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93D CONGRESS }
2d Session }

SENATE

{ REPORT
No. 93-1194

COMMODITY FUTURES TRADING COMMISSION ACT OF 1974

SEPTEMBER 30, 1974.—Ordered to be printed

Mr. TALMADGE, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 13113]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 13113) to amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:
That this Act may be cited as the "Commodity Futures Trading Commission Act of 1974".

TITLE I—COMMODITY FUTURES TRADING COMMISSION

SEC. 101. (a) Section 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2, 4), is amended—

(1) By inserting "(1)" after the subsection designation.

(2) By striking the last sentence of section 2(a) and inserting in lieu thereof the following new sentence: "The words 'the Commission' shall mean the Commodity Futures Trading Commission established under paragraph (2) of this subsection."

(3) By adding at the end thereof the following new paragraphs:

"(2) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission—

(1)



COMMODITY FUTURES TRADING COMMISSION ACT OF 1974

AUGUST 29, 1974.—Ordered to be printed
Filed under authority of the order of the Senate of August 22, 1974

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

REPORT

[To accompany H.R. 13113]

The Committee on Agriculture and Forestry, to which was referred the bill (H.R. 13113) to amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes, having considered the same, unanimously reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

SHORT EXPLANATION

H.R. 13113 makes extensive changes in the Commodity Exchange Act, brings under Federal regulation all agricultural and other commodities, goods, and services traded on exchanges, and otherwise strengthens the regulation of the Nation's \$500 billion commodity futures trading industry.

The bill is designed to further the fundamental purpose of the Commodity Exchange Act in insuring fair practice and honest dealing on the commodity exchanges and providing a measure of control over those forms of speculative activity which often demoralize the markets to the injury of producers, consumers, and the exchanges themselves.

sion. The Commission shall be composed of a Chairman and four other Commissioners, 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 (A) 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 (B) 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.

“(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, by and with the advice and consent of the Senate, 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 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, 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

of 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 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) No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearing-house 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.

“(8) The Commission shall, in cooperation with the Secretary of Agriculture, establish a separate office within the Department of Agriculture to be staffed with employees of the Commission for the purpose of maintaining 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 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.

“(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 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 and the Senate Committee on Agriculture 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) Section 12 of the Commodity Exchange Act, as amended (7 U.S.C. 16), is amended by striking such section and inserting in lieu thereof the following:

"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 the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978."

SEC. 102. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraph:

"(60) Chairman, Commodity Futures Trading Commission."

(b) Section 5315 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraph:

"(100) Members, Commodity Futures Trading Commission."

(c) Section 5316 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraphs:

"(135) General Counsel, Commodity Futures Trading Commission.

“(196) Executive Director, Commodity Futures Trading Commission.”

Sec. 103. The Commodity Exchange Act, as amended, is amended—

(a) By striking the word “Secretary” and the words “Secretary of Agriculture” wherever such words appear therein (except where the words “Secretary of Agriculture” first appear in section 5(a) (7 U.S.C. 7) or where said words would be stricken by subsection (b), (c), or (d) of this section) and by inserting in lieu thereof the word “Commission”.

(b) By striking the words “the Secretary of Agriculture or” wherever they appear in the phrase “the Secretary of Agriculture or the Commission”.

(c) By striking the words “the Secretary of Agriculture, who shall thereupon notify the other members of” from section 6(a) thereof (7 U.S.C. 8).

(d) By striking “the Secretary of Agriculture (or any person designated by him),” from section 6(b) thereof (7 U.S.C. 15).

(e) By striking the word “he”, “his”, or “He” wherever such word is used therein to refer to the Secretary of Agriculture, and by inserting in lieu thereof the word “it”, “its”, or “It”, respectively.

(f) By striking the words “United States Department of Agriculture” and “Department of Agriculture” wherever they appear therein and by inserting in lieu thereof the word “Commission”.

(g) By inserting in section 5(a) (7 U.S.C. 7) after the words “Secretary of Agriculture” where the same first appear therein the words “or the Commission”.

Sec. 104. All of the personnel of the Commodity Exchange Authority, property, records, and unexpended balance of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with administration of the Commodity Exchange Act shall be transferred to the Commodity Futures Trading Commission upon the effective date of this Act.

Sec. 105. Section 8 of the Commodity Exchange Act, as amended (7 U.S.C. 12, 12-1), is amended by adding at the end thereof the following new paragraphs:

“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 recommendations for further legislation as it may deem advisable with respect to the administration of this Act and its powers and functions under this Act.

“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 he may require and he and his duly authorized representatives 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 his 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."

SEC. 106. The Commodity Exchange Act, as amended, is amended by adding at the end thereof the following new section:

"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 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.

"(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 \$2,500, a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied in the form of depositions or verified statements of fact.

"(c) After opportunity for hearing on complaints where the damages claimed exceed the sum of \$2,500 has been provided or waived and on complaints where damages claimed do not exceed the sum of \$2,500 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) 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) 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 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) of this section, an order of the Commission awarding reparations shall be final and conclusive.

“(g) 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.

"(i) The provisions of this section shall not become effective until one year after the date of its enactment: *Provided*, That claims which arise within nine months immediately prior to the effective date of this section may be heard by the Commission after such one year period."

SEC. 107. The Commodity Exchange Act, as amended, is amended by adding at the end thereof the following new section:

"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."

TITLE II—REGULATION OF TRADING AND EXCHANGE ACTIVITIES

SEC. 201. Section 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2, 4), is amended—

(a) By striking after the word "eggs," the word "onions,"

(b) By striking the period at the end of the third sentence of the section and substituting therefor the following: "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 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 217 of the Commodity Futures Trading Commission Act of 1974: 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 Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this sec-

tion 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."

SEC. 202. Section 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2, 4), is amended by adding at the end of paragraph (1) the following new sentences: "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 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."

SEC. 203. The Commodity Exchange Act, as amended, is amended by inserting after section 4i (7 U.S.C. 6i), the following new section:

"Sec. 4j. (1) The Commission shall within six 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 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 deter-

minations 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 six 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. 204. (a) The Commodity Exchange Act, as amended, is amended by adding the following new section:

“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 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 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) or 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 date thereof, 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, the effective period of such registration shall be set by the Commission, not to

exceed two years from the effective date thereof and not to be less than one year from the effective date thereof."

(b) Section 6(b) of the Commodity Exchange Act, as amended (7 U.S.C. 9), is amended by inserting after the words "futures commission merchant" each time those words appear, the following: "or any person associated therewith as described in section 4k of this Act,".

(c) Section 8a(1) of the Commodity Exchange Act, as amended (7 U.S.C. 12a(1)), is amended by inserting after the words "futures commission merchants" the following: "and persons associated therewith as described in section 4k of this Act,".

SEC. 205. (a) The Commodity Exchange Act, as amended, is amended by adding the following new sections:

"SEC. 4l. 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;

"(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. 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.

"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 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) Except as hereinafter provided, such registration shall become effective thirty days after the receipt of such application by the Commission, or within such shorter period of time as the Commission may determine.

“(3) All registrations under this section shall expire on the 30th day of June of each year, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

“(4) (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.

“(5) 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.

“(6) 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.

“(7) 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—

“(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 market.

SEC. 40. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator registered under this Act, 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.”

(b) Section 6(b) of the Commodity Exchange Act, as amended (7 U.S.C. 9), is amended by inserting immediately before the words

"or as floor broker" each time those words appear, the following: "commodity trading advisor, commodity pool operator,".

"(c) Section 8a(1) of the Commodity Exchange Act, as amended (7 U.S.C. 12a(1)), is amended by inserting immediately before the words "and floor brokers" the following: "commodity trading advisors, commodity pool operators,".

SEC. 206. The Commodity Exchange Act, as amended, is amended by adding the following new section:

"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. 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."

SEC. 207. Section 5 of the Commodity Exchange Act, as amended (7 U.S.C. 7), is amended by adding after subsection (f) thereof the following new subsection:

"(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."

SEC. 208. Section 5a of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended—

(a) By inserting after the word "purposes" in subsection (7) the following: "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".

(b) By striking out "and" at the end of subsection (8).

(c) By striking out the period at the end of subsection (9) and inserting in lieu thereof a semicolon.

(d) By adding at the end of subsection (9) thereof the following new subsection:

"(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 differen-

tials 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;”.

SEC. 209. Section 5a of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended by adding a new subsection (11) as follows:

“(11) provide a fair and equitable 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, (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”.

SEC. 210. Section 5a of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended by inserting the following new subsection (12) as follows:

“(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. The Commission shall approve, within thirty days of their receipt 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 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."

SEC. 211. The Commodity Exchange Act, as amended, is amended by inserting the following new section immediately after section 6b (7 U.S.C. 13a):

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

(1) By substituting a comma for the period at the end of the fourth sentence in paragraph (b) and adding thereafter the following: "and may assess such person a civil penalty of not more than \$100,000 for each such violation."

(2) By adding in the sixth sentence in paragraph (b), a comma after the word "petition" and inserting thereafter and before the word "praying" the following phrase: "within fifteen days after the notice of such order is given to the offending person."

(3) By adding after paragraph (c) thereof the following new paragraph:

"(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."

(b) Section 6b of the Commodity Exchange Act, as amended (7 U.S.C. 13a), is amended to read as follows:

"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 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 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."

(c) Section 6(c) of the Commodity Exchange Act, as amended (7 U.S.C. 13b), is amended by deleting the words "not less than \$500 nor more than \$10,000" and substituting therefor the words "not more than \$100,000".

(d) Section 9 of the Commodity Exchange Act, as amended (7 U.S.C. 13), is amended as follows:

(1) Subsection (a) is amended by striking "\$10,000" and substituting therefor "\$100,000".

(2) Subsection (b) is amended by striking "\$10,000" and substituting therefor "\$100,000".

(3) Subsection (c) is amended by striking "\$10,000" and substituting therefor "\$100,000".

SEC. 213. Section 8a of the Commodity Exchange Act, as amended (7 U.S.C. 12a), is amended by striking subsection (7) and inserting in lieu thereof the following new subsection:

"(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"

SEC. 214. Section 8a of the Commodity Exchange Act, as amended (7 U.S.C. 12a), is amended by adding the following new subsection (8):

"(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”.

SEC. 215. Section 8a of the Commodity Exchange Act, as amended (7 U.S.C. 12a), is amended by adding the following new subsection (9):

“(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 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.”

SEC. 216. The Commodity Exchange Act, as amended, is amended by inserting the following new section immediately after section 8b (7 U.S.C. 12b):

“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, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. Otherwise the notice and reasons shall be kept confidential.

“(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. 217(a). 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, pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract contrary to any rule, regulation, or order of the Commodity Futures Trading Commission designed to insure 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. If the Commission determines that any such transaction is a contract for future delivery within the meaning of the Commodity Exchange Act, as amended, such transaction shall be regulated in accordance with the provisions of such Act.

(b) The provisions of section 9(c) of the Commodity Exchange Act, as amended, shall be applicable with respect to persons who violate the provisions of this section.

TITLE III—ENABLING AUTHORITY FOR CREATION OF NATIONAL FUTURES ASSOCIATIONS

SEC. 301. The Commodity Exchange Act, as amended, is amended by adding the following new section:

“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 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 with in 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 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 (7 U.S.C. 9), 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) provide 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, 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.

“(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 per-

sons 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.

“(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 \$5,000, (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.

“(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 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) 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.

"(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.

"(k) (1) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice 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 for adoption of any change in or addition to the rules of the association;

“(C) the method of choosing officers and directors.

“(l) 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 title 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 title 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 title 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 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) 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.”

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. Section 9 of the Commodity Exchange Act, as amended (7 U.S.C. 13), is amended by adding the following new subsections:

“(d) It shall be a felony punishable by a fine of not more than \$10,000 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.

“(e) It shall be a felony punishable by a fine of not more than \$10,000 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’; 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’.”

SEC. 402. Section 4c of the Commodity Exchange Act, as amended (7 U.S.C. 6c), is amended—

(a) by inserting “(a)” after “SEC. 4c.”

(b) By striking paragraph (B) in its entirety and inserting in lieu thereof the following:

“(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) By adding at the end thereof the following new subsection:

“(b) No person shall offer to enter into, 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 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."

(d) *By striking the last sentence of subsection (a) as designated by this section.*

SEC. 403. Section 4a(1) of the Commodity Exchange Act, as amended (7 U.S.C. 6a), is amended by inserting, following the word "straddles" in the last sentence of such paragraph the words "or 'arbitrage'" and by adding the following new sentences at the end of such paragraph: "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'."

SEC. 404. Section 4a(3) of the Commodity Exchange Act, as amended (7 U.S.C. 6a), is amended by deleting the period at the end of the first sentence and adding "as such terms shall be defined by the Commission within ninety days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this Act."; and by deleting, effective immediately on enactment of this Act, the remainder of paragraph (3): Provided, That notwithstanding any other provision of law, the Secretary of Agriculture, immediately upon the enactment of the Commodity Futures Trading Commission Act of 1974, is authorized and directed to promulgate regulations defining bona fide hedging transactions and positions: And provided further, That until the Secretary issues such regulations defining bona fide hedging transactions and positions and such regulations are in full force and effect, such terms shall continue to be defined as set forth in the Commodity Exchange Act prior to its amendment by the Commodity Futures Trading Commission Act of 1974.

SEC. 405. Section 4b of the Commodity Exchange Act, as amended (7 U.S.C. 6b), is amended—

(a) *By deleting the word "cotton" where it appears in the last full paragraph of such section, and inserting in lieu thereof the words "a commodity".*

(b) *By striking the period at the end of such section and adding the following: ": 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. 406. Section 5a(6) of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended by deleting the semicolon at the end of said subsection and inserting in lieu thereof the following: "and adopted by the Commission;".

SEC. 407. Section 5a(8) of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended—

(a) *By deleting the words "not been disapproved by the Secretary of Agriculture pursuant to paragraph (7) of section 8a" and inserting in lieu thereof the words "been approved by the Commission pursuant to paragraph (12) of section 5a".*

(b) By deleting the word "so", and inserting the words "by the Commission" immediately before the semicolon at the end of such subsection.

SEC. 408. Section 6(b) of the Commodity Exchange Act, as amended (7 U.S.C. 9), is amended—

(a) By striking in the second sentence "a referee" and inserting in lieu thereof "an Administrative Law Judge".

(b) By striking the word "referee" each other place it appears and inserting in lieu thereof "Administrative Law Judge".

SEC. 409. Section 9(c) of the Commodity Exchange Act, as amended (7 U.S.C. 13), is amended by inserting after "section 4" the following: "section 4k, section 4m, section 4o,".

SEC. 410. Section 5108(c) of title 5 of the United States Code is amended by adding after paragraph (11) thereof the following new paragraph:

"(12) The Commodity Futures Trading Commission, subject to the standards and procedures prescribed by this chapter, may place an additional twenty positions in GS-16, GS-17, and GS-18 for purposes of carrying out its functions."

SEC. 411. All operations of the Commodity Exchange Commission and of the Secretary of Agriculture under the Commodity Exchange Act, including all pending administrative proceedings, shall be transferred to the Commodity Futures Trading Commission as of the effective date of this Act and continue to completion. All rules, regulations, and orders heretofore issued by the Commodity Exchange Commission and by the Secretary of Agriculture under the Commodity Exchange Act to the extent not inconsistent with the provisions of this Act shall continue in full force and effect unless and until terminated, modified, or suspended by the Commodity Futures Trading Commission.

SEC. 412. Pending proceedings under existing law shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended, in effect prior to the effective date of this Act.

SEC. 413. 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 the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 414. The Commodity Exchange Act, as amended, is amended by adding the following new section at the end thereof:

"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 Commis-

sion 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 of any person and trade secrets or names of customers except as provided in section 8 of this Act."

SEC. 415. Section 4g of the Commodity Exchange Act, as amended, is amended by inserting "(1)" after the section designation and by adding the following new subsections:

"(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) 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.

"(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. 416. The Commodity Exchange Act, as amended, is amended by adding at the end thereof the following new 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. 417. The Commodity Futures Trading Commission shall submit to the Congress, not later than June 30, 1976, a report respecting the need for legislation insuring owners of commodity futures accounts and persons handling or clearing trades in such accounts against loss by reason of the insolvency or financial failure of a futures commis-

sion merchant carrying such accounts. The report shall contain the recommendations of the Commission concerning the form and nature of any such legislation.

Sec. 418. (a) Except as otherwise provided specifically in this Act, the effective date of this Act shall be the 180th day after enactment. The Commission referred to in section 101 is hereby established effective immediately on enactment of this Act. Sections 102 and 410 shall be effective immediately on enactment of this Act. Activities necessary to implement the changes effected by this Act may be carried out after the date of enactment and before as well as after the 180th day thereafter. Activities to be carried out after the date of enactment and before the 180th day thereafter may include, but are not limited to the following: designation of boards of trade as contract markets, registration of futures commission merchants, floor brokers, and other persons required to be registered under the Act, approval or modification of bylaws, rules, regulations, and resolutions of contract markets, and issuance of regulations, effective on or after the 180th day after enactment; appointment and compensation of the members of the Commission; hiring and compensation of staff; and conducting of investigations and hearings. Nothing in this Act shall limit the authority of the Secretary of Agriculture or the Commodity Exchange Commission under the Commodity Exchange Act, as amended, prior to the 180th day after enactment of this Act.

(b) Funds appropriated for the administration of the Commodity Exchange Act, as amended, may be used to implement this Act immediately after the date of enactment of this Act.

And the Senate agree to the same.

HERMAN E. TALMADGE,
GEORGE MCGOVERN,
HUBERT H. HUMPHREY,
DICK CLARK,
CARL T. CURTIS,
ROBERT DOLE,
HENRY BELLMON,

Managers on the Part of the Senate.

W. R. POAGE,
FRANK A. STUBBLEFIELD,
THOMAS S. FOLEY,
BOB BERGLAND,
WILLIAM C. WAMPLER,
ROBERT PRICE,
CHARLES THONE,

Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13113) to amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report. The differences between the House bill and the Senate amendment and the substitute agreed to in conference are noted in the following outline, except for conforming, clarifying, and technical changes:

(1) *Nature of Commission.*

The *House* bill creates a five-man regulatory Commission with certain ties to the Department of Agriculture. The Commission would consist of four public members and the Secretary of Agriculture or his designee. The four public members of the Commission would be appointed by the President from the general public and confirmed by the Senate. Any of the five members of the Commission could be separately nominated by the President as Chairman of the Commission, although such nomination would be subject to separate Senate approval. The four public members would serve on a part-time basis. They would be compensated at Executive Level IV on a per diem basis for the time they spend in the performance of their official activities. The Commission would be allowed to utilize the facilities and services of the Department of Agriculture, at cost, including adequate office space if available. The Commission would be required to meet as often as necessary, but not less than one regular meeting per month. Additional meetings could be called by the Chairman or any two members of the Commission. The Commission would have a General Counsel, an Executive Director, and a Secretary.

