures association; and

"(2) 6 cents for each such contract or option which is made or executed for the proprietary account (as defined by the Commission) of a person who is a member of such contract market, board of trade or of a registered futures association.

"(b) Each person who grants a commodity option pursuant to section 4c(d) of this Act, or who is engaged in the business of offering any leverage transaction pursuant to section 19 of this Act, shall remit to the Treasury of the United States, with written verification thereof to the Commission, by March 15 of each year, a fee of \$ 3 for each such option granted or leverage contract entered during the preceding calendar year or portion thereof following the effective date of this section.

"(c) The fees assessed hereunder for any calendar year are intended not to exceed the funds appropriated by the Congress for the Commission's activities for the fiscal year in which remittance of the fees is due. In the event that the total fees remitted to the Treasury of the United States pursuant to this section for any calendar year or portion thereof exceed the funds appropriated for the Commission for the fiscal year in which remittance of the fees is due, the Commission shall, by rule, regulation, or order, suspend the assessment of fees in the current calendar year for such period as the Commission determines, to the extent practicable and based on current market volume, would otherwise generate an amount equal to excess fees remitted in the preceding calendar year. No fees shall be required to be remitted for transactions effected during such period of suspension determined by the Commission; provided that at the conclusion of such period, the obligation to assess fees to be remitted under this section shall resume.

"(d) Notwithstanding any other provision of this section, the Commission, after notice and opportunity for hearing, may by rule, regulation, or order reduce, suspend, or waive the application to any person or class of persons, of the fees or any portion thereof upon a finding that such section is necessary to prevent or correct any significant adverse effect upon any market or person occasioned by such fee.

"(e) The Commission shall create, prior to or after the effective date of this section, an advisory committee pursuant to the Federal Advisory Committee Act, comprised of persons materially affected by the operation of this section. Such advisory committee shall remain in existence until June 30, 1985. The advisory committee shall be empowered to advise the Commission with respect to the efficacy of the fee system created by this section, to consult with the Commission with respect to actions taken under subsection (d) hereof, to prepare a report containing its assessment and recommendations with respect to the fee system, and to perform such other duties and functions as the Commission may prescribe. Such report, together with the views and recommendations of the Commission, shall be submitted to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the United States Senate no later than June 30, 1985."

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As noted earlier, the version of H.R. 5447 which was reported by the Committee as a Committee Substitute does not contain a user or transaction fee provision nor any other provision for increased recovery of costs for services performed by CFTC. There was a discussion of user and/or transaction fees in Subcommittee, which found its way into the form of an amendment that was offered. However that amendment was not adopted. Meanwhile, there was strong opposition voiced by the industry to the transaction/user fee provision as originally provided in H.R. 5447.

THE COMMODITY FUTURES TRADING COMMISSION REITERATES ITS ADVOCACY FOR TRANSACTION FEES

In a letter dated May 13, 1982, the Chairman of the Commodity Futures Trading Commission commented with respect to the Committee's action in providing for a National Futures Association study before any transaction fees could be imposed by stating in pertinent part:

The Commission does have some concern, however, over certain of the provisions of H.R. 5447. The Commission hopes that the members of the Committee and the House will study carefully the following comments and either reconsider or clarify these provisions. We offer these comments consistent with our mutual desire to provide a sound statutory scheme for the fair and effective regulation of the futures markets.

(1) National Futures Association Study and Transaction Fees. The Commission continues to advocate adoption of its proposal for transaction fees contained in Section 22 of H.R. 5447, as introduced. Transaction fees are needed to solve in part the Commission's perennial resource problems. To delay imposition of these fees for the two years necessary to complete the National Futures Association Study called for by H.R. 5447 would greatly exacerbate those problems. Furthermore, as stated in our responses to questions from various members that appear in the Committee's hearing record, the Commission remains confident that its transaction fee proposal will not impede development of the National Futures Association. Our confidence in this conclusion is buttressed by the fact that SEC transaction fees and the National Association of Securities Dealers Inc. have coexisted for many years. Moreover, any adverse impact that transaction fees might have on the National Futures Association could easily be rectified by the Commission's authority under its proposal to reduce, suspend or waive the fee.