The *Senate* amendment creates a five-man independent regulatory Commission consisting of a Chairman and four other Commissioners. In nominating persons for appointment, the President is to seek to establish and maintain a balanced Commission that will include—but not be 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 the goods, articles, services, rights, and interests covered by the Act. The Chairman would be the chief administrative officer and compensated at Executive Level III. The other Commissioners would be compensated at Executive Level IV. The Commission would have a General Counsel and an Executive Director, but no Secretary. Both the General Counsel and the Executive Director would be subject to Senate confirmation. They would be compensated at Executive Level V.

The *Conference* substitute adopts the *Senate* provision with an amendment. Under the *Conference* substitute, the Secretary of Agriculture will appoint a liaison officer, who shall be an employee of the Department of Agriculture, for the purpose of maintaining liaison between the Commission and the Department. The Commission shall furnish the liaison officer with appropriate office space and clerical help, and he shall have the right to attend and observe all deliberations and proceedings of the Commission. Likewise, the Commission shall establish a separate office within the Department of Agriculture to be staffed with employees of the Commission for the purpose of maintaining liaison between the Department and the Commission. 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 as may be necessary in order to maintain effectively such liaison.

Under the *Conference* substitute, the Commission would appoint the General Counsel and the Executive Director. Only the Executive Director would be subject to Senate confirmation. Both would serve at the pleasure of the Commission.

The *Conference* substitute includes the *House* provision that a vacancy in the Commission would not impair the right of the remaining Commissioners to exercise the powers of the Commission. Thus, during the period of transition between the date of enactment and the effective date of the bill, it will be possible for the Commission to function when three of the Commissioners have been appointed and have qualified.

The *Conference* substitute also provides that 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 Agriculture Committees and the House and Senate Appropriations Committees. Likewise, whenever the Commission submits any legislative recommendation, 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 and Senate Agriculture Committees.

(2) *Reparations procedure.*

Under the *Senate* amendment, a person would have three years instead of nine months, as provided in the *House* bill, to make a complaint to the Commission.

Judicial review of the Commission's findings and order would under the *House* bill be de novo, except that the findings of fact and orders of the Commission would be prima facie evidence of the facts therein stated. Under the *Senate* amendment, the findings would be reviewable only for purposes of determining if they are supported by substantial evidence.

Under the *House* bill, the period of time for a person to comply with or appeal a reparations order entered against him is five days. Under the *Senate* amendment, the period of time is extended to 15 days.

Under the *Conference* substitute, a person would have two years to make a complaint to the Commission. In lieu of the *House* and *Senate* provisions, judicial review of the Commission's findings and order would on appeal be in the Court of Appeals pursuant to the procedure provided in section 6(b) of the Commodity Exchange Act.

Under section 6(b) of the Act, the findings of the Commission, as to the facts, would, if supported by the weight of the evidence, be conclusive. The *Conference* substitute retains the *Senate* provision that the period of time for a person to comply with or appeal a reparations order entered against him is 15 days.

(3) *Antitrust laws.*

Under the *House* bill, the Commission—in issuing any order, rule, or regulation or in requiring or approving any bylaw, rule, or regulation of a contract market—is to take into consideration the public interest to be protected by the antitrust laws.

The *Senate* amendment retains this provision, and, in addition, requires the Commission to endeavor to take the least anticompetitive means of achieving the objectives of the Commodity Exchange Act.

The *Conference* substitute adopts the *Senate* amendment with only a technical change. However, the requirement that the Commission endeavor to take the least anticompetitive means of achieving the objectives of the Commodity Exchange Act is not intended to constitute any procedural roadblock to the Commission in regulating the futures trading industry, and separate proceedings to consider antitrust and anticompetitive matters are not required by the Commission in issuing any order, adopting any Commission rule or regulation, or in requiring or approving any bylaw, rule, or regulation of a contract market.

(4) *Jurisdiction of the Commission.*

The *House* bill provides for exclusive jurisdiction of the Commission over all futures transactions. However, it is provided that such exclusive jurisdiction would not supersede or limit the jurisdiction of the Securities and Exchange Commission or other regulatory authorities.

The *Senate* amendment retains the provision of the *House* bill but adds three clarifying amendments. The clarifying amendments make clear that (a) the Commission's jurisdiction over futures contract markets or other exchanges is exclusive and includes the regulation of commodity accounts, commodity trading agreements, and commodity options; (b) the Commission's jurisdiction, where applicable, supersedes State as well as Federal agencies; and (c) Federal and State courts retain their respective jurisdictions.

In addition, the *Senate* amendment provides that interbank trading of foreign currencies and specified financial instruments is not subject to Commission regulation.

Also, the *Senate* amendment provides that the Commission's authority in section 217 of the bill to regulate transactions for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins pursuant to standardized margin or leverage contracts is exclusive.

The *Conference* substitute adopts the *Senate* amendment, including the provision in section 402(d) of the bill which strikes the last sentence of section 4c of the Commodity Exchange Act. The language being struck provides that "Nothing in this section [section 4c] or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections."

Under the exclusive grant of jurisdiction to the Commission, the authority in the Commodity Exchange Act (and the regulations issued by the Commission) would preempt the field insofar as futures regulation is concerned. Therefore, if any substantive State law regu-

lating futures trading was contrary to or inconsistent with Federal law, the Federal law would govern. In view of the broad grant of authority to the Commission to regulate the futures trading industry, the Conferees do not contemplate that there will be a need for any supplementary regulation by the States.

(5) *Fitness requirements for floor brokers, futures commission merchants, and persons associated with them.*

The *Senate* amendment provides in section 206 that the Commission may exempt floor brokers, futures commission merchants, and persons associated with them, from any written proficiency examinations, if they have previously demonstrated the required proficiency and skill necessary to protect the interests of customers.

The *Senate* amendment strikes a similar provision in section 204 of the *House* bill which would be applicable only with respect to persons associated with futures commission merchants.

The *Conference* substitute adopts the *Senate* provision.

(6) *Contract market designation (economic justification).*

The *House* bill requires a board of trade, before designation as a contract market, to demonstrate (a) that the prices involved in transactions for future delivery in the commodity for which such designation is sought, are, or reasonably can be expected to be, generally quoted and disseminated as a basis for determining prices to producers, merchants, or consumers of such commodity or the products or byproducts thereof or (b) that such transactions are, or reasonably can be expected to be, utilized by producers, merchants, or consumers engaged in handling such commodity or the products or byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price.

The *Senate* amendment strikes the *House* provision and substitutes therefor the requirement that the board of trade demonstrate 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.

The *Conference* substitute adopts the *Senate* provision. The Conferees note that the broader language of the *Senate* provision would include the concept of the "economic purpose" test provided in the *House* bill subject to the final test of the "public interest".

(7) *Delivery points.*

The *Senate* amendment would give contract markets 75 days, instead of 60 days as specified in the *House* bill, to make changes in delivery points as deemed necessary by the Commission.

In addition, the *Senate* amendment eliminates any requirement that warehouse receipts issued under the United States Warehouse Act be accepted in satisfaction of futures contracts where such a requirement is totally inappropriate.

The *Conference* substitute adopts the *Senate* provision.

(8) *Voluntary arbitration of customers' claims.*

Under the *House* bill, a contract market's voluntary arbitration procedure is limited to claims not in excess of \$5,000.

The *Senate* amendment increases this amount to \$15,000.

The *Conference* substitute adopts the *Senate* provision.

(9) *Commission approval of exchange bylaws, rules, regulations, and resolutions.*

The *Senate* amendment retains the provision of the *House* bill that a contract market submit for Commission approval bylaws, rules, regulations, and resolutions which relate to the terms and conditions of futures contracts or other trading requirements.

The *Senate* amendment provides that the Commission is to approve or disapprove such bylaws, rules, regulations, and resolutions within 30 days unless the Commission determines that a longer period of time is necessary for such determination and so notifies the contract market. In addition, the *Senate* amendment (a) authorizes contract markets to adopt rules in an emergency without prior approval by the Commission, and (b) permits the Commission to exempt contract market operational and administrative rules from the requirement that they be submitted to the Commission for approval.

The *Conference* substitute retains the *Senate* provision with an amendment providing that the Commission shall specify the terms and conditions under which a contract market may, in an emergency, adopt a temporary rule dealing with trading requirements without prior Commission approval.

Under section 213 of the bill, the Commission retains its authority and flexibility to alter or supplement previously-approved exchange bylaws, rules, regulations, and resolutions.

(10) *Restraining orders, injunctions, and writs of mandamus.*

The *House* bill provides that 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 the Act or any rule, regulation, or order thereunder, or is in a position to effectuate a squeeze or corner or otherwise restrain trading in any commodity for future delivery, the Commission is permitted to notify the Attorney General, and the Attorney General is permitted to bring a court action to enjoin such act or practice, or to enjoin the continued maintenance of such a position, or to enforce compliance with the Act, or any rule, regulation, or order thereunder.

The *Senate* amendment authorizes the Commission to go directly into court itself—without going through the Attorney General—to enjoin any contract market or other person from violating the Act or restraining trading in any commodity for future delivery. The *Senate* amendment retains the authority for the Commission to seek injunctions with respect to persons “about to engage” in violations of the Act, but deletes the authority to seek injunctions with respect to persons “in a position to” effectuate a squeeze or corner. Under both the *Senate* amendment and the *House* bill, no restraining order, injunction, or writ of mandamus will be issued *ex parte*.

The *Conference* substitute adopts the *Senate* provision with an amendment providing that, in lieu of bringing actions itself, 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 and advise him of subsequent developments.

(11) *Emergency powers.*

The *House* bill authorizes the Commission to direct any contract market, “whenever [the Commission] has reason to believe that the

amount of deliverable supplies, the number of open contracts, the relative size of individual traders' positions, the amount and direction of price movements in cash and futures markets, the impact of government edicts and regulations, the existence of a market emergency, or any other such market factor creates a condition which threatens orderly trading in, or liquidation of, any futures contract, 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 *House* bill specifies examples of actions that the Commission may take.

Under the *Senate* amendment, the Commission will have authority to act only in "emergency" situations and direct a contract market to take such action as is necessary to maintain or restore orderly trading. The term "emergency" is defined as meaning—in addition to threatened or actual market manipulations and corners—any act of government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand. In addition, the "emergency" itself must—in the Commission's judgment—have a greater adverse impact on the market than the action the Commission proposes to take.

The *Conference* substitute adopts the *Senate* provision with an amendment deleting the language that the "emergency" must, in the Commission's judgment, have a greater adverse impact on the market than the action the Commission proposes to take. At the outset of an emergency, it might not be practicable for the Commission to reach such a judgment.

However, the Conferees do not intend that the emergency powers section be used to prescribe a remedy more severe than the malady sought to be cured. The effective use of the emergency powers requires the careful exercise of expert and impartial judgment by the Commission.

Under the *Conference* substitute, the Commission may take, but is not limited to, all of the emergency actions specified in the *House* bill.

(12) *Disciplinary procedures.*

The *Senate* amendment (a) authorizes the Commission to discipline exchange members if the exchange fails to act and (b) permits a member who is disciplined by an exchange to appeal to the Commission. The provision does not require any person to submit to the appeal procedure of the Commission and it does not deny any person the right to seek relief in the courts. Nor does it limit the liability of any person in any suit by a State or Federal agency.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment under which review by the Commission of exchange disciplinary action would be discretionary and, if allowed, in accordance with such standards and procedures as the Commission deems appropriate. The *Conference* substitute deletes the *Senate* provision stating that nothing therein (a) requires any person to submit to the appeal procedure of the Commission, (b) prohibits any person from seeking relief in the courts, or (c) limits the liability of any person in any suit by a State or Federal agency. The appeal procedure, under the *Conference* substitute, is discretionary. While as a matter of primary ad-

ministrative jurisdiction, courts may defer to any review afforded by the Commission, the availability of such review procedure will not affect rights that are otherwise available to persons adversely affected by exchange action.

(13) *Leverage contract regulation.*

The *Senate* amendment requires the Commission to regulate leverage transactions for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins. Under the *Senate* amendment, if the Commission determines at any time that such transactions are futures contracts within the meaning of the Act, they would be regulated accordingly.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. If the Commission determines that any leverage transaction is a contract for future delivery within the meaning of the Commodity Exchange Act, all of the requirements in the Act would be applicable to trading in such transaction.

(14) *Futures associations.*

Title III of the *House* bill provides enabling authority at the discretion of the Commission for persons registered under the Commodity Exchange Act and in the commodity trading business to establish voluntary associations for regulating the practices of the members.

The *Senate* amendment strikes title III of the *House* bill and requires the Commission to investigate the need for legislation providing for the registration of futures associations. The Commission is to report its findings to Congress within two years.

The *Conference* substitute adopts the *House* provision with an amendment providing that the Commission's annual reports to the Congress are to include information concerning the futures associations registered pursuant to title III and the effectiveness of such associations in regulating the practices of the members. Thus, Congress will be in a position to make a continuing review of the effectiveness of any futures associations registered by the Commission.

(15) *Insider trading.*

The *Senate* amendment makes technical changes in the *House* section on insider trading. In addition, it modifies the *House* prohibition against insider trading in *actual commodities*. The *Senate* amendment prohibits trading in actual commodities only if the insider is using "information acquired by virtue of his employment or position" to do such trading.

The *Senate* amendment would also make it a felony for any person to *acquire* information from an insider and *use* such information for futures trading, options trading, and trading in actual commodities.

The *House* bill does not impose any sanctions against persons *acquiring* information from insiders.

The *Conference* substitute deletes the *Senate* provision requiring that, for a crime to be committed under the new section 9(d), a Commissioner of the Commission or employee or agent thereof engaging in a transaction in an actual commodity must be proven to have used "information acquired by virtue of his employment or position". The

Conferees wished to make it clear that the deletion of this requirement should not be construed to mean that a Commissioner or other employee or agent of the Commission would be prohibited from engaging in *any* transaction in an actual commodity (e.g., the purchase of butter or other commodities for his own use). The *Conference* substitute, therefore, adds the word "investment" to define the type of actual transaction sought to be prohibited. This makes clear that the purchase of commodities for one's own use and consumption is not prohibited. In addition, the Conferees added language refining the "excepted transactions" language to permit "purchase" as well as sale of actual commodities and livestock in connection with farming and ranching operations of a Commissioner, employee or agent.

The *Conference* substitute retains the *Senate* provision making it a felony for any person to acquire and use insider information.

(16) *Options trading.*

The *House* bill continues the ban now contained in section 4c of the Act on trading in options (privileges, indemnities, bids, offers, puts, calls, advance guaranties, and decline guaranties) in the now-regulated commodities, but permits trading in options in all other commodities *if* not done 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 may prescribe. The Commission could promulgate such an order, rule, or regulation only after notice and opportunity for hearing. The Commission may set different terms and conditions for different markets.

The *Senate* amendment retains the *House* provision, but provides that the Commission is to prescribe the regulations governing such options trading within one year after the effective date of the bill.

The *Conference* substitute adopts the *Senate* provision with an amendment providing that the period for issuing regulations governing such options trading may be extended if the Commission determines, and notifies the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture, that it will be unable to promulgate such regulations within the one-year period.

(17) *Arbitrage.*

The *House* bill authorizes the Commission, in fixing trading and position limits, to exempt "arbitrage" transactions, and defines the word "arbitrage" as meaning the same as a "spread" or "straddle".

The *Senate* amendment retains such exemption but limits the definition to arbitrage in domestic markets and authorizes the Commission to define "international arbitrage".

The *Conference* substitute adopts the *Senate* provision.

(18) *Hedging.*

The *House* bill deletes the definition of "bona fide hedging transactions or positions" now contained in the Act and allows the Commission to define that term "by order consistent with the purposes of this Act." However, until the Commission issues regulations defining what constitutes bona fide hedging transactions and positions under the Act and such regulations are in full force and effect, such terms will continue to be defined as set forth in the Act prior to its amendment by the bill.

The *Senate* amendment allows the Commission to define hedging, as would the *House* bill, but requires that the Commission allow the hedging of "contract" bushels of seed and extend anticipatory hedging privileges to persons such as bakers who use products (for example, flour) of traded commodities rather than the commodity itself. Under the *Senate* amendment, the new definitions must be issued by the Commission within 90 days after the effective date of the bill.

The *Conference* substitute adopts the *House* provision, with an amendment. The Conferees recognize that the language of the *House* bill accommodates the *Senate* provision requiring the Commission to allow hedging by users of products of traded commodities as well as hedging by seed companies of the contract bushel equivalent of anticipated seed production. The Conferees intend that such hedging be allowed by the Commission. Further, with respect to this change in existing law which allows bakers to be deemed legitimate hedgers for purpose of exceeding the speculative limits provided under the Act, the Conferees intend that the right of such hedging on products of traded commodities be extended to all persons similarly situated—*i.e.*, to all legitimate businessmen seeking to offset an existing cash risk in a product of a traded commodity—unless otherwise provided by the Commission. Therefore, the Commission retains control over potential abuse, if any, of this provision through its general authority to refine the mandate intended by the Conferees by order consistent with the purposes of the Act.

Immediately upon the enactment of the bill, the Secretary of Agriculture is to issue regulations defining bona fide hedging transactions to allow hedging by the persons described above. Such regulations would, of course, only be applicable with respect to the now-regulated commodities. The new Commission would issue hedging definitions for the other commodities within 90 days after the effective date of the bill.

(19) *Separability.*

Both the *House* bill and the *Senate* amendment preserve the validity of the remainder of the bill if any portion is held invalid.

The *Senate* amendment strikes that part of the *House* bill which would preserve any section of the Commodity Exchange Act in its applicability to any person or circumstance if such section is amended by any provision of the bill which is held invalid.

The *Conference* substitute adopts the *Senate* provision.

(20) *Market reports.*

The *Senate* amendment authorizes the Commission to investigate markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and publish regular market reports. The Commission would be required to cooperate with other Federal agencies to avoid unnecessary duplication of information-gathering activities. Other agencies would be required to furnish market information to the Commission, which would in turn be subject to any rules of confidentiality applying to the information. The Commission could not disclose the names of individual companies.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment providing that, except as provided in section 8 of the Act, the Commission shall not disclose in the market reports data and information which would separately disclose the business transactions of any person and trade secrets or names of customers.

(21) *Daily trading reports.*

The *Senate* amendment requires every clearinghouse to deliver a daily report to the Commission, specifying for each trade made on the exchange that day, the time, the subject, the number of contracts, the price, the delivery month, and the identification of the traders. The Commission would be authorized to require additional information in such reports, and to prescribe the form and manner of such reports. The Commission would be permitted to disclose such reports or information from them if it determines that disclosure furthers the regulation of futures trading. Exchanges would be required to publish daily reports of the volume of trading on each type of contract. The Commission would be authorized to require exchanges to include additional information in such daily reports.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment authorizing the Commission to determine the type of trading records and the type and frequency of trading reports to be required of clearinghouses and contract markets. In carrying out the *Conference* substitute, the Commission may obtain whatever information is needed for the effective enforcement of the Commodity Exchange Act, including—but not limited to—the items specified in the *Senate* amendment. If, for example, the Commission determines that it needs the time of each trade made on the exchanges and the identification of the traders involved in each trade, it can require that a record be kept of this information and that it be reported to the Commission by the clearinghouse and contract market. In lieu of the daily reporting requirement in the *Senate* amendment, if the Commission requires that reports be made, the frequency of such reports is to be determined by the Commission. However, reports shall be submitted on a daily basis if, in the Commission's judgment, this is necessary. Whatever records are required by the Commission shall be maintained by the clearinghouses and contract markets in order to avoid the necessity of the Commission going to the individual clearing members to obtain such information. Under the *Conference* substitute, the Commission's authority to make the reports available to the public would be governed by the provisions of section 8 of the Commodity Exchange Act.

(22) *Investor protection.*

The *Senate* amendment makes it unlawful for a futures commission merchant to accept a futures contract order from any person, or for a commodity trading advisor to advise any person to buy or sell a futures contract, without first obtaining a statement from such person that he understands the risks involved.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(23) Research and information programs.

The *Senate* amendment requires the Commission to establish and maintain research and information programs to investigate new technology and the feasibility of its use for improving, strengthening, facilitating or regulating futures trading; to assist in developing materials for educating producers, market users, and the general public about futures trading; and to carry out the general purposes of the Act. Annual reports of such programs would be required.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision.

(24) Forward contracting insurance program.

The *Senate* amendment requires the Commission to encourage and assist private insurers to establish a pool to provide insurance to protect the parties to any forward contract from financial loss resulting from failure of the other party to comply with the terms of the contract for future delivery.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(25) Commodity futures account insurance.

The *Senate* amendment requires the Commission to investigate and report to Congress, not later than June 30, 1976, on the need for legislation providing insurance against losses caused by the financial failure of futures commission merchants.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision.

(26) Effective date.

Both the *House* bill and the *Senate* amendment provide that the bill is effective 180 days after enactment. Activities necessary to implement the changes made by the bill may, however, be carried out after the date of enactment and before the effective date.

The *Senate* amendment provides, in addition to the items specified in the *House* bill, that activities to be carried out after the date of enactment and before the effective date shall include the necessary steps to regulate futures trading in silver immediately on the effective date of the bill.

The *Conference* substitute adopts new language relating to the effective date of the new Act for that contained in section 414 of the *House* bill and section 321 of the *Senate* amendment. This language is intended to clarify the interim authority between the date of enactment and 180 days after enactment, the date on which the new law will become fully operational.

In order that it may be prepared to begin full operation on the effective date of the Act, the Commission may, prior to the effective date, make such studies, conduct such hearings, and require such reports as are authorized to carry out the purposes of the Act and may issue and publish in the Federal Register such proposed regulations and notices as it deems appropriate. The fact that the detailed activities specified in this provision remain permissive as provided in the *House* bill is not intended to deter their implementation. The Conferees fully expect that implementing activities under this Act shall begin as

soon as practicable in order that the Commission is fully operational at the end of 180 days.

In addition, the Conferees intend that the new Commission take the necessary steps to regulate effectively futures trading in all commodities, including silver, immediately on the effective date of the Act. The Conferees believe that current conditions on the silver futures market particularly require the most effective and informed regulation as soon as feasible but are persuaded that the earliest feasible time is the effective date.

HERMAN E. TALMADGE,
 GEORGE MCGOVERN,
 HUBERT H. HUMPHREY,
 DICK CLARK,
 CARL T. CURTIS,
 ROBERT DOLE,
 HENRY BELLMON,

Managers on the Part of the Senate.

W. R. POAGE,
 FRANK A. STUBBLEFIELD,
 THOMAS S. FOLEY,
 BOB BERGLAND,
 WILLIAM C. WAMPLER,
 ROBERT PRICE,
 CHARLES THONE,

Managers on the Part of the House.

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COMMODITY FUTURES TRADING COMMISSION
ACT OF 1974

REPORT

ON

H.R. 13113

A BILL TO AMEND THE COMMODITY EXCHANGE ACT
TO STRENGTHEN THE REGULATION OF FUTURES
TRADING, TO BRING ALL AGRICULTURAL AND OTHER
COMMODITIES TRADED ON EXCHANGES UNDER REGU-
LATION, AND FOR OTHER PURPOSES



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MARY MARGARET KELLEY, *Clerical Assistant*

DENISE A. LOVE, *Clerical Assistant*

“People will endeavor to forecast the future and to make agreements according to their prophecy. Speculation of this kind, by competent men is the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to ruin by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain.”

Mr. JUSTICE HOLMES.

Board of Trade v. Christie Grain & Stock Co., 198 U.S. 236, 247-248 (1905).

(III)

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TITLE II

Title II provides broad authority to the Commission to regulate futures trading and exchange activities.

- All goods, articles, services, rights, and interests traded for future delivery are brought under Federal regulation.

- Commodity trading advisors and commodity pool operators are required to register with the Commission. In addition, the existing registration and examination for fitness requirements applicable to futures commission merchants and floor brokers are expanded to include all individuals handling customers' accounts.

- The new Commission will determine whether trading by floor brokers and futures commission merchants for their own account and at the same time trading for their customers will be permitted. If the Commission determines that such dual trading will be permitted, the Commission shall further determine the circumstances under which it shall be conducted. The Commission may make separate determinations for different contract markets.

- Contract markets will be required to demonstrate that futures contracts for which they seek designation will not be contrary to the public interest.

- The new Commission may establish additional points for the delivery of a commodity in order to diminish price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce.

- Contract markets must submit for Commission approval bylaws, rules, regulations, and resolutions which relate to the terms and conditions of futures contracts or other trading requirements. In addition, the Commission may require a contract market to make changes in its rules and practices which are necessary or appropriate for the protection of the public interest.

- The Commission will have authority to go directly into court to enjoin any contract market or other person from violating the Act or restraining trading in any commodity for future delivery. However, no restraining order, injunction, or writ of mandamus will be issued *ex parte*.

- The Commission will have authority to act in emergency situations and direct a contract market to take such action as is necessary to maintain or restore orderly trading. The term "emergency" is defined as meaning—in addition to threatened or actual market manipulations and corners—any act of government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand. In addition, the "emergency" itself must have a greater adverse impact on the market than the action the Commission proposes to take.

- Penalties in amounts up to \$100,000 could be imposed in both administrative and criminal proceedings for violations of the Act.

- The Commission will have authority to regulate transactions for the delivery of silver bullion, gold bullion, and bulk silver and gold coins pursuant to standardized margin or leverage account contracts.

TITLE III

Title III makes it a felony for Commissioners, employees, or agents of the Commission to participate, directly or indirectly, in any trans-

action in commodity futures or options or an actual commodity. It is also a felony for such person to impart confidential information to others for the purpose of assisting them in participating in such transactions. The persons receiving the confidential information are likewise prohibited from using such information.

- The ban on trading in options in commodities presently subject to regulation is continued. Options trading with respect to all other commodity futures is likewise banned if contrary to Commission rules or regulations prohibiting or allowing such trading. The Commission is to prescribe the regulations governing such trading within one year after the effective date of the bill.

- The term "arbitrage" is added to the Commission's authority to allow the exceeding of speculative limits. Arbitrage in domestic markets is defined as meaning the same as a "spread" or "straddle". The Commission is authorized to define the term "international arbitrage".

- The Commission is authorized to define bona fide hedging transactions or positions. However, the new definition must permit hedging of a person's anticipated production of seed quantities of a commodity and hedging by the users of products of traded commodities as well as users of the commodities.

- The authority under which a futures commission merchant or floor broker may "cross trades" for cotton is made applicable to all commodities under rules and regulations issued by the Commission.

- The Commission is authorized to conduct regular investigations of the markets for commodities which are the subject of futures contracts, and furnish reports of its findings to the public on a regular basis.

- Every clearinghouse must prepare a daily trading report in the form and manner prescribed by the Commission. The Commission could disclose daily trading reports, or information from the reports, if disclosure furthers the regulations of futures trading.

- It would be unlawful for a futures commission merchant to accept a futures contract order from any person, or for a commodity trading advisor to advise any person to buy or sell a futures contract, without first obtaining a statement from such person that he understands the risks involved.

- The Commission would establish research and information programs to investigate the feasibility of trading by computer and the expanded use of modern information system technology.

- In order to promote the use of forward contracting, the Commission would encourage and assist private insurers to provide insurance to protect the parties to any forward contract from losses resulting from breaches of the contract.

- The Commission is to investigate the need for legislation providing for the registration of futures associations. The Commission is to report its findings to Congress within two years.

- The Commission is to investigate and report to Congress, not later than June 30, 1976, on the need for legislation providing insurance against losses caused by the financial failure of futures commission merchants.

- The bill is effective 180 days after enactment. However, activities necessary to implement the bill may be carried out after enactment and before the effective date.

COMMITTEE AMENDMENT

The Committee amendment strikes all after the enacting clause of H.R. 13113 and inserts in lieu thereof an amendment in the nature of a substitute. The principal differences between H.R. 13113 as passed by the House and the bill as amended by the Committee are as follows:

(1) *Type of Commission (Secs. 101, 102)*

The *House* bill creates a five-man regulatory Commission with certain ties to the Department of Agriculture. The Commission would consist of four public members and the Secretary of Agriculture or his designee. The four public members of the Commission would be appointed by the President from the general public and confirmed by the Senate. Any of the five members of the Commission could be separately nominated by the President as Chairman of the Commission, although such nomination would be subject to separate Senate approval. The four public members would serve on a part-time basis. They would be compensated at Executive Level IV on a per diem basis for the time they spend in the performance of their official activities. The Commission would be allowed to utilize the facilities and services of the Department of Agriculture, at cost, including adequate office space if available. The Commission would be required to meet as often as necessary, but not less than one regular meeting per month. Additional meetings could be called by the Chairman or any two members of the Commission. The Commission would have a General Counsel, an Executive Director, and a Secretary.

The *Committee* amendment creates a five-man independent regulatory Commission consisting of a Chairman and four other Commissioners. In nominating persons for appointment, the President is to seek to establish and maintain a balanced Commission that will include persons of demonstrated knowledge.

The Chairman would be the chief administrative officer and compensated at Executive Level III. The other Commissioners would be compensated at Executive Level IV.

The Commission would have a General Counsel and an Executive Director, but no Secretary. Both the General Counsel and the Executive Director would be subject to Senate confirmation. They would be compensated at Executive Level V.

(2) *Reparations procedure (Sec. 106)*

Under the *Committee* amendment, a customer would have three years instead of nine months, as provided in the *House* bill, to make a complaint to the Commission.

Judicial review of the Commission's findings and order would under the *House* bill be de novo. Under the *Committee* amendment, the findings would be reviewable only for purposes of determining if they are supported by substantial evidence.

Under the *House* bill, the period of time for a person to comply with or appeal a reparations order entered against him is five days. Under the *Committee* amendment, the period of time is extended to 15 days.

(3) *Antitrust laws (Sec. 107)*

Under the *House* bill, the Commission—in issuing any order, rule, or regulation or in requiring or approving any bylaw, rule, or regulation of a contract market—is to take into consideration the public interest to be protected by the antitrust laws.

The *Committee* amendment retains this provision, and, in addition, requires the Commission to take the least anti-competitive means of achieving the objectives of the Commodity Exchange Act.

(4) *Exclusive jurisdiction over futures trading (Sec. 201)*

The *House* bill provides for exclusive jurisdiction of the Commission over all futures transactions. However, it is provided that such exclusive jurisdiction would not supersede or limit the jurisdiction of the Securities and Exchange Commission or other regulatory authorities.

The *Committee* amendment retains the provision of the *House* bill but adds three clarifying amendments. The clarifying amendments make clear that (a) the Commission's jurisdiction over futures contract markets or other exchanges is exclusive and includes the regulation of commodity accounts, commodity trading agreements, and commodity options; (b) the Commission's jurisdiction, where applicable, supersedes State as well as Federal agencies; and (c) Federal and State courts retain their jurisdiction. In addition, the *Committee* amendment provides that inter-bank trading of foreign currencies and specified financial instruments is not subject to Commission regulation.

(5) *Fitness requirements for futures commission merchants, floor brokers, and persons associated with them (Sec. 206)*

The *Committee* amendment provides in section 206 that the Commission may except—from any written proficiency examinations—floor brokers, futures commission merchants, and persons associated with them, if they have previously demonstrated the required proficiency and skill necessary to protect the interests of customers.

The *Committee* amendment strikes a similar provision in the *House* bill which would be applicable only with respect to persons associated with futures commission merchants.

(6) *Contract market designation (Sec. 207)*

The *House* bill requires a board of trade, before designation as a contract market, to demonstrate (a) that the prices involved in transactions for future delivery in the commodity for which such designation is sought, are, or reasonably can be expected to be, generally quoted and disseminated as a basis for determining prices to producers, merchants, or consumers of such commodity or the products or by-products thereof or (b) that such transactions are, or reasonably can be expected to be, utilized by producers, merchants, or consumers engaged in handling such commodity or the products or byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price.

The *Committee* amendment strikes the *House* provision and substitutes therefor the requirement that the board of trade demonstrate 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.

(7) *Delivery points (Sec. 208)*

The *Committee* amendment would give contract markets 75 days, instead of 60 days as specified in the *House* bill, to make changes in delivery points as deemed necessary by the Commission.

In addition, the *Committee* amendment eliminates any requirement that warehouse receipts issued under the United States Warehouse Act be accepted in satisfaction of futures contracts where such a requirement is totally inappropriate.

(8) *Voluntary arbitration of customers' claims (Sec. 209)*

Under the *House* bill, a contract market's voluntary arbitration procedure is limited to claims not in excess of \$5,000.

The *Committee* amendment increases this amount to \$15,000.

(9) *Commission approval of exchange bylaws, rules, regulations, and resolutions (Sec. 210)*

The *Committee* amendment retains the provision of the *House* bill that a contract market submit for Commission approval bylaws, rules, regulations, and resolutions which relate to the terms and conditions of futures contracts or other trading requirements.

However, the *Committee* amendment provides that the Commission is to approve or disapprove such bylaws, rules, regulations, and resolutions within 30 days unless the Commission determines that a longer period of time is necessary for such determination and so notifies the contract market. In addition, the *Committee* amendment (a) authorizes contract markets to adopt rules in an emergency without prior approval by the Commission, and (b) permits the Commission to exempt contract market operational and administrative rules from the requirement that they be submitted to the Commission for approval.

(10) *Restraining orders, injunctions, and writs of mandamus (Sec. 211)*

The *House* bill provides that 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 the Act or any rule, regulation, or order thereunder, or is in a position to effectuate a squeeze or corner or otherwise restrain trading in any commodity for future delivery, the Commission is permitted to notify the Attorney General, and the Attorney General is permitted to bring a court action to enjoin such act or practice, or to enjoin the continued maintenance of such a position, or to enforce compliance with the Act, or any rule, regulation, or order thereunder.

The *Committee* amendment authorizes the Commission to go directly into court itself—without going through the Attorney General—to enjoin any contract market or other person from violating the Act or restraining trading in any commodity for future delivery. The amendment retains the authority for the Commission to seek in-

junctions with respect to persons "about to engage" in violations of the Act, but deletes the authority to seek injunctions with respect to persons "in a position to" effectuate a squeeze or corner. As under the *House* bill, no restraining order, injunction, or writ of mandamus will be issued ex parte.

(11) *Emergency powers (Sec. 215)*

The *House* bill authorizes the Commission to direct any contract market, "whenever [the Commission] has reason to believe that the amount of deliverable supplies, the number of open contracts, the relative size of individual traders' positions, the amount and direction of price movements in cash and futures markets, the impact of government edicts and regulations, the existence of a market emergency, or any other such market factor creates a condition which threatens orderly trading in, or liquidation of, any futures contract, 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."

Examples of such actions are: limiting trading to liquidation only; extending the expiration date of futures contracts; extending the time for making deliveries in fulfillment of futures contracts; ordering liquidation of futures contracts under such terms as the Commission deems necessary; suspending trading; ordering the fixing of settlement prices for the liquidation of futures contracts; and "any other action necessary to prevent significant intervention or manipulation by a foreign government."

Under the *Committee* amendment, the Commission will have authority to act only in "emergency" situations and direct a contract market to take such action as is necessary to maintain or restore orderly trading. The term "emergency" is defined as meaning—in addition to threatened or actual market manipulations and corners—any act of government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand. In addition, the "emergency" itself must—in the Commission's judgment—have a greater adverse impact on the market than the action the Commission proposes to take.

(12) *Disciplinary procedures (Sec. 216)*

The *Committee* amendment (a) authorizes the Commission to discipline exchange members if the exchange fails to act and (b) permits a member who is disciplined by an exchange to appeal to the Commission. The provision does not require any person to submit to the appeal procedure of the Commission and it does not deny any person the right to seek relief in the courts. Nor does it limit the liability of any person in any suit by a State or Federal agency.

The *House* bill contains no comparable provision.

(13) *Margin contract regulation (Sec. 217)*

The *Committee* amendment requires the Commission to regulate margin or leverage transactions for the delivery of silver bullion, gold bullion, or bulk silver and gold coins. Under the *Committee* amendment, if the Commission determines at any time that such transactions are futures contracts within the meaning of the Act, they would be regulated accordingly.

The *House* bill contains no comparable provision.