Apart from the transaction fee issue, the Commission sees no need for a mandated National Futures Association study to be included in the bill. Section 17(n) of the Act already requires the Commission to include in its annual reports to Congress information concerning the effectiveness of registered futures associations in regulating the practices of their members. The information called for by the

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study required by H.R. 5447 could easily be incorporated in the Commission's annual reports.

While the letter from the Commission Chairman is not as strong as the letter from the Director, Office of Management and Budget, they are not inconsistent. Meanwhile, the cost estimate for H.R. 5447 provided by the Congressional Budget Office which is reprinted below reflects that in the four year authorization period, of this bill over \$ 80 million will be expended:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill No.: H.R. 5447.
2. Bill title: Futures Trading Act of 1982.
3. Bill status: As ordered reported by the House Committee on Agriculture, April 22, 1982.

4. Bill purpose: H.R. 5447 authorizes appropriations to carry out the activities of the Commodity Futures Trading Commission (CFTC) through 1986. It also makes a number of changes affecting CFTC jurisdiction, registration requirements, and enforcement procedures. In addition, the CFTC would be required to study and report to the Congress on the commodity futures industry.

The President has requested an appropriation of \$ 23.0 million in 1983 to carry out the activities of the CFTC. The proposed 1983 budget also recommends user fees be collected to cover the full cost of the CFTC regulatory operations. Fiscal year 1982 appropriations to date for the CFTC are \$ 19.9 million.

5. Cost estimate:

[By fiscal years, in millions of dollars]

Including outlays from prior year's budget authority, outlays for the CFTC would be approximately \$ 20.9 million in 1983.

The costs of this bill fall within budget subfunction 376.

6. Basis of estimate: For purposes of this estimate, CBO's baseline projections were assumed for the estimates of authorization level in 1983 through 1986, since no specific authorization level was provided in the bill. Outlays reflect historical spending patterns.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 6, 1982, CBO prepared a cost estimate for S. 2109, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry on March 31, 1982. S. 2109 reauthorized the CFTC only through 1984. Since no specific authorization was provided in that bill, the same estimated authorization level was assumed for fiscal years 1983 and 1984.

9. Estimate prepared by: Mary B. Maginniss.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

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THE ADMINISTRATION AND SENATE VERSIONS OF THE 1983 BUDGET PROVIDE FOR APPROXIMATELY \$ 2 BILLION IN USER FEES

The President's budget that was submitted to the Congress in January carried with it the provision for user fees in a total amount of \$ 2 1/2 billion. The Senate budget proposal, Senate Concurrent Resolution 92, which was recently adopted and favorably reported by the Senate Budget Committee, contains a provision for \$ 2 billion in user fees. Presumably, those user fees contemplated by the Senate Concurrent Resolution 92 will, no doubt, have to be translated into substantive legislation directing the collection of a variety of such fees.

For instance, section 2(b) (3) and (7) of Senate Concurrent Resolution 92 contain, in pertinent part, the following language:

(3) The Senate Committee on Finance shall also report changes in laws within the jurisdiction of that committee sufficient to increase receipts from user fees authorized by that committee as follows: \$ 2,000,000,000 in fiscal year 1983; \$ 2,000,000,000 in fiscal year 1984; and \$ 2,000,000,000 in fiscal year 1985.

(7) The House Committee on Ways and Means shall also report changes in laws within the jurisdiction of that committee sufficient to increase receipts from user fees authorized by that committee as follows: \$ 2,000,000,000 in

fiscal year 1983: \$ 2,000,000,000 in fiscal year 1984; and \$ 2,000,000,000 in fiscal year 1985.

While it is true this Committee ordered this bill reported prior to the time that the Budget Committee in the House or Senate had taken action on the First Concurrent Budget Resolution, it would appear that we cannot totally ignore the President's budget and the actions that have now been taken in the Senate and we can speculate that the actions that may be taken in the House on the budget may call for a substantial amount of deficit reduction measures in the form of user fees.

THE POSITION OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET ON USER FEES IN H.R. 5447

The Committee was provided with a copy of a letter (undated) forwarded to a Member of the Senate Committee on Agriculture, by David Stockman, Director, Office of Management and Budget, regarding the Senate counterpart to H.R. 5447 (S. 2109) that stated in pertinent part:

This is to advise you of our strong concern over the failure of the Senate Subcommittee on Agricultural Research and General Legislation to include this Administration's user charge proposal for the Commodity Futures Trading Commission (CFTC) in the bill as reported out of your subcommittee.