(14) *Options trading (Sec. 302)*

The *House* bill continues the ban now contained in section 4c of the Act on trading in options (privileges, indemnities, bids, offers, puts, calls, advanced guaranties, and decline guaranties) in the now-regulated commodities, but permits trading in options in all other commodities if not done 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 may prescribe. The Commission could promulgate such an order, rule, or regulation only after notice and opportunity for hearing. The Commission may set different terms and conditions for different markets.

The *Committee* amendment retains the *House* provision, but provides that the Commission is to prescribe the regulations governing options trading within one year after the effective date of the bill.

(15) *Arbitrage (Sec. 303)*

The *House* bill authorizes the Commission, in fixing trading and position limits, to exempt "arbitrage" transactions, and defines the word "arbitrage" as meaning the same as a "spread" or "straddle".

The *Committee* amendment retains such exemption but limits the definition to arbitrage in domestic markets and authorizes the Commission to define "international arbitrage".

(16) *Hedging (Sec. 304)*

The *House* bill deletes the definition of "bona fide hedging transactions or positions" now contained in the Act and allows the Commission to define that term "by order consistent with the purposes of this Act."

However, until the Commission issues regulations defining what constitutes bona fide hedging transactions and positions under the Act and such regulations are in full force and effect, such terms will continue to be defined as set forth in the Act prior to its amendment by the bill.

The *Committee* amendment allows the Commission to define hedging, as would the *House* bill, but requires that the Commission allow the hedging of "contract" bushels of seed and extend anticipatory hedging privileges to persons such as bakers who use products (for example, flour) of traded commodities rather than the commodity itself.

Under the *Committee* amendment, the new definitions must be issued by the Commission within 90 days after the effective date of the bill.

(17) *Market reporting (Sec. 314)*

The *Committee* amendment authorizes the Commission to conduct regular investigations of the markets for commodities which are the subject of futures contracts, and furnish reports of its findings to the public on a regular basis.

The *House* bill contains no comparable provision.

(18) *Daily trading reports (Sec. 315)*

The *Committee* amendment requires that every clearinghouse prepare a daily trading report in the form and manner prescribed by the Commission. The Commission could disclose daily trading reports, or

information from the reports, if disclosure furthers the regulations of futures trading.

The *House* bill contains no comparable provision.

(19) *Investor protection (Sec. 316)*

The *Committee* amendment makes it unlawful for a futures commission merchant to accept a futures contract order from any person, or for a commodity trading advisor to advise any person to buy or sell a futures contract, without first obtaining a statement from such person that he understands the risks involved.

The *House* bill contains no comparable provision.

(20) *Research and information programs (Sec. 317)*

The *Committee* amendment requires the Commission to establish research and information programs to investigate the feasibility of trading by computer and the expanded use of modern information system technology.

The *House* bill contains no comparable provision.

(21) *Forward contracting insurance (Sec. 318)*

The *Committee* amendment requires the Commission to encourage and assist private insurers in providing insurance to protect the parties to any forward contract from losses resulting from breaches of the contract.

The *House* bill contains no comparable provision.

(22) *Futures association (Sec. 319)*

The *Committee* amendment requires the Commission to investigate the need for legislation providing for the registration of futures associations. The Commission is to report its findings to Congress within two years.

The *Committee* amendment strikes Title III of the *House* bill which provided enabling authority for persons registered under the Act and in the commodity trading business to establish voluntary futures associations for regulating the practices of the members.

(23) *Commodity futures account insurance (Sec. 320)*

The *Committee* amendment requires the Commission to investigate and report to Congress, not later than June 30, 1976, on the need for legislation providing insurance against losses caused by the financial failure of futures commission merchants.

The *House* bill contains no comparable provision.

(24) *Effective date (Sec. 321)*

Both the *House* bill and the *Committee* amendment provide that the bill is effective 180 days after enactment. Activities necessary to implement the changes made by the bill may, however, be carried out after the date of enactment and before the effective date.

The *Committee* amendment provides, in addition to the items specified in the *House* bill, that activities to be carried out after the date of enactment and before the effective date shall include the necessary steps to regulate futures trading in silver immediately on the effective date of the bill.

BACKGROUND

Futures trading is a basic adjunct of the marketing of agricultural and other commodities, and a source of speculative activities by a growing number of American investors. Its economic purpose, its peculiar needs, and effect upon the cash pricing system of those commodities which are traded as futures are often misunderstood by those both within and without industry. Often equally misunderstood is the role of governmental regulation of the industry.

I.

The commodity exchanges are old institutions. The present day exchanges, where futures are traded, trace their lineage to medieval trade fairs that sprang into existence in the Twelfth Century on the Continent. At these fairs, trading was first formalized into the practices of pre-announced markets at fixed time and places, with subsequent specialization. Early trading fairs had immediate delivery of the commodity traded, but gradually the practice of contracting for merchandise for subsequent delivery with standards of quality established by samples, gained favor. The practices of such trading were subsequently codified into the Law Merchant.

Following the example of the Continent, producers and merchants in America formed the first centralized commodity markets in the late 1700's, for trade in eggs, butter, vegetables and grain. By and large, the commodity exchanges in the United States were largely cash markets for "spot" delivery.

As farmers brought grain and livestock to regional markets at essentially the same time each year, they often found that the supply of meats and grain far exceeded the immediate, short-term needs of packers and millers. These processors in turn, seeing more than adequate supplies at particular times, would bid at the lowest possible price. Often, the short-term demand could not absorb the glut of commodities at any price, and goods were dumped in the street for lack of buyers. The problem was often aggravated by lack of adequate storage facilities and road and water transportation. Through much of the year, snow and rain made the dirt roads from country farmlands to the city impassable, and once the commodities reached the exchange area, there was a continual problem of inadequate storage. Standards of quality and weight were often nonexistent and complicated a marketing system that also was victim of inadequate and underdeveloped harbor facilities.

Yet several months after the fall harvest and marketing of grain and livestock, prices would soar and people often went hungry. Businesses faced bankruptcy through lack of raw materials and inability to meet financing of their businesses. The rural population was unable to pay for needed manufactured products from the city—tools, building materials and textiles.

This situation led to the emergence in the United States of *forward contracting*, following its development in England. Forward contracting solved the basic problems of availability and demand, but did nothing to control the financial risk of loss that could occur with rapidly changing prices resulting from crop failures, losses of ships, inadequate storage and transportation, and the recurring economic panics of 19th Century America.

II.

The system of agricultural futures trading developed in the United States in the 1850-1900 period in response to the rapidly increasing economic need for centralized pricing and large-scale risk bearing in agricultural marketing.

It came about first at Chicago in the main stream of surplus grain marketing, and then at New York in the distribution and export of cotton. From the 1870's onward the futures markets at these and other centers, by attracting many traders and increasing competition, began to provide the "common language of price" and the standard commercial practices needed for the greatly increased commerce in grains and cotton.

The large trade in futures provided a competitive system of almost continuous information for price basing and guidance in marketing and distribution. Beginning in the early period, prices from futures trading did more than disseminate a central-market price for immediate needs, such as a large cash market can provide. Futures trading projects demand and price into the future, and provides a means of appraising supply-and-demand conditions, and dealing with price risks, over time and distance. Trading in futures provides not only the market of today, but of months ahead, and affords guidance to buyers and sellers of agricultural commodities in planning ahead, and in financing and marketing commodities from one season to another.

The emerging futures trading system of the 1870's and 1880's also began to provide protection for the increased capital needed for large-scale marketing of grains and cotton. More precisely, by adapting to large-scale marketing needs the principle of the hedging transaction—sales or purchases in futures against inventories or commitments in the cash commodity—price risks were so reduced or offset as to enable many merchants with limited capital to handle larger commodity requirements. Equally important, the competitive effect of many speculative buyers and sellers in the market, and the effect of hedging in maintaining effective competition among commodity handlers, began to reduce gradually the merchandising price margins involved in moving large quantities of grains and cotton.

Little, if any, of this was apparent to farmers in the early period when the frequent picture of commodity exchanges was one of unbridled speculation, recurrent market manipulations, and spectacular price fluctuations. Indeed, it was a serious question with many whether the economic services of the system in the 1870's and 1880's were not outweighed by the speculative excesses and abuses of the system. In this period and later, big speculators and market "plungers" openly

paraded their power over prices, and farm prices, often low, were further depressed by spectacular price manipulations and the collapse of recurrent market corners.

III.

The irresponsible trading and lack of effective market regulation in the early period stirred farm resentment and opposition to futures trading which still exist to a limited extent. From the abuses of futures trading in the early period stemmed the repeated efforts of various State legislatures, from the late 1860's onward, to abolish futures trading. In 1844, the first bill to prohibit futures trading was introduced in the Federal Congress—followed by a long succession of similar bills over the next 50 years. Matters came to a crisis in 1892-93 when both the House and Senate of the Congress actually passed bills levying a prohibitive tax on futures contracts in grain, cotton and certain other commodities. This legislation failed only narrowly when two-thirds approval was needed on a House motion to suspend its rules to clear the way for acceptance of minor changes in the Senate bill.

In the period from 1895 to 1920, the agitation to abolish futures trading gradually gave way to efforts directed toward regulation. This change was associated with the rising trend of farm prices in the United States and generally improved farm conditions in the 1895-1920 period. The growth during this period of effective farmers' organizations and cooperative marketing associations, and work by the U.S. Department of Agriculture for better grading methods, and more uniform standards in grain and cotton, began to lay the groundwork for more stable and dependable pricing in the futures markets.

The demands for Federal regulation of futures were insistent, however, and although quieted temporarily by the restrictions on futures trading imposed by World War I, were sharply reawakened in 1920-21 by speculative excesses on the grain exchanges during the post-war period of falling prices and farm depression. This resulted in the Futures Trading Act of 1921 which was based on the taxing power under the Federal Constitution. On this basis, the regulatory legislation was declared unconstitutional by the Supreme Court, but was reintroduced in 1922 as the Grain Futures Act, based on the interstate commerce clause of the Constitution, and on this basis was declared constitutional.

IV.

The Grain Futures Act of 1922 was designed mainly to enable the Government to deal with the exchanges themselves, rather than with individual traders. To conduct futures trading lawfully, the grain exchanges were required to be federally licensed or "designated" as "contract markets." A condition of such designation was that the exchanges themselves would take major responsibility for the prevention of price manipulation by their members. If they failed to do so, the only recourse was the suspension or revocation of their designations, and this was scarcely advisable. Although the legislation did provide for legal action by the Government against price manipulation,

some of the legal actions undertaken against alleged manipulators proved ineffectual because of limitations and loopholes in the early law. The Act of 1922 did, however, provide the means for effective and continuous fact-finding and investigations by the U.S. Department of Agriculture which pointed to the sources and patterns of excessive speculation and price manipulation, and clearly showed that the limited regulatory powers authorized were inadequate in dealing with these and other market abuses. Beginning in 1927, the Department began submitting recommendations to Congress for additional legislation, and these eventually resulted, after extensive congressional hearings in the 1934-36 period, in the amended legislation of the latter year.

Under these amendments of 1936, the legislation was renamed the Commodity Exchange Act and the regulatory coverage was extended to cotton and other specified commodities as well as grains. Broad additional authority was granted to deal with market abuses by traders generally as well as exchange members, to prosecute price manipulation as a criminal offense, to curb excessive speculation by the large market operator, and to extend regulation to the previously uncovered field of commodity brokerage in order to suppress cheating, fraud, and fictitious transactions in futures which were seriously impairing the services of the market.

Between 1936 and 1968, there were several minor amendments to the Commodity Exchange Act, including amendments bringing additional commodities under regulation. In 1968, the Congress made several significant changes in the Act. It required that futures commission merchants meet specified minimum financial standards, increased the penalties for certain law violations such as manipulation and embezzlement, authorized the issuance of cease-and-desist orders, required contract markets to enforce their trading rules and contract terms, and brought under regulation livestock, livestock products, and frozen concentrated orange juice. The Act has not been amended since 1968.

V.

The present Commodity Exchange Act is predicated upon findings and conclusions of the Congress that (1) transactions in commodity futures are carried on in large volume by the public, as well as by persons engaged in the business of buying and selling agricultural commodities in interstate commerce, and (2) such transactions and prices are susceptible to speculation, manipulation and control, and sudden and unreasonable price fluctuations, and such fluctuations are a burden upon interstate commerce and make regulation essential in the public interest. A fundamental purpose of the Commodity Exchange Act is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves.

Futures trading involves purchases and sales of contracts for delivery at some future date of certain quantities of specified commodities at fixed prices. In effect, the Commodity Exchange Act has required that futures trading in regulated commodities be conducted at a com

modity exchange designated as a "contract market" by the Secretary of Agriculture. Future trades (transactions) are made by or through a member of such a commodity exchange. A separate futures market is established for each regulated commodity traded on a contract market. The contract markets have the authority, with certain limitations, to admit members and select officers; discipline offenders and expel members; determine delivery months and contract terms; fix price fluctuation limits (the amount of permissible price change during a trading day); and establish margin requirements, brokerage fees, and commissions.

In order to qualify for designation as a contract market, a commodity exchange must meet certain conditions and requirements, including those covering the (1) maintenance of certain records and the preparation of reports on futures transactions, (2) prevention of dissemination of false, misleading, or inaccurate commodity information, (3) prevention of manipulation and other abusive trading practices, and (4) inspection of records by the Department of Agriculture and the Department of Justice.

THE MECHANICS OF FUTURES TRADING

PLACING ORDERS

The customer contacts a solicitor or account executive who in turn transmits the order, either directly or through a central office, to the exchange trading floor. The order is received on the trading floor by the firm's phone man. After recording and time-stamping the order, he gives it to a runner who carries the order to a floor broker in the designated trading area for that commodity. These trading areas are called pits or rings and each delivery month of a commodity is generally traded in a certain area of the pit or ring. Some firms no longer telephone orders to the floor. Instead, the orders are fed through a computerized system that transmits them to the floor via teletype.

EXECUTION OF TRADES

The actual trading of futures contracts takes place in the noisy, boisterous setting of an auction-type market. The Commodity Exchange Act requires that all futures transactions in regulated commodities be executed on a commodity exchange designated by the Secretary of Agriculture as a "contract market." Both the Commodity Exchange Act and the rules and regulations of the commodity exchanges require that futures transactions be executed openly in a competitive manner. Section 1.38 of the regulations under the Commodity Exchange Act reads as follows:

All purchases and sales of any commodity for future delivery on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for the trading in such commodity.

Certain carefully prescribed exceptions to competitive trading are allowed, but they do not nullify the general requirement of open and competitive trading.

The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are focused into the centralized marketplace to participate in the competitive determination of the price of futures contracts. This system also provides ready access to the market for all orders and results in a continuous flow of price information to the public.

The rules requiring competitive trading also require that all trades be executed in the area and during the hours designated by the contract market. Other exchanges can trade virtually identical contracts for the same commodity, provided they meet the requirements of a contract market as specified by the Commodity Exchange Act and are so designated by the Secretary of Agriculture.

CLEARING TRADES

After a trade has been executed, the confirmation of the trade retraces the path of the initial order within a few minutes. Final confirmation, however, cannot be made until the trade goes through the clearinghouse. In the clearinghouse, both sides of the trade must be matched, and any differences between the buyer and seller must be referred to the clearing firms involved for reconciliation.

A brief description of the clearing procedure for futures trading points out one of the major distinctions between futures and securities trading. Unlike securities, there is no certificate or document exchanged in a futures transaction. The futures contract is embodied in the rules and regulations of the contract market.

The clearinghouse (or clearing association) performs the functions of matching all buys and sells which are executed each day and of assuring the financial integrity of all futures transactions. As trades are matched and confirmed at the end of each trading session, the clearinghouse takes the opposite side of every transaction. It becomes the seller of all "buys" and the buyer of all "sells." Thus, when a trader establishes a position in the market, he does so with the clearinghouse, and when he offsets his position he offsets it with the clearinghouse. The clearinghouse assumes the legal responsibility for the opposite side of every transaction made on the contract market.

The clearinghouse requires that its members deposit margins to secure their firm's futures transactions. The clearing members, in turn, require margins from their customers. If the market moves against the open contracts of a clearing firm, that firm's initial margin is impaired and additional margin will be required.

Daily payments or receipts also occur between the clearinghouse and its members to account for daily price changes. The clearinghouse maintains the open accounts of member firms at the current market prices. At the end of each day, these accounts are adjusted to the day's settlement price for each contract. Firms with net gains receive payment from the clearinghouse, while firms with net losses make payments to the clearinghouse. These receipts and payments of the clearinghouse exactly offset one another, with the clearinghouse merely transferring equity from losers to winners.

DELIVERIES

Deliveries on futures contracts are also made through the clearinghouse. A seller wishing to make delivery on a futures contract during the delivery month files a delivery notice with the clearinghouse on the day prior to the intended delivery. The clearinghouse then assigns the notice to the clearing member having the oldest long position in that particular future. At this point, the clearinghouse has completed its role, and the delivery must be consummated between the buyer and seller in accordance with exchange rules.

NEED FOR BETTER AND EXTENDED REGULATION

I.

Since the 1968 amendments to the Commodity Exchange Act, there has been a major shift to a market-oriented economy. As a result, futures markets are playing an increasingly important role in the pricing and marketing of the Nation's commodities. The growing importance of futures markets is reflected in a record volume of trading, substantial increases in open contracts, sharp rises in the prices of many commodities, the increased volatility of prices, and the number and complexity of price-making forces in the markets.

In former years when the Federal Government had large stockpiles of the major commodities, the Government stocks had a stabilizing effect upon price. There was little fear of sharp increases in prices, for when such increases began, Government stocks were freed, thus reversing or limiting the price movement. As long as this was true, there was less need for hedging in the futures markets. A merchandiser or processor could make forward fixed-price sales commitments without too much fear of a sharp rise in prices before he obtained the commodities to fulfill his commitments. This is no longer true. Thus, merchandisers and processors, in order to protect themselves against substantial price rises, are making greater use of the futures markets for hedging purposes. Producers likewise, who are anxious to obtain the maximum price for their commodities, are hedging in the futures market whenever it appears to them that the futures price is favorable. Banks are increasingly reluctant to provide loans to producers, merchandisers and processors on unhedged production or inventories.

The shift to market-oriented economy has brought the general public into the futures markets in growing numbers. Speculators are attracted to the futures markets by the wide price swings and the possibility of large profits. Such an increase in trading by the speculative public, while useful to hedgers, brings with it potential market problems. If individual speculators or groups operating in concert obtain control of the futures markets, price manipulation, corners and squeezes can occur, with adverse effects on producers and consumers alike.

In recent years, the consumer has become increasingly aware that futures markets have a direct effect on such matters as his grocery bill and the cost of his home. Properly operating futures markets help to hold down consumer prices by reducing middleman costs. However, improperly operating futures markets can have the opposite result. In order to assure that futures markets operate properly and that the prices consumers pay are not artificially high, careful and efficient supervision of the markets is essential.

II.

While the futures markets in a number of agricultural commodities have been regulated in varying degrees since 1922, many large and important futures markets are completely unregulated by the Federal Government. These include such agricultural and forest commodities as coffee, sugar, cocoa, lumber, and plywood, plus various metals, including the highly sensitive silver market and markets in a number of foreign currencies. A person trading in one of the currently unregulated futures markets should receive the same protection afforded to those trading in the regulated markets. Whether a commodity is grown or mined, or whether it is produced in the United States or outside, makes little difference to those in this country who buy, sell, and process the commodity, or to the U.S. consumers whose prices are affected by the futures market in that commodity. There are indications that futures markets will be further expanded to cover additional goods and services. Discussions are already underway concerning futures markets in such things as home mortgages and ocean freight.

It is apparent that a regulatory agency cannot be expected to oversee the rapidly expanding and complex futures markets without additional tools with which to do the job and proper organization and funding. In addition to providing the tools that the regulatory body would need in preventing violations and disciplining violators directly, its role in supervising exchanges must be substantially expanded. Unquestionably, exchanges are going to have to perform their regulatory role better in order to provide a viable market in which the public can have confidence. The Federal regulatory agency must be given the authority to require that exchanges do so.

The value of futures trading has reached \$500 billion annually, substantially exceeding the value of securities trading on the various stock exchanges in this country. The importance of futures trading to the general public and to the Nation equals the importance of the securities markets. It is, therefore, time to establish a regulatory authority in the commodity field similar to the Securities and Exchange Commission and to give that authority a strong law which will enable it to regulate both agricultural and nonagricultural goods and services in the public interest.

III.

The appendices to this report contain information showing (1) the size of the commodity futures business in 1973, (2) the commodities which are presently regulated under the Commodity Exchange Act, (3) the commodities currently being traded which are not regulated under the Commodity Exchange Act, (4) the commodity futures contracts traded during the period 1969-73, (5) the names and addresses of the commodity exchanges, (6) speculative limits on positions and daily trading, (7) the quantities of commodities requiring that traders file reports with the Commodity Exchange Authority, (8) examples of typical exchange limits on daily price fluctuations, and (9) a glossary of terms used in commodity futures trading.

Appendix X contains a summary of the provisions of the present Commodity Exchange Act.

COMMITTEE CONSIDERATION

The Committee on Agriculture and Forestry began hearings on H.R. 13113 and the three Senate bills, S. 2485, S. 2578, and S. 2837, on May 3. It conducted 8 days of hearings, which were completed on May 22. During the course of these hearings, the Committee heard from 58 witnesses and received written statements from 18 other parties. The Committee staff summarized each statement and sent a copy of the statement and a summary to each member of the Committee.

On August 7, the Committee began its executive mark-up of the futures trading legislation pending before it and completed the mark-up on August 8. In its mark-up, the Committee attempted to consider the views of all parties who had testified or submitted statements to the Committee. The Committee utilized a print which provided a brief summary of how the various witnesses stood on the main issues involved in the regulation of commodity futures trading. It also considered the differences between the provisions of the various Senate bills and the House bills, as well as all amendments which had been submitted by interested parties.

The Committee proceeded gingerly and with caution in its efforts to rewrite the legislation regulating such an important industry as commodity futures trading. It noted that the total volume of trading in futures in 1973 was over \$500 billion. Moreover, it recognized that the futures market is a very important part of our economy, providing an indispensable tool for agricultural producers, manufacturers, exporters, and consumers. In view of the current plight of the American economy, the Committee did not want to take any precipitous action which would be detrimental to the trading of commodity futures or do anything that would tend to damage viable futures contracts.

Moreover, the Committee felt that by relying on the broad range of testimony it received from the U.S. Department of Agriculture, the General Accounting Office, the various commodity exchanges, the user groups, farm organizations, consumer organizations, and law professors, it could avoid any unnecessary pitfalls and develop a bill that would be beneficial both to those who are to be regulated and to the users of the market, as well as the American consumer. The Committee was fortunate to have the benefit of the advice and technical assistance of experts in the Department of Agriculture who have been regulating commodity futures trading for many years, particularly the very able assistance of Alex C. Caldwell, the Administrator of the Commodity Exchange Authority in the Department of Agriculture.

Nature of the Commission (Sec. 101)

One of the most basic issues that had to be resolved by the Committee was the nature of the Commission—whether the Commission should be a full-time independent Commission similar in structure

and status to the Securities and Exchange Commission or whether it should be a quasi-independent, part-time Commission as provided for in the House bill. The Committee received a great deal of testimony on this issue during the hearings and Committee members asked many of the witnesses very direct questions on this point. The overwhelming weight of the testimony was in favor of the full-time, independent Commission, particularly when the Committee members asked the witnesses who testified for their own personal views. In some cases, the organization for which the witness was testifying had no position on this point, but the witness' own personal view was that the Commission should be full-time and independent. Although some witnesses did want the Commission to retain some ties to the Department of Agriculture and a few questioned the need for a full-time commission, only the USDA witness strongly opposed a full-time Commission.

The Committee felt that the weight of the testimony was correct on this issue. Some members felt that there was an inherent conflict between the role and mission of the Department of Agriculture and the regulation of commodity futures trading. Since the enactment of the Agricultural Adjustment Act of 1933, as a result of the great depression, it has been the duty of the Department of Agriculture to provide price and income protection for farmers.

The USDA role in providing price and income protection for farmers has grown through the years, and the need for assistance to the Nation's farmers is as great in this day of skyrocketing costs of farm production and extreme fluctuations in commodity prices as it was in the depression years of the 1930's.

However, the Committee felt that it is not the function and the role of the commodity markets to have an impact one way or the other on farm prices. The proper regulatory function of an agency which regulates futures trading is to assure that the market is free of manipulation and other practices which prevent the market from being a true reflection of supply and demand. Therefore, the agency which regulates futures trading must have a neutral role on commodity prices. The Committee felt this neutral role can best be maintained by a completely independent agency. Moreover, while in the past the Commodity Exchange Authority of the USDA has been authorized to regulate only certain agricultural commodities that are produced in the United States, the Committee felt that agricultural products not produced in this country and commodities such as silver and copper, which have no relation to agriculture, could not be effectively regulated within the Department of Agriculture or an agency dominated by the Department of Agriculture.

The Committee noted that the estimated value of commodities traded in 1973 was over \$520 billion, over twice the volume of trading in all securities in the United States. It felt that the importance of futures trading to the economy of this country warranted a full-time, independent commission. Because this Commission would have to regulate futures trading in a wide diversity of commodities ranging from precious metals to agricultural commodities, and because the Commission would need to bring under regulation those exchanges which are now non-regulated, the Committee felt that effective

regulation could not be accomplished by Commissioners working on a part-time basis.

Moreover, members of the Committee expressed some dissatisfaction with agencies which are dominated and run by staff members who are not appointed by the President and subject to Senate confirmation. They felt that such a regulatory agency is often unresponsive to either Congress or to the needs of the people. It noted that in all probability a part-time commission would really be a staff-dominated commission.

In the Committee hearings, as well as the informal sessions that members had with both the commodity exchanges and the users of these exchanges, there was great concern expressed about the type of persons who would serve on the Commission. Many segments of the industry, particularly those who are now non-regulated, expressed strong concern that the Commission include members with expertise in the so-called "world commodities."

The Committee itself was quite concerned about the type of individual who would serve on the Commission. The Committee felt that it would be impossible to get the best qualified and most knowledgeable individuals to serve on the Commission on a part-time basis, for most of these individuals would have a conflict of interests. It felt that people who use the market to hedge, or people who speculate in the market, or other knowledgeable individuals who are involved in the market in one way or another, would be reluctant to give up all involvement in the market for a part-time job.

By establishing a full-time prestigious commission, the Committee felt that it would induce the best and most knowledgeable people to serve.

The Committee does not want a commission that is dominated by any particular interest group. It wants a commission that has broad knowledge of all aspects of the industry to be regulated, as well as a commission that is responsive to the needs of farmers and the needs of consumers. Therefore, the Committee adopted an amendment which requires the President, in making appointments, to seek to establish a balanced commission that would include, but not be limited to, persons of demonstrated knowledge in futures trading and its regulation and persons of demonstrated knowledge in the production, merchandising, processing or distribution of commodities or other goods and services. The Committee wishes to emphasize that the Commissioners are to have a broad range of knowledge.

Relationship of the Commission to antitrust laws (Sec. 107)

During the hearings, the Committee received testimony from the Department of Justice regarding the relationship of the new Commodity Futures Trading Commission to the antitrust laws. The Department of Justice did not like the language of the House bill which merely required the Commission to take into consideration the public interest to be protected by the antitrust laws as well as the policies and purposes of the Act. The Department of Justice objected to this language stating, "We believe, however, that the language of Section 106 is not sufficiently precise to guard against anticompetitive agency action. A requirement merely to 'take into consideration' antitrust

policy might result in agency imposition or approval of an anticompetitive rule which was not necessary to achieve a valid regulatory objective." The Department of Justice suggested in lieu of this language a requirement that the Commission insure that its action represent the least anticompetitive means of achieving the objectives of the Act.

The Committee did not want to encourage excessive litigation to test the decisions of the Commission to determine whether they represented the least anticompetitive means of achieving the objectives of the Act. It did not want to make the antitrust laws more restrictive in the commodities industry than they are in the securities industry.

However, the Committee did not want to exempt the futures industry from the antitrust laws and it did not wish to encourage the Commodity Futures Trading Commission to restrict competition and ignore the public policies protected by the antitrust laws. Therefore, the Committee amendment would retain the requirement in the House bill that the Commission take into consideration the public interest to be protected by the antitrust laws and it would go one step further by requiring that the Commission endeavor to take the least anticompetitive means of achieving the objectives of the Act.

Exclusive jurisdiction over futures trading (Sec. 201)

While the Committee did wish the jurisdiction of the Commodity Futures Trading Commission to be exclusive with regard to the trading of futures on organized contract markets, it did not wish to infringe on the jurisdiction of the Securities and Exchange Commission or other government agencies. Therefore, the Committee adopted clarifying amendments to the House bill. The Committee wished to make clear that where the jurisdiction of the Commodity Futures Trading Commission is applicable, it supersedes State as well as Federal agencies. The Committee also wished to make clear that nothing in the Act should be construed as superseding or limiting jurisdiction of Federal and State courts.

Also, the Committee included an amendment to clarify that the provisions of the bill are not applicable to trading in foreign currencies and certain enumerated financial instruments unless such trading is conducted on a formally organized futures exchange. A great deal of the trading in foreign currency in the United States is carried out through an informal network of banks and tellers. The Committee believes that this market is more properly supervised by the bank regulatory agencies and that, therefore, regulation under this legislation is unnecessary.

Likewise, the Committee believes that regulation by the Commission of transactions in the specified financial instruments (i.e., security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, mortgages and mortgage purchase commitments), which generally are between banks and other sophisticated institutional participants, is unnecessary, unless executed on a formally organized futures exchange.

Exemption of world commodities (Sec. 201)

During the hearings, the Committee received testimony regarding the exemption from regulation of the so-called "world commodities". The overwhelming weight of the testimony favored the regulation of

all commodities, goods, and services. The only witnesses who favored exempting the "world commodities" were the nonregulated exchanges themselves. Moreover, the Committee did not feel it could justify imposing stricter regulation on the commodities which are now regulated while exempting completely trading in certain other commodities. However, the Committee did recognize that there are some unique differences that are characteristic of the "world commodities". Therefore, it notes that the Committee bill provides the Commission with the authority to differentiate between different commodities. The Commission will have ample authority and flexibility to treat different commodities differently. The Committee expects that the Commission will be composed of broadly knowledgeable people and that these Commissioners will have an understanding of the differences in the various commodities and treat them accordingly.

Commodity trading advisor and commodity pool operator (Sec. 202)

The Committee approved without change the provisions of the House bill for the regulation of commodity trading advisors and commodity pool operators. However, the Committee wished to make clear that many individuals who are engaged in the buying and selling of commodities may, in the course of their arms-length transactions with customers, offer opinions on the value of commodities or commodity futures which are entirely gratuitous. Any such incidental expression of views does not bring either an employee or his employer within the definition of "commodity trading advisor."

Delivery points (Sec. 208)

The Committee accepted the House provision on delivery points with an amendment to give contract markets 75 days, instead of 60 days, to make changes in delivery points as deemed necessary by the Commission and an amendment to eliminate any requirement that receipts issued under the United States Warehouse Act be accepted in satisfaction of futures contracts where such a requirement is totally inappropriate.

In addition, the Committee wishes to emphasize that farmers' views and needs are to be considered in the establishment of delivery points for any commodity produced within the United States. If the Commission receives complaints about the delivery points for any commodity from farmers or farm organizations, it should investigate to see whether the delivery points established for the commodity conform with the provisions of the Act. The Commission should give farmers an opportunity to be heard fully when the designation of any delivery point is in question.

Restraining orders, injunctions, and writs of mandamus (Sec. 211)

There was a great deal of concern about the provisions of the House bill authorizing the Commission to seek injunctions against persons who are "about to engage" in violations of the Act and against persons who are "in a position to" effectuate a squeeze or corner or otherwise restrain trading in any commodity for future delivery.

The Committee noted that the authority to seek injunctions against persons about to violate the law has several precedents in Federal statutes. It also noted that this authority had been used very sparingly

by the courts. The courts have interpreted "about to engage" language as authorizing injunctions only in narrowly limited circumstances, where an actual violation has occurred or is occurring or in those rare instances where, unless enjoined from doing so, a person intends to proceed with his plans despite an agency's litigation challenging those plans. Therefore, the Committee did not feel that the "about to engage" language would be abused and it felt that this authority in the House bill should be retained.

On the other hand, the Committee did feel that the "in a position to" language in the House bill was unprecedented in Federal statutes. The Committee did not feel that the Commission should be authorized to obtain an injunction against a person merely because he has the *ability* to effectuate a squeeze or corner or to restrain trading, even though he might not have the slightest intention of abusing his power. Therefore, the Committee eliminated the "in a position to" authority in the House bill.

Also, the Committee amended the House bill to authorize the Commission to go directly into court without going through the Attorney General to seek an injunction. The Committee felt that the Commission would have adequate legal counsel to obtain any injunction that would be necessary and that the requirement that the Commission go through the Attorney General would only result in delay, when the need for the injunction might be quite urgent. Moreover, the Committee felt that the Commission's attorneys would likely be more knowledgeable in futures trading than the attorneys in the Department of Justice.

Emergency powers (Sec. 215)

During the Committee's hearings, much comment was received about the emergency powers that could be exercised by the Commission under section 215. The Committee felt that the term "emergency" was defined too loosely in the House bill and was disturbed by the fact that the Commission would be authorized to use extraordinary powers in cases other than a "market emergency". Therefore, the Committee amended this section to define more narrowly an "emergency" and to allow the Commission to use its extraordinary emergency powers only in the case of a defined emergency. Under the Committee amendment, the "emergency" itself must, in the Commission's judgment, have a greater adverse impact on the market than the action that the Commission proposes to take.

The Committee wishes to emphasize that nothing in the emergency powers section, the injunctions section (Sec. 211), or any other provision of the bill is to be used by the Commission to violate unnecessarily the sanctity of contract. The Committee fully realizes that the users of the futures markets will be reluctant to continue to depend on the markets if they feel that their contracts will be violated and abrogated by arbitrary governmental action. The Committee intends that the emergency powers, the power to seek injunctions, the power to alter exchange rules and bylaws, and the other powers granted to the Commission under this Act are to be used to make the markets work more effectively and to make them a more reliable marketplace.

Therefore, the Commission is not to exert its extraordinary emergency powers except when it is clear that threatened or actual market manipulations and corners or other major market disturbances will in fact disrupt the markets and adversely affect the legitimate users of the markets.

Also, the Commission must be particularly careful in dealing with commodities traded on international exchanges, for it should not take any "emergency" action that would drive trading out of exchanges in the United States.

Options trading (Sec. 302)

The Committee retained the provision in the House bill that bans trading in options in commodities that are now regulated. It also retains the House provision permitting trading in options in all other commodities if not contrary to the rules, regulations, or orders of the Commission. Under the House provision, the Commission would have the authority to prohibit trading in options of any kind.

The Committee amendment requires the Commission to prescribe the regulations governing options trading within one year after the effective date of the bill. The Committee intends that options not be traded except on organized exchanges and in conformity with the rules and regulations of the Commission. However, the Commission would not have the authority to regulate trading in puts and calls for securities. Where traded on exchanges, these puts and calls are regulated by the Securities and Exchange Commission. Where traded among banks, they are regulated by the bank regulatory agencies.

Definition of arbitrage (Sec. 303)

During the hearings, the Committee received some testimony that indicated that there was a substantial difference between "international arbitrage" and the word "arbitrage" as used in domestic markets. It was pointed out that international arbitrage is used to hedge against fluctuations in currency and changes in shipping rates. The Committee felt that this was a highly technical matter, and that it should not attempt to define international arbitrage. Therefore, it authorized the Commission to define international arbitrage.

Hedging (Sec. 304)

The Committee retained the House provision which authorizes the Commission to define "bona fide hedging transactions or positions." However, the Committee did amend this section to require the Commission to allow hedging of "contract" bushels of seed and to require that the Commission extend anticipatory hedging privileges to persons, such as bakers, who use products of traded commodities rather than the commodity itself.

The Committee wishes to emphasize that, in giving the Commission authority to define hedging, it does not intend that hedging be defined in such a manner as to deny traditional legitimate users of the futures market an opportunity to continue to hedge. The Committee felt that the Commission should have the authority to define hedging because the current definition is too narrow to permit certain businessmen the opportunity to hedge legitimately on the market.

SECTION-BY-SECTION ANALYSIS

The preamble of the bill provides "That this Act may be cited as the 'Commodity Futures Trading Commission Act of 1974.'" The bill is divided into three titles:

Title I—Commodity Futures Trading Commission.