This Administration views this proposal as an essential part of its overall budget strategy. We see absolutely no justification whatsoever for the general taxpayer to shoulder

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the cost of the special benefits conferred upon the commodity futures market by the programs of the CFTC.

For the foregoing reasons, I must advise you that the Administration could not support enactment of the CFTC reauthorization bill without a user charge provision which would be effective upon enactment.

Subsequently, an inquiry was made to the Director of the Office of Management and Budget on the House side about the issue of user charges in a reauthorization for the Commodity Futures Trading Commission bill. The response from David A. Stockman, Director of the Office of Management and Budget, dated April 21, 1982, is quoted in pertinent part below (with enclosures):

I regret that there is some uncertainty about the Administration's position on user charges for the CFTC. I will attempt to clarify our position.

This Administration assigns very high priority to enactment of a number of user charge proposals transmitted as part of the fiscal year 1983 budget. We believe that the case for full cost recovery user charges for the CFTC is particularly persuasive. Enclosed are several tables which clearly show that the Administration's proposed user charges are insignificant when compared with a number of measures of the cash requirements and costs associated with trading in the futures market. The proposed differential in the member and non-member transaction fees -- 6 cents as opposed to 12 cents -- gives adequate recognition in our view of the added costs of National Futures Association members for self regulation.

As I indicated in my letter of March 30, to Senator Lugar and others, this Administration views the CFTC user charge proposal as an essential part of its overall budget strategy. We see no justification for the general taxpayer to continue to shoulder the cost of the special benefits conferred upon the commodity futures market by the programs of the CFTC.

While we welcome efforts to enact a user charge provision in response to our concerns, we feel strongly that such a provision should permit recovery of all of the costs of CFTC programs. Consequently, a provision which would recover

only \$ 7 or \$ 8 million or less would be unacceptable.

We believe that it is essential that the Administration's full cost recovery user charge proposal be enacted if there is to be assurance of Administration support for enactment of the CFTC reauthorization bill.

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COST OF ADMINISTRATION USER FEE PROPOSAL AS A PERCENT OF DIFFERENT MEASURES OF FUTURES'S TRADING COSTS

ESTIMATED COST OF PROPOSED USER FEES BASED ON AVERAGE TRADING VOLUME OF SELECTED CLASSES OF TRADERS (PER SIDE OF TRANSACTION)

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Floor Traders and Pool Operators are assumed to be members of an exchange or NFA and thus subject to the lower rate.

ESTIMATED COST OF BROKER COMMISSION AND EXCHANGE AND CLEARINGHOUSE FEES (COMEX) BASED ON AVERAGE TRADING VOLUME OF SELECTED CLASSES OF TRADERS (PER SIDE OF TRANSACTION)

Certainly as we take up the First Concurrent Budget Resolution on the House Floor, we will have ample time to reflect on whether or not the measure we report here, H.R. 5447, should have added to it an amendment at some point to provide for some form of user fees, transaction fees or additional charges for services provided to the industry by the Commodity Futures Trading Commission.

It would appear that certain CFTC services for which no charges are now made, could be increased and new charges imposed by adding language in this bill that could provide charges for certain services now provided without charge. These charges for services could include: audits, review of financial statements and disclosure documents, contract market rule reviews, rule enforcement reviews and trade practice investigation and reparations, unit fees for initial decisions and certified copies.

There may in fact be other service charges that could be made as well.

CONCLUSION

At a time when farmers and producers are paying "user charges" in the form of grain inspection fees, subscription fees for U.S. Department of Agriculture publications, etc. it does not appear fair to exempt the futures industry from the imposition of a transaction fee to help bear the cost of the services provided the industry by the Commodity Futures Trading Commission.

Accordingly, faced as we are with one of the most difficult budgets to come before the Congress in years, it is my opinion that we should leave open for the time being the question of what to do with the issue of user fees as it relates to those functions and services performed by the Commodity Futures Trading Commission for and on behalf of those who are regulated by the Commission.

Whether the issue should be addressed in this bill, the 1983 Budget Reconciliation Bill, or in the Debt Limit Bill, all of which we will be considering in the next few weeks, is of little matter. What is important is that the matter be considered by the House and disposed of one way or another.

GEORGE HANSEN.

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