Title II—Regulation of Trading and Exchange Activities.

Title III—Miscellaneous Provisions.

TITLE I—COMMODITY FUTURES TRADING COMMISSION

Sections 101 and 102. Commission; compensation

Section 101 amends section 2 of the Commodity Exchange Act to establish a new Commodity Futures Trading Commission, consisting of a Chairman and four other Commissioners appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners could be members of the same political party. The Commissioners would be appointed for staggered terms of five years each. The Commission would be required to be "balanced" and include persons of demonstrated knowledge in futures trading or its regulation, and persons of demonstrated knowledge in the production, merchandising, processing, or distribution of the goods, articles, services, rights, and interests covered by the Act.

Commissioners and employees would be forbidden to accept employment or compensation from anyone subject to regulation or to engage in transactions of a character subject to regulation.

The Chairman would be compensated at Executive Level III (currently \$40,000 annually), and the other Commissioners at Executive Level IV (currently \$38,000 annually). There would be provision for payment of Commissioners' expenses, including transportation expenses.

The Commission would have a General Counsel and an Executive Director, appointed by the President, by and with the advice and consent of the Senate. They would report directly to the Commission and be compensated at Executive Level V (currently \$36,000 annually).

Executive and administrative functions would be vested in the Chairman subject to:

- (1) General policies and decisions of the Commission.
- (2) Commission approval of heads of major administrative units.
- (3) An exception for employees in the other Commissioners' immediate offices.
- (4) Reservation of the Commission's functions with respect to revising budget estimates and determining allocation of appropriated funds according to major programs and purposes.

The Commission would be authorized to cooperate with others; to employ a staff, including Administrative Law Judges; to employ experts and consultants; and to make and enter into contracts.

Appropriations would be authorized, of such sums as may be required for fiscal years up to June 30, 1978.

Sections 103 and 104. Transfer of functions

Section 103 and section 104 provide for transfer to the new Commission of the powers presently vested under the Commodity Exchange Act in the Secretary of Agriculture and the Commodity Exchange Commission (the Secretaries of Agriculture and Commerce and the Attorney General, or their designees), and also personnel, property, records, and funds employed in connection with administration of the Commodity Exchange Act.

Section 105. Annual reports; GAO examinations

Section 105 requires annual reports by the Commission to Congress, and reviews and audits of the Commission by the Comptroller General. The Comptroller General could examine any books, documents, papers, or records of the Commission. With respect to business transactions of any person, trade secrets, and names of customers, the Comptroller General would be forbidden to include such information in his reports. However, he could provide such information on request by any Committee of either House of Congress acting within the scope of its jurisdiction.

Section 106. Reparations procedure

Section 106 adds a new section to the Act, providing for administrative reparation proceedings before the Commission by any person against persons registered as futures commission merchants, floor brokers, persons associated with futures commission merchants or with agents thereof, commodity trading advisors, or commodity pool operators. A complaint could be filed by any person, based on any violation of the Act or rules, regulations, or orders thereunder. A complaint could be filed up to three years after accrual of the cause of action alleged therein.

The Commission would be required to send the complaint to the respondent who would then be required to satisfy it or answer it, if the Commission believed that the facts alleged warranted such action.

The Commission would be required to investigate the complaint if the Commission believed that there appeared to be reasonable grounds for such investigation, and would be permitted to have the complaint served on the respondent and afford the respondent an opportunity for hearing before an Administrative Law Judge. If the complainant claimed not more than \$2,500 in damages, proof in support of the complaint and in support of respondent's answer, could be supplied by depositions or verified statements of fact.

The Commission would be required to determine whether or not the respondent had committed any violation of the Act or rules, regulations, or orders thereunder. If the Commission determines that he has committed such a violation, it would be required to determine the damages to which the complainant is entitled as a result of the viola-

tion, and to order the respondent to pay such damages to the complainant.

If the respondent admits liability for a portion of the damages claimed, the Commission could order the respondent to pay the undisputed amount and subsequently determine liability for the disputed amount.

If a reparation award is not paid, the person for whose benefit it is made, would have three years to file an action in court. He would have his choice of courts: The United States district court for the district of his residence or the district where respondent has its principal place of business, or any State court having general jurisdiction of the parties. The court action would proceed in all respects like other civil suits for damages except that the findings of fact and orders of the Commission would be prima facie evidence of the facts therein stated and reviewable only for the purposes of determining if they are supported by substantial evidence. The petitioner would have certain advantages with respect to costs and attorney fees.

The new section provides for appeal to the United States district court by either party adversely affected by entry of a reparation order. If there is an administrative hearing, the appeal would be filed in the district where that hearing is held. If there is no administrative hearing, the appeal would be filed in the district in which the appellee is located.

The proceeding on appeal would likewise proceed like other civil suits for damages, except that the findings of fact and orders of the Commission would be prima facie evidence of the facts therein stated and reviewable only for the purposes of determining if they are supported by substantial evidence. The appellee would not be liable for costs in such court action and if he prevails he would be allowed a reasonable attorney's fee, taxed and collected as part of his costs.

The new section provides that unless the registrant against whom a reparation order is issued, paid the award or appealed it, he would be prohibited from trading on contract markets, and his registration would be suspended automatically.

Complainants not residing in the United States would be required to furnish bond in double the amount claimed, for costs including a reasonable attorney's fee for the respondent if the respondent prevails, and any reparation award on a counterclaim. There is provision for waiver of bond by the Commission if the complainant resides in a country which permits filing of complaints by a resident of the United States without bond. Persons appealing from a reparation award would also be required to file a bond, in double the amount of any reparation awarded against the appellant, for payment of the court's judgment, plus interest and costs, including a reasonable attorney's fee for the appellee if the appellee prevails.

The section would become effective one year after enactment, but claims arising within nine months before the effective date could be heard by the Commission after such one year period.

Section 107. Antitrust laws

Section 107 adds a new section to the Act, requiring the Commission to consider the public interest to be protected by the antitrust laws as well as the policies and purposes of the Commodity Exchange Act,

and endeavor to take the least anti-competitive means of achieving the purposes of the Act, in issuing any order or adopting any rule or regulation, or requiring or approving any bylaw, rule, or regulation of a contract market.

TITLE II—REGULATION OF TRADING AND EXCHANGE ACTIVITIES

Section 201. What would be regulated; jurisdiction

The term "commodity" in the present Commodity Exchange Act covers certain specified agricultural commodities, in which futures trading was found by the Congress to be of definite value to the Nation's commercial and agricultural life. The present Commodity Exchange Act provides for futures trading in such specified agricultural commodities if conducted in accordance with the Act on boards of trade designated as contract markets by the Secretary of Agriculture.

Section 201 of the bill enlarges the definition of "commodity" to include all goods and articles, except onions, and "all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in", and provides for the exclusive jurisdiction of the Commission over all futures transactions which are executed on domestic boards of trade. The Commission will have exclusive jurisdiction over options trading in commodities (but not in securities).

However, transactions in foreign currency, security warrants and rights, resales of installment loan contracts, repurchase options, government securities or mortgages and mortgage purchase commitments would not be subject to the Act unless they involve the sale thereof for future delivery conducted on a board of trade.

Section 201 contains a proviso that "except as hereinabove provided" nothing contained therein shall 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 restrict them from carrying out their duties and responsibilities in accordance with such laws. Likewise nothing in section 201 shall supersede or limit the jurisdiction of any Federal or State court.

Section 202. Definitions of the terms "commodity trading advisor" and "commodity pool operator," regulated under other sections of the bill

The term "commodity trading advisor" means 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. The term would not include any of the following, provided that their furnishing of such services is solely incidental to the conduct of their business or profession: (1) any bank or trust company, (2) any newspaper reporter, newspaper columnist, newspaper editor, lawyer, accountant, or teacher. (3) any floor broker or futures commission merchant, (4) the publisher of any bona fide newspaper, news maga-

zine, or business or financial publication of general and regular circulation including their employees, and (5) any contract market.

The term "commodity pool operator" means 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.

Section 202 empowers the Commission to specify by rule, regulation, or order, persons not within the intent of the two definitions.

Section 203. Dual trading by floor brokers and futures commission merchants

Section 203 adds a new section to the Act which requires the Commission to determine, after notice and opportunity for hearing, within six months after the effective date of the bill, and subsequently when it determines that changes are required, whether 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. If the Commission determines that such trades and executions shall be permitted, it is required to determine the terms, conditions, and circumstances under which such trades and executions shall be conducted.

The new section likewise requires the Commission to determine, after notice and opportunity for hearing, within six months after the effective date of the bill, and subsequently when it determines that changes are required, whether a futures commission merchant may trade for its own account or any proprietary account, as defined by the Commission. If the Commission determines that such trades shall be permitted, it is required to determine the terms, conditions, and circumstances under which such trades shall be conducted.

Any such determination, with respect to either floor brokers or futures commission merchants, would be required at a minimum to take into account the effect upon the liquidity of trading of each market. The Commission would be permitted to make separate determinations for different contract markets, and contract markets would be permitted to set terms and conditions more restrictive than those set by the Commission.

Section 204. Registration of associates

Section 204 adds a new section to the Act requiring registration of persons 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 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." The Commission would be authorized to require reporting by such persons. Such registration would expire two years after the effective date thereof, and the Commission would be required to renew it on application unless the registrant is under suspension or revocation. With respect to initial registrations, however, the Commission would be

required to set the effective period, not to be more than 2 years or less than 1 year from the effective date thereof.

Persons registered as futures commission merchants or floor brokers would not be required to register as such associates.

Section 204 amends section 6(b) and section 8a of the Act to provide that such associates shall be subject to administrative disciplinary proceedings provided for in those sections of the Act.

Section 205. Regulation of commodity trading advisors and commodity pool operators

Section 205 amends the Act by adding four new sections.

New section 4l constitutes a finding 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;

(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 substantially to affect transactions on contract markets.

New section 4m requires registration by such persons, but would 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 15 persons and who does not hold himself out generally to the public as a commodity trading advisor.

New section 4n authorizes the Commission to prescribe what information, and in what form and detail, such persons would have to supply in applying for the required registration. The section would specify the minimum information to be required as follows:

(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, his name and address; and the number of employees;

(B) the education, the business affiliations for the past ten years and the present business affiliations of the applicant 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 compensated.

Registration would be required to become effective no more than 30 days after application, unless denied as provided elsewhere in the Act.

New section 4n also provides that registrations of commodity trading advisors and commodity pool operators would expire on the 30th day of June of each year, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

The Commission is authorized to prescribe recordkeeping and reporting requirements for such persons, who would be required to keep the prescribed books and records for at least three years or longer if the Commission so directs. The prescribed books and records would be required to be open to inspection by any representative of the Commission or the Department of Justice. On request of the Commission, a registered commodity trading advisor or commodity pool operator would be required to furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memoranda, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

Futures market positions taken or held by individual principals of commodity trading advisors and commodity pool operators would be required to be fully and completely disclosed to subscribers, clients, or participants, unless otherwise authorized by the Commission by rule or regulation.

Statements of account would be required to be furnished regularly to each participant in the operations of every commodity pool operator. Such statements would be required to include complete information as to the current status of all trading accounts in which the participant has an interest. The Commission would be empowered to prescribe the form and manner of such statements.

Denial, without hearing, of registration as a commodity trading advisor or commodity pool operator would be authorized for any person who is subject to an outstanding order under the Act denying him trading privileges on any contract market, or suspending or revoking his registration as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling him from membership on any contract market.

Denial, revocation, or suspension, after hearing, of registration of any commodity trading advisor or commodity pool operator, would be authorized if the Commission finds that such denial, revocation, or suspension is in the public interest and that—

(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 person (or any partner, officer, director, person performing similar function, or controlling person thereof)—(i) has been convicted within ten years of any felony or misdemeanor involving the purchase or sale of any commodity or security, or arising out of his conduct as a commodity trading advisor or commodity pool operator; or (ii) is under court injunction from act-

ing as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or affiliated person or employee of any of them, or from engaging in or continuing any conduct or practice in connection with such activity or in connection with the purchase or sale of commodities or securities; or

(C) any partner, officer, or director of such person, or any person performing a similar function or any controlling person thereof, is subject to a Commission denial of trading privileges on any contract market, or a Commission suspension or revocation of registration as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or a Commission suspension or expulsion from membership on any contract market.

New section 40 forbids registrants as commodity trading advisors or as commodity pool operators, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, from employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or engaging 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. Such registrants would also be forbidden to represent or imply that they have been sponsored, recommended, or approved, or that their abilities or qualifications have been passed upon, by the United States or any agency or officer thereof, but would be permitted to state that they are registered under the 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.

Section 205 amends section 6(b) of the Act, specifically to provide that administrative disciplinary proceedings could be instituted and administrative disciplinary orders issued, against persons registered as commodity trading advisors and commodity pool operators. Section 6(b) of the Act now provides for such proceedings and orders for manipulation or attempt 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 for wilfully making any false or misleading statement of a material fact in any registration application or any report filed under the Act, or for wilfully omitting to state in any such application or report any material fact which is required to be stated therein, or for otherwise violating any of the provisions of the Act or of the rules, regulations, or orders thereunder.

Section 205 amends section 8a of the Act to make it apply to commodity trading advisors and commodity pool operators. Section 8a of the Act now authorizes the Secretary of Agriculture to register futures commission merchants and floor brokers upon application in accordance with rules and regulations and in form and manner to be prescribed by the Secretary. Section 8a also now authorizes the Secretary to refuse to register any person—

(A) if the prior registration of such person is under suspension or revocation;

(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 ten per centum of the stock, at any time engaged in any practice of the character prohibited by the 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 wilfully made any material false or misleading statement in his application or wilfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown.

Section 8a now further provides for suspension or revocation of the registration of any person registered under the Act if cause exists under (B) above which would warrant a refusal of registration of such person.

Section 206. Qualifications of futures commission merchants, floor brokers, and their associates

Section 206 adds a new section 4p to the Act to empower the Commission to specify by rules and regulations appropriate standards with respect to training, experience, and other qualifications which the Commission finds necessary or desirable to ensure the fitness of futures commission merchants, floor brokers, and persons associated with them. The Commission would be empowered to prescribe the adoption of written proficiency examinations to be given to applicants for registration as futures commission merchants, floor brokers, and persons associated with them, and to establish reasonable fees to be charged to such applicants to cover the administration of such examinations.

The Commission would be empowered further to prescribe that in lieu of examinations administered by the Commission, contract markets may adopt written proficiency examinations to be given to such applicants and charge reasonable fees to such applicants to cover the administration of such examinations.

Under a "grandfather" clause, the Commission would be authorized to specify terms and conditions for affording exception to a written proficiency examination to an individual who has previously demonstrated proficiency and skill, through training and experience, necessary to protect the interests of customers.

Section 207. Additional requirement for designation of a board of trade as a contract market

Section 207 amends section 5 of the Act by adding a new subsection specifically requiring that a board of trade, before designation as a contract market, demonstrate that futures transactions in the commodity for which designation is sought, will not be contrary to the public interest.

Section 208. Satisfaction of futures contracts; warehouse receipts; delivery points

Section 208 amends section 5a of the Act, which imposes certain requirements on each contract market.

Warehouse receipts would not be required under section 5a(7) to be accepted in satisfaction of a futures contract unless the commodity in

question may be delivered from a warehouse subject to the United States Warehouse Act.

A new subsection (10) is added, specifically requiring each contract market to permit the delivery of any commodity, on futures contracts, 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. The new subsection also requires the Commission, if after investigation it finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on futures contracts do not accomplish the objectives of the subsection, to 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 75 days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of the subsection, then the Commission is empowered to change or supplement such rules and regulations to achieve such objectives, after granting the contract market an opportunity to be heard.

Any order issued under the subsection would not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open. The new subsection would also provide a contract market with notice and opportunity to file exceptions to a proposed order determining the location and number of an additional delivery point or points.

Section 209. Contract market procedures on customers' claims and grievances

Section 209 amends section 5a of the Act, by adding a new subsection (11) which requires each contract market to provide a fair and equitable procedure through arbitration or otherwise for the settlement of customers' (but not futures commission merchants' or floor brokers') claims and grievances against any member or employee thereof. The use of such procedure by a customer would be required to be voluntary. The procedure would not be applicable to any claim in excess of \$15,000. The procedure would not result in any compulsory payment except as agreed upon between the parties.

Section 210. Commission approval or disapproval of contract market rules

Section 210 amends section 5a of the Act by adding a new subsection (12) requiring each contract market to submit to the Commission for its approval all bylaws, rules, regulations, and resolutions made or issued by it, 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.

The Commission would have 30 days either to approve such bylaws, rules, regulations, and resolutions or to notify the contract market that it is unable to make the necessary determination within 30 days.

The Commission would be required to approve such bylaws, rules, regulations, and resolutions upon a determination that they are not in violation of the provisions of the Act or the regulations of the Commission. Thereafter, the Commission would be required to disapprove, after appropriate notice and opportunity for hearing, any by-law, rule, regulation, or resolution which the Commission finds at any time is in violation of the provisions of the Act or the regulations of the Commission.

A contract market would be empowered to issue without prior Commission approval a rule dealing with an emergency requiring immediate action, with notice and a complete explanation to the Commission.

Regulations would be authorized exempting enumerated types of contract market operational and administrative rules from the submission requirement.

Section 211. Restraining orders, injunctions, writs of mandamus, or orders affording like relief, but not ex parte

Section 211 adds a new section 6c to the Act. Under such new section, 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 the Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring a court action to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

United States district courts and United States courts of territories and other places subject to the jurisdiction of the United States, would have jurisdiction to entertain such actions, and jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of the 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 the Act or any such rule, regulation, or order.

Any action could be brought in the district 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 could be served in any district in which the defendant is an inhabitant or wherever the defendant could be found.

The courts would be forbidden to issue such orders ex parte.

Section 212. Civil money penalties; increase of maximum fines

Section 212 amends section 6 of the Act, which provides, among other things, for administrative disciplinary proceedings for violations of the Act, or of the rules, regulations, or orders thereunder. The Commission would be authorized to assess civil penalties of not more than \$100,000 for each such violation. Appeals to United States Courts of Appeal, from administrative disciplinary orders, would be required to be filed within 15 days after the notice of such an order is given to the offending person.

A new paragraph (d) would be added to section 6 of the Act, requiring the Commission to consider certain facts in addition to the gravity of the violation in determining the amount of the money penalty assessed. In the case of a person whose primary business involves the

use of the commodity futures market, the Commission would be required to consider the appropriateness of such penalty to the size of the business of the person charged and the extent of such person's ability to continue in business. In the case of a person whose primary business does not involve the use of the commodity futures market, the Commission would be required to consider the appropriateness of the penalty to the net worth of the person charged.

If a civil penalty is not paid, the Commission would refer the matter to the Attorney General, who would be required to recover the penalty by court action.

Section 212 also amends section 6b of the Act, which now provides for orders to contract markets, directors, officers, agents, and employees thereof to cease and desist from violations of the Act, the rules, regulations, and orders thereunder. Civil penalties of not more than \$100,000 for each violation, would be provided. Such penalties would be collected by the Attorney General by court action, upon referral by the Commission. In determining the amount of such a money penalty assessed under section 6b, the Commission would be required to consider the appropriateness of the penalty to the net worth of the offending person and the gravity of the offense, and in the case of a contract market, the Commission would be required further to consider whether the amount of the penalty will materially impair the contract market's ability to carry on its operations and duties.

Section 212 also amends section 6(c) of the Act, which now provides for orders to any person (other than a contract market) to cease and desist from violating the Act, rules, regulations, or orders thereunder. The fine for violating such a cease and desist order would be changed from not less than \$500 nor more than \$10,000 to not more than \$100,000.

Section 212 also amends section 9 of the Act by changing from \$10,000 to \$100,000 the maximum fine for the criminal offenses provided in the three subsections of section 9.

Section 213. Authority of Commission to change contract market rules

Section 213 adds a new subsection (7) to section 8a of the Act to give the Commission specific authority to alter or supplement the rules of a contract market insofar as necessary or appropriate by rule or regulation or by order. Before taking such action, the Commission would be required first to make an appropriate request in writing to the contract market that it effect on its own behalf specified changes in its rules and practices.

The Commission could then alter or supplement such rules if, after appropriate notice and opportunity for hearing, the Commission determined that the contract market had not made the changes required and that such changes were necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on the contract market, or the product or byproduct thereof, or for the protection of traders or to ensure fair dealing in commodities traded for future delivery on the contract market.

The Commission could alter or supplement such rules with respect to such matters as: contract terms and conditions; the form and manner of execution of contracts; other trading requirements, excepting

the setting of levels of margin (unless done pursuant to the emergency powers provided in section 215); safeguards with respect to the financial responsibility of members; the manner, method and place of soliciting business, including the content of such solicitations; and the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts.

Section 214. Rulemaking authority of Commission with respect to non-member registrants

Section 214 adds a new subsection (8) to section 8a of the Act to authorize the Commission to issue rules and regulations with respect to registrants under the 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.

Section 215. Emergency powers

Section 215 adds a new subsection (9) to section 8a of the Act to give specific authority to the Commission to direct any contract market, "whenever [the Commission] 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" would be defined to mean "in addition to threatened or actual market manipulations and corners, any act of 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 and which, in the Commission's judgment, will of itself have a greater adverse impact on the market than the [Commission's] intervention action . . .".

It is further provided in section 215 that nothing therein would 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. This proviso does not, however, limit in any way the Commission's authority to define an "emergency".

Section 216. Disciplinary procedures

Section 216 adds a new section 8c to the Act to empower any exchange—or the Commission if the exchange fails to act—to suspend, expel, or otherwise discipline an exchange member, or deny any person access to an exchange. Such action shall be taken solely in accordance with exchange rules.

Exchanges would be required to notify the persons affected and the Commission of suspensions, expulsions, disciplinary actions, or denials of access, within 30 days, and give reason therefor, but otherwise to keep such notices and reasons confidential.

Persons who are disciplined may appeal the exchange decision to the Commission. The Commission may affirm, modify, set aside, or remand any exchange decision it reviews.

Section 217. Commission regulation of margin contracts

Section 217 requires the Commission to regulate transactions for the delivery of silver bullion, gold bullion, or bulk silver and gold coins pursuant to a standardized contract commonly known as a margin account, margin contract, leverage account, or leverage contract.

All persons would be forbidden to enter into or confirm the execution of any such transaction contrary to any rule, regulation, or order of the Commission designed to insure the financial solvency of the transaction or prevent manipulation or fraud. Notice and opportunity for hearing would be required before such rule, regulation, or order is issued.

If the Commission determines that such transactions are contracts for future delivery within the meaning of the Commodity Exchange Act, then such transactions would be regulated as futures contracts under that Act.

TITLE III—MISCELLANEOUS PROVISIONS

Section 301. Insider trading

Section 301 adds new subsections (d) and (e) to section 9 of the Act to make it a felony punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any commodity futures or option transaction or use "insider" information in any transaction in an actual commodity.

The prohibition against any transaction in an actual commodity would not apply to a transaction in which the person 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, however, it is provided that the Commission shall require the person who participates therein to notify it of such transactions in accordance with such regulations as the Commission shall prescribe, and the Commission shall make such information available to the public.

It would also be a felony punishable by a fine of not more than \$10,000 or imprisonment for not more than five years or both, 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 actual 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 commodity futures or option transaction or in any transaction in an actual commodity, or for another person to receive and use such information.

Section 302. Options trading

Section 302 amends 4c of the Act to continue the ban now contained in section 4c of the Act on trading in options (privileges, indemnities,

bids, offers, puts, calls, advanced guaranties, and decline guaranties) in the now-regulated commodities, but permits trading in options in all other commodities if not done 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 may prescribe. The Commission would be required within one year of the effective date of the bill to promulgate such an order, rule or regulation. The Commission may set different terms and conditions for different markets.

Section 303. Arbitrage

Section 303 amends section 4a(1) of the Act to authorize the Commission, in fixing trading and position limits, to exempt "arbitrage" transactions, and defines the word "arbitrage" in domestic markets as meaning the same as a "spread" or "straddle". The Commission would be authorized to define the term "international arbitrage".

Section 304. Hedging

Section 304 amends section 4a(3) of the Act to delete the definition of bona fide hedging transactions or positions now contained in the Act and requires the Commission, within 90 days after the effective date of the bill, to define the terms by order consistent with the purposes of this Act. Certain restrictions on such definition would be provided, to permit hedging of anticipated production of seed quantities of a commodity and hedging by users of products of traded commodities.

Until the Commission issues regulations defining what constitutes bona fide hedging transactions and positions and such regulations are in full force and effect, such terms would continue to be defined as set forth in the Act prior to its amendment by the bill.

Section 305. "Crossing of trades" authority

Section 305 amends section 4b of the Act by deleting the word "cotton" where it appears in the last full paragraph of that section and inserting in place thereof the words "a commodity." In pertinent part, section 4b of the Act now provides that nothing in the 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 cotton for future delivery in the same month, from executing such buying and selling orders at the market price" if such execution takes place on the floor of the exchange by open outcry and is duly reported, recorded, and cleared in the same manner as other orders executed on the exchange. Section 305, therefore, makes such authority applicable to all commodities.

Section 305 also amends section 4b of the Act specifically to give the Commission rulemaking authority regarding the manner of the execution of such transactions.

Section 306. Authority to decide whether contracts must provide for delivery of commodities conforming to United States standards

Section 306 amends section 5a(6) of the Act, which now provides that each contract market require that the futures contracts made thereon provide for the delivery of commodities conforming to United

States standards if such standards have been officially promulgated. Under section 306, the delivery of commodities conforming to official United States standards would be required if such standards were adopted by the Commission.

Section 307. Enforcement of contract market bylaws, rules, regulations, and resolutions

Section 307 amends section 5a(8) of the Act, which now requires each contract market to enforce all bylaws, rules, regulations, and resolutions 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 not been disapproved by the Secretary of Agriculture and to revoke and not enforce any such bylaw, rule, regulation, or resolution which has been so disapproved.

Under section 307, each contract market would be required to enforce such bylaws, rules, regulations, and resolutions if they have been approved by the Commission, and would be required to revoke and not enforce any bylaw, rule, regulation, or resolution, which has been disapproved by the Commission.

Section 308. "Referee" changed to Administrative Law Judge

Section 308 amends section 6(b) of the Act by striking the word "referee" wherever it appears therein and inserting in place thereof the words "Administrative Law Judge."

Section 309. Criminal penalties extended to new offenses being added to the Act

Section 309 references new provisions of the bill in section 9(c) of the Act establishing criminal penalties. Under section 309, criminal sanctions would be applicable to a failure to register by commodity trading advisors, commodity pool operators, and persons associated with futures commission merchants or with any agents thereof, and to acts of fraud or deceit by commodity trading advisors and commodity pool operators.

Section 310. Provision for supergrade positions

Section 310 authorizes the Commission to place an additional twenty positions in GS-16, GS-17, and GS-18 for purposes of carrying out its functions.

Section 311. Transfer of operations and proceedings to Commission

Section 311 provides that all operations of the Commodity Exchange Commission and of the Secretary of Agriculture under the Commodity Exchange Act, including all pending administrative proceedings, shall be transferred to the new Commission as of the effective date of the bill and continue to completion. All rules, regulations, and orders previously issued by the Commodity Exchange Commission and by the Secretary of Agriculture under the Act to the extent not inconsistent with the provisions of the bill shall continue in full force and effect unless and until terminated, modified, or suspended by the new Commission.

Section 312. Pending proceedings under existing law

Section 312 provides that pending proceedings under existing law shall not be abated by reason of any provision of the bill but shall be

disposed of pursuant to the applicable provisions of the Act, as amended, in effect prior to the effective date of the bill.

Section 313. Separability

Section 313 provides that if any provision of the bill or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the bill and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 314. Market reports

Section 314 adds a new section 16 to the Act, to permit the Commission to investigate markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and publish regular market reports. The Commission would be required to cooperate with other Federal agencies to avoid unnecessary duplication of information-gathering activities. Other agencies would be required to furnish market information to the Commission, which would in turn be subject to any rules of confidentiality applying to the information. The Commission could not disclose the names of individual companies.

Section 315. Daily trading reports

Section 315 amends section 4g of the Act, which requires reporting and recordkeeping by futures commission merchants and floor brokers, by adding a new paragraph. Every clearinghouse would be required to deliver a daily report to the Commission, specifying for each trade made on the exchange that day, the time, the subject (good, article, service, right, or interest), the number of contracts, the price, the delivery month, and the identification of the traders.

The Commission would be authorized to require additional information in such reports, and to prescribe the form and manner of such reports. The Commission would be permitted to disclose such reports or information from them if it determines that disclosure furthers the regulation of futures trading.

Exchanges would be required to publish daily reports, of the volume of trading on each type of contract. The Commission would be authorized to require exchanges to include additional information in such daily reports.

Section 316. Investor protection

Section 316 adds a new section 17 to the Act, to require futures commission merchants and commodity trading advisors to obtain signed statements from customers, acknowledging understanding of the speculative nature and risks involved in futures trading. The Commission would be authorized to require additional information in such customers' statements.

Section 317. Research and information programs

Section 317 adds a new section 18 to the Act to require the Commission to establish and maintain research and information programs to investigate new technology and the feasibility of its use for improving, strengthening, facilitating or regulating futures trading; to assist in developing materials for educating producers, market users, and the general public about futures trading; and to carry out the general purposes of the Act. Annual reports of such programs would be required.

Section 318. Forward contracting insurance program

Section 318 adds a new section 19 to the Act to require the Commission to encourage and assist private insurers to establish a pool to provide insurance to protect the parties to any forward contract from financial loss resulting from failure of the other party to comply with the terms of the contract for future delivery.

Such insurance would not be available with respect to any agricultural commodity contracted for sale through a board of trade.

There would be a limit on the premium which could be charged any insured, and the Commission would be authorized to assume up to 50 per centum of the loss suffered by the pool in any year in excess of premiums collected during the duration of the pool. The Commodity Credit Corporation would be required to reimburse the Commission for payments of such losses.

Section 319. Futures associations

Section 319 requires the Commission to investigate and report to Congress on the need for legislation providing for registration of futures associations.

Section 320. Insurance against loss caused by financial failure of futures commission merchants

Section 320 requires the Commission to investigate and report to Congress on the need for legislation providing insurance against losses caused by the financial failure of futures commission merchants.

Section 321. Effective date

Section 321 provides that the bill shall become effective 180 days after enactment, that activities necessary to implement the changes effected by the 1974 Act may be carried out after the date of enactment and before as well as after the effective date, and that such activities are required to include, but not be limited to: appointment of the members of the Commission; designation of boards of trade as contract markets; registration of futures commission merchants, floor brokers, and other persons required to be registered; approval or modification of bylaws, rules, regulations, and resolutions of contract markets; and the necessary steps to regulate futures trading in silver immediately on the effective date of the bill.

EXECUTIVE COMMUNICATIONS

In a letter to the Committee dated May 15, 1974, the Department of Agriculture recommends that H.R. 13113, as passed by the House, be enacted if modified by deleting (1) the Commission's authority to have its own General Counsel and legal staff, its own Administrative Law Judges, and independent budgeting capacity; and (2) the authority under which persons in the commodity trading business could establish a voluntary futures association to regulate the practices of members. The letter from the Department reads as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 15, 1974.

HON. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your requests for reports on the following bills:

- (1) S. 2485, a bill to establish an independent Commodity Exchange Commission,
- (2) S. 2578, a bill to strengthen the regulation of commodity exchanges,
- (3) S. 2837, a bill to regulate the interstate and foreign commerce trading of futures contracts in order to prevent unfair and deceptive acts and practices, and
- (4) H.R. 13113, an act to amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes.

We recommend that H.R. 13113, if modified in the two respects discussed below, be enacted in lieu of S. 2485, S. 2578, and S. 2837.

In the past year the futures markets have attracted more attention than at any other time in history. For perhaps the first time, it has become clear to the general public that futures markets touch the lives of all of us. The Commodity Exchange Act provides for the regulation of 19 commodities in which there were active futures markets in 1973. There were, however, 7 other agricultural or forest commodities and 9 nonagricultural commodities with active futures markets which were completely unregulated by the Federal Government. With the value of contracts traded in fiscal 1973 reaching almost \$400 billion, it is an appropriate time for the Congress to consider and adopt legislation which will recognize the growing importance of futures markets in the national economy, protect all market users, protect the general public, including producers and consumers indirectly affected by the

futures markets, and provide a climate in which futures markets can continue to grow and operate in the public interest.

The proposed bills would bring under regulation the futures markets in such important agricultural and nonagricultural commodities as coffee, sugar, cocoa, plywood, lumber, silver and copper. This has long been needed. There is no reason why a person trading in one of the currently unregulated futures markets should not receive the same protection afforded to those trading in the regulated markets. It was once thought that protection was needed only for producers of a commodity. It is now recognized, however, that all persons along the merchandising chain and consumers are entitled to the full protection of the law. Whether a commodity is grown or mined, or whether it is produced in the United States or outside, makes little difference to those in this country who buy, sell, and process the commodity or to U.S. consumers whose prices are affected by the futures markets in that commodity. This bill will put all exchanges and all persons in the industry under the same set of rules and regulations for the protection of all concerned.

H.R. 13113 includes a number of strengthening amendments to the Commodity Exchange Act. Although there is adequate legal authority to do several of the things contemplated by the bill, clarification is welcome and should be helpful. The Department supports most of these proposed amendments, particularly those that would:

- (1) give the commission specific authority through the Attorney General to seek injunctions to stop any person from violating the Act or regulations thereunder and to stop any trader from controlling a commodity futures contract to the extent that he is effectively restraining trade;
- (2) give the commission the specific authority to require exchanges to permit delivery of commodities at such a point or points as is necessary to diminish price manipulation, market congestion or the abnormal movement of commodities in interstate commerce;
- (3) provide that trading by floor brokers and futures commission merchants for their own accounts and for customers will be restricted and allowed only under such conditions as may be prescribed by the commission;
- (4) extend the registration and fitness requirements to cover all individuals handling customers' accounts; and
- (5) give the commission the specific authority to direct contract markets to take action in emergency situations in order to facilitate the orderly trading in or liquidation of any futures contracts.

The Department recommends that H.R. 13113 be modified in two respects:

- (1) We are opposed to provisions of the bill authorizing the commission to have its own General Counsel and legal staff, its own administrative law judges, and an independent budgeting capacity. We believe the independence of the commission is achieved through statutory creation of the commis-

sion and the direct grant of regulatory powers to it and the performance of the legal and administrative functions for the commission within the Department of Agriculture will not detract from the objectives of the bill and will be far more economical and efficient.

- (2) We oppose the authority to be granted by this bill under which persons in the commodity trading business can establish a voluntary futures association(s) to regulate the practices of members. We feel the functions authorized to be carried out by national futures associations should be carried out exclusively by the commission. Such associations would create an unnecessary layer of regulation, would tend to become pressure organizations forcing all in the commodity industry to join, and could make effective regulation by the commission more difficult. With the new authority given to the commission by this bill, particularly the customers' reparation procedure under which it will handle customers' complaints of financial loss arising from violations of the Act, there seems no need for such futures associations.

Enclosed as an addendum to this report is language which would implement the changes we recommend.

There is enclosed a schedule showing the estimated cost of the enactment (above current appropriation levels for the Commodity Exchange Authority) of this legislation for the first five fiscal years.

Finally, we understand that the Department of Justice has some difficulty concerning the exclusive jurisdiction antitrust provision in H.R. 13113, and we defer to the Department on that issue.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the administration's standpoint.

Sincerely,

J. PHIL CAMPBELL,
Acting Secretary.

Enclosures.

ADDENDUM

On page 2, line 5, insert the phrase "within the Department of Agriculture" after the word "established."

On page 4, delete lines 9 through 17. On line 18, change (9) to (8) and on line 21 change (10) to (9).

On page 5, lines 6 and 7, delete "administrative law judges."

On page 6, line 10, delete the word "solely".

On page 6, line 14, after the word "commission" delete the period and add the following "or the Department of Agriculture."

On page 6, delete lines 15 through 21.

On page 8, line 3, delete the word "All" and substitute the word "Such", and on line 7 insert after the word "Act" the phrase "as the Secretary of Agriculture may determine".

Delete title III of the bill (page 43, line 3 through page 58, line 21).

COMMODITY EXCHANGE AUTHORITY, LEGISLATIVE PROGRAM PROJECTIONS

[In thousands of dollars]

Agency, legislative item, account	1975	1976	1977	1978	1979
COMMODITY EXCHANGE AUTHORITY					
H.R. 13113—Strengthen the regulation of futures trading, bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes:					
Commodity Exchange Authority:					
Budget authority.....	3,906	4,085	4,274	4,470	4,676
Outlays.....	2,950	4,044	4,231	4,425	4,629
Office of the General Counsel:					
Budget authority.....	135	141	148	155	162
Outlays.....	132	137	144	151	158
Economic Management Support Center:					
Budget authority.....	312	327	342	358	374
Outlays.....	234	324	338	354	370
Total departmental cost:					
Budget authority.....	4,353	4,553	4,764	4,983	5,212
Outlays.....	3,296	4,505	4,713	4,930	5,157

In a letter to the Committee dated July 30, 1974, the Department of the Treasury recommended that a provision be included in the legislation exempting, from regulation by the Commission, foreign currency futures trading other than on organized exchanges. The letter from the Department of the Treasury reads as follows:

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., July 30, 1974.

HON. HERMAN E. TALMADGE,
*Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The attention of the Department has been directed to H.R. 13113, S. 2485, S. 2578 and S. 2837, bills to regulate futures trading in agricultural and other commodities, which are currently pending before your Committee.

Each of these bills would establish a Federal regulatory agency with sweeping authority to regulate futures trading in virtually any commodity, good, article, right or interest. This authority would extend to the regulation of futures trading in foreign currencies. Moreover, H.R. 13113 and S. 2578 would amend the Commodity Exchange Act, 7 U.S.C. Sec. 1, *et seq.*, to subject futures trading in foreign currencies to the regulatory requirements of that Act.

The Department believes the bills contain an ambiguity that should be clarified. The provisions of the bills do not clearly indicate that the new regulatory agency's authority would be limited to the regulation of futures trading on organized exchanges, and would not extend to futures trading in foreign currencies off organized exchanges. We do not believe that either the House of Representatives or your Committee intends the proposed legislation to subject the foreign currency futures trading of banks or other institutions, other than on an organized exchange, to the new regulatory regime.

The Department feels strongly that foreign currency futures trading, other than on organized exchanges, should not be regulated by

the new agency. Virtually all futures trading in foreign currencies in the United States is carried out through an informal network of banks and dealers. This dealer market, which consists primarily of the large banks, has proved highly efficient in serving the needs of international business in hedging the risks that stem from foreign exchange rate movements. The participants in this market are sophisticated and informed institutions, unlike the participants on *organized* exchanges, which, in some cases, include individuals and small traders who may need to be protected by some form of governmental regulation.

Where the need for regulation of transactions on other than organized exchanges does exist, this should be done through strengthening existing regulatory responsibilities now lodged in the Comptroller of the Currency and the Federal Reserve. These agencies are currently taking action to achieve closer supervision of the trading risks involved in these activities. The Commodity Futures Trading Commission would clearly not have the expertise to regulate a complex banking function and would confuse an already highly regulated business sector. Moreover, in this context, new regulatory limitations and restrictions could have an adverse impact on the usefulness and efficiency of foreign exchange markets for traders and investors.

Section 201 of H.R. 13113 currently contains broad language that would appear to authorize the new agency to regulate bank foreign currency departments. Section 201 provides that the new Commodity Futures Trading Commission would have "exclusive jurisdiction of transactions dealing in, resulting in, or relating to contracts of sale of a commodity for future delivery, traded or executed on a domestic board of trade, contract market or on any other board of trade, exchange, or market." The bill would amend the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, to broaden the definition of commodity to include all goods, articles, services, rights and interests "in which contracts for future delivery are presently or in the future dealt in." (Section 201). Since this definition would encompass foreign currencies, it seems clear that the language of the bill would give the Commission authority to regulate futures trading in foreign currencies by banks. Moreover, the language "or any other board of trade, exchange, or market" is sufficiently broad to authorize the Commission to regulate trading in foreign currencies by banks in the over-the-counter market.

S. 2837, S. 2485, and S. 2578 are also, in our view, unclear whether they would authorize the regulation of futures trading in foreign currencies by banks. For example, section 301 of S. 2837 provides that it "is unlawful for any person to buy or sell, or offer to buy or sell, any futures contract except on an exchange registered under section 201." Section 201(a) provides that it is unlawful for an exchange to permit futures contracts to be traded on it unless the exchange is registered with the Futures Exchange Commission. A futures contract is defined as "an agreement to buy or sell for delivery at a future time any specified quantities of goods, services, or other tangible or intangible things." (Section 102(3)). This definition is broad enough to include futures contracts in foreign currencies. The term "exchange" is defined broadly to mean "any place where futures contracts are traded." (Section 102(10)).

Accordingly, S. 2837 could be construed to prohibit banks from engaging in futures trading in foreign currencies unless they registered as an exchange with the new Futures Exchange Commission and became subject to its regulation. We believe that this is a serious defect in the proposed legislation that would, if enacted, impair the usefulness and efficiency of our foreign exchange markets.

In addition, the Department is concerned that the language of the bills is broad enough to subject to regulation by the proposed futures trading regulatory agency a wide variety of transactions involving financial instruments, such as puts and calls, warrants, rights, resale of installment loan contracts, repurchase options in Government securities, Federal National Mortgage Association mortgage purchase commitments, futures trading in mortgages contemplated by Federal Home Loan Mortgage Corporation, etc. We feel that regulation of these transactions, which generally are between large, sophisticated institutional participants, is unnecessary, and could be harmful. For this reason, we do not believe it is contemplated that the bills should regulate transactions in financial instruments of that nature.

In view of the foregoing, we strongly urge the Committee to amend the proposed legislation to make clear that its provisions would not be applicable to futures trading in foreign currencies or other financial transactions of the nature described above other than on organized exchanges. This could be accomplished by inserting a new section at an appropriate place reading as follows:

"Sec. —. 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, mortgages and mortgage purchase commitments, or in puts and calls for securities, unless such transactions involve the sale thereof for future delivery conducted on a board of trade."

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

DONALD L. E. RITGER,
Acting General Counsel.

COST ESTIMATE

In accordance with section 252 of the Legislative Reorganization Act of 1970, the following is the Committee's estimate of the costs which would be incurred in carrying out the provisions of the bill. No formal estimate of costs has been received from the Department of Agriculture on the bill being reported by the Committee.

The Department of Agriculture formally submitted the following cost table to accompany their report on H.R. 13112, as passed by the House of Representatives. However, the estimate apparently takes into consideration the changes recommended by the Department (Table 1). That estimate is included for comparative purposes with the estimate made by the Committee (Table 2).

TABLE 1.—COMMODITY EXCHANGE AUTHORITY, LEGISLATIVE PROGRAM PROJECTIONS
[In thousands of dollars]

Agency, legislative item, account	1975	1976	1977	1978	1979
H.R. 13113—Strengthen the regulation of futures trading, bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes:					
Commodity Exchange Authority:					
Budget authority.....	3,906	4,085	4,274	4,470	4,676
Outlays.....	2,930	4,044	4,231	4,425	4,629
Office of the General Counsel:					
Budget authority.....	135	141	148	155	162
Outlays.....	132	137	144	151	158
Economic Management Support Center:					
Budget authority.....	312	327	342	358	374
Outlays.....	234	324	338	354	370
Total Departmental Cost:					
Budget authority.....	4,353	4,553	4,764	4,983	5,212
Outlays.....	3,296	4,505	4,713	4,930	5,157

TABLE 2.—COMMODITY FUTURES TRADING COMMISSION, LEGISLATIVE PROGRAM PROJECTIONS
H.R. 13113, AS APPROVED BY THE COMMITTEE

[In thousands of dollars]					
	1975	1976	1977	1978	1979
Commodity Exchange Authority:					
Budget authority.....	4,309	4,524	4,751	4,988	5,237
Outlays.....	4,210	4,420	4,642	4,874	5,117
New legislation (per House estimate):					
Budget authority.....	4,669	4,884	5,108	5,343	5,589
Outlays.....	2,334	4,835	5,057	5,290	5,533
Additional costs of Senate revisions: ¹					
Budget authority.....	1,550	1,627	1,176	1,704	1,209
Outlays.....	775	1,600	1,156	1,691	1,205
Total budget authority ²	10,528	11,035	11,035	11,035	11,035
Total outlays ²	7,319	10,855	10,855	10,855	10,855

¹ House figure adjusted because of the delay in the passage of the legislation.

² Including an estimate for the regulation of futures trading in gold not considered in the House estimate.

³ Reflects increase needed to supervise the expected annual rise in the number of contracts traded.

⁴ Expected saving as a result of the reporting system required by sec. 315 will, during the year, offset the cost of supervising the expected annual rise in the number of contracts traded.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, 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, existing law in which no change is proposed is shown in roman) :

TITLE 5, UNITED STATES CODE

* * * * *

§ 5108. Classification of positions at GS-16, 17, and 18

(a) A majority of the Civil Service Commissioners may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 2,754 in addition to any professional engineering positions primarily concerned with research and development and professional positions in the physical and natural sciences and medicine which may be placed in these grades, and in addition to 240 hearing examiner positions under section 3105 of this title which may be placed in GS-16 and 9 such positions which may be placed in GS-17) which may be placed in GS-16, 17, and 18 at any one time. However, under this authority, not to exceed 25 percent of the aggregate number may be placed in GS-17 and not to exceed 12 percent of the aggregate number may be placed in GS-18. A position may be placed in GS-16, 17, or 18 only by action of, or after prior approval by, a majority of the Civil Service Commissioners.

* * * * *

(c) In addition to the number of positions authorized by subsection (a) of this section—

* * * * *

(12) *The Commodities Futures Trading Commission, subject to the standards and procedures prescribed by this chapter, may place an additional twenty positions in GS-16, GS-17, and GS-18 for purposes of carrying out its functions.*

* * * * *

§ 5314. Positions at level III.

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is \$29,500 :¹

* * * * *

(60) *Chairman, Commodity Futures Trading Commission.*

§ 5315. Positions at level IV.

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is \$28,750 :²

* * * * *

¹ Now \$40,000. See 2 U.S.C. 358 note.

² Now \$38,000. See 2 U.S.C. 358 note.

(98) *Members, Commodity Futures Trading Commission.*

§ 5316. Positions at level V.

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is \$28,000:³

* * * * *

(134) *General Counsel, Commodity Futures Trading Commission.*

(135) *Executive Director, Commodity Futures Trading Commission.*

* * * * *

COMMODITY EXCHANGE ACT, AS AMENDED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commodity Exchange Act."

SEC. 2. (a) (1) 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, [onions.] *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 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 and which, in accordance with section 4h of this Act, may not lawfully be executed or consummated otherwise than through a member of a contract market: 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 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

³ Now \$36,000. See 2 U.S.C. 358 note.

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 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 Exchange Commission, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, or an official or employee of each of the executive departments concerned, designated by the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, respectively; and the Secretary of Agriculture or his designee shall serve as Chairman.] *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 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.

(2) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of a Chairman and four other Commissioners, 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 (A) 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 (B) 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.

(3) *The Commission shall have a General Counsel, to be appointed by the President, by and with the advice and consent of the Senate. 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 proceedings pending before it, and perform such other legal duties and functions as the Commission may direct.*

(4) *The Commission shall have an Executive Director, to be appointed by the President, by and with the advice and consent of the Senate. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.*

(5) (A) *Except as otherwise provided in this paragraph and in paragraphs (3) and (4) of this subsection, the executive and administrative 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, 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 of 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.*

(6) *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.*

(7) *The Commission shall have an official seal, which shall be judicially noticed.*

(b) *For the purpose of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity*

trade whereby commodities and commodity products and 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 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 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 [Secretary of Agriculture] *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 [Secretary of Agriculture] *Commission* shall so direct, which record shall at all times be open to the inspection of any representative of the [United States Department of Agriculture] *Commission* or the United States Department of Justice.

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 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 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; after which, and until such 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 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 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 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 ninety days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this Act: Provided, That such terms shall permit the hedging of a person's anticipated production of seed quantities of a commodity and the hedging by the users of products of traded commodities as well as users of the commodities.* **■** For the purposes of determining the bona fide hedging transactions or positions of any person under this paragraph (3), they shall mean sales of, or short positions in, any commodity for future delivery on or subject to the rules of any contract market made or held by such person to the extent that such sales or short positions are offset in quantity by the ownership or purchase of the same cash commodity by the same person or, conversely, purchases of, or long positions in, any commodity for future delivery on or subject to the rules of any contract market made or held by such person to the extent that such purchases or long positions are offset by sales of the same cash commodity by the same person. There shall be included in the amount of any commodity which may be hedged by any person—

■ (A) the amount of such commodity such person is raising, or in good faith intends or expects to raise, within the next twelve months, on land (in the United States or its Territories) which such person owns or leases;

■ (B) an amount of such commodity the sale of which for future delivery would be a reasonable hedge against the products or by-products of such commodity owned or purchased by such person, or the purchase of which for future delivery would be a reasonable hedge against the sale of any product or byproduct of such commodity by such person;

■ (C) an amount of such commodity the purchase of which for future delivery shall not exceed such person's unfilled anticipated requirements for processing or manufacturing during a specified operating period not in excess of one year: *Provided*, That such purchase is made and liquidated in an orderly manner and in accordance with sound commercial practice in conformity with such regulations as the Secretary of Agriculture may prescribe. **■**

(4) This section shall apply to a person that is registered as a futures commission merchant 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.

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 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 **[cotton]** 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 transac-

tion 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;

[(B) if such transaction is, is of the character of, or is commonly known to the trade as, a “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advanced guaranty”, or “decline guaranty”, 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) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall not have been disapproved by the [Secretary of Agriculture] Commission. Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections.

(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: 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.

SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant 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 [Secretary of Agriculture] Commission as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, 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 such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the [Secretary of Agriculture] *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 [Secretary of Agriculture] *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 [Secretary of Agriculture] *Commission*, which application shall be made in form and manner to be prescribed by the [Secretary of Agriculture] *Commission*, giving such information and facts as the [Secretary of Agriculture] *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 [Secretary of Agriculture] *Commission* may direct, if a corporation. Such person, when registered hereunder, shall likewise continue to report and furnish to the [Secretary of Agriculture] *Commission* the above-mentioned information and such other information pertaining to his business as the [Secretary of Agriculture] *Commission* may require. All registrations shall expire on the 31st day of December of the year for which issued, 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.

(2) Notwithstanding any other provisions of this Act, no person desiring to register as futures commission merchant shall be so registered unless he meets such minimum financial requirements as the [Secretary of Agriculture] *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 [Secretary of Agriculture] *Commission* as adequate to effectuate the purposes of this paragraph (2).

SEC. 4g. (1) Every person registered hereunder as futures commission merchant or floor broker shall make such reports as are required by the [Secretary of Agriculture] *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 [Secretary] *Commission*; and shall keep such books and records open to inspection by any representative of the [United States Department of Agriculture] *Commission* or the United States Department of Justice.

(2) *Every clearinghouse shall prepare a daily trading report in the form and manner which the Commission prescribes by rule. The daily trading report shall include—*

- (A) *the time of each trade made on the exchange that day;*
- (B) *the good, article, service, right, or interest which is the subject of the contract;*
- (C) *the number of futures contracts involved in each trade;*
- (D) *the price of the futures contract in each trade;*
- (E) *the delivery month specified in the futures contract in each trade;*

(F) the identification of the traders involved in each trade; and

(G) any other information the Commission requires.

(3) Daily trading reports shall be delivered to the Commission at the time and place it designates. The Commission may disclose daily trading reports, or information from those reports, to the public if, in the determination of the Commission, disclosure will further the regulation of futures trading.

(4) Before the beginning of trading each day, the exchange shall 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.

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. 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 [Secretary of Agriculture] 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 [Secretary of Agriculture] 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 [Secretary of Agriculture] Commission. Such person shall keep books and

records of all futures transactions 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 [Secretary of Agriculture] 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 [United States Department of Agriculture] 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 six 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 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 six 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 date thereof, 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, the effective period of such registration shall be set by the Commission, not to exceed two years from the effective date thereof and not to be less than one year from the effective date thereof.

SEC. 4l. 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;

(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. 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.

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 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) Except as hereinafter provided, such registration shall become effective thirty days after the receipt of such application by the Commission, or within such shorter period of time as the Commission may determine.

(3) All registrations under this section shall expire on the 30th day of June of each year, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(4)(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.

(5) 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.

(6) 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.

(7) 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—

(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 market.

SEC. 40. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator registered under this Act, 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. 41. 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. 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, 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.

SEC. 5. The [Secretary of Agriculture] 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 [Secretary of Agriculture] Commission.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the [Secretary of Agriculture] 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 [Secretary of Agriculture] 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 [Secretary of Agriculture] 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 [Secretary of Agriculture] Commission shall so direct, and shall at all times be open to the inspection of any representative of the [United States Department of Agriculture] 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 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.*

SEC. 5a. Each contract market shall—

(1) promptly furnish the [Secretary of Agriculture] *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 [United States Department of Agriculture] *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 [Secretary of Agriculture] *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 [Secretary of Agriculture] *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 [Secretary of Agriculture] *Commission* shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the [United States Department of Agriculture] *Commission* or United States Department of Justice;

(4) when so directed by order of the [Secretary of Agriculture] *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 [Secretary of Agriculture] *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, [he] *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 [he] *it* finds will prevent or tend to pre-

(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.*

SEC. 5a. Each contract market shall—

(1) promptly furnish the [Secretary of Agriculture] *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 [United States Department of Agriculture] *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 [Secretary of Agriculture] *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 [Secretary of Agriculture] *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 [Secretary of Agriculture] *Commission* shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the [United States Department of Agriculture] *Commission* or United States Department of Justice;

(4) when so directed by order of the [Secretary of Agriculture] *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 [Secretary of Agriculture] *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, [he] *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 [he] *it* finds will prevent or tend to pre-

vent 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 [Secretary of Agriculture] *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, [he] *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 [he] *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 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 [not been disapproved by the Secretary of Agriculture pursuant to paragraph (7) of section 8a] *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 [so] *disapproved by the Commission;* [and]

(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 [Secretary of Agriculture] 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 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, (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*

(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. The Commission shall approve, within thirty days of their receipt 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. In the event of an emergency 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 rule dealing with such emergency if it notifies the Commission of such action with a 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.

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 Secretary of Agriculture or] 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 [Secretary of Agriculture] 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. 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 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 Secretary of Agriculture or] 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: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such board of trade 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 Secretary of Agriculture, who shall thereupon notify the other members of] 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 [Secretary of Agriculture] *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 [Secretary of Agriculture] *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 Secretary of Agriculture or] the Commission thereunder, [he] *it* may serve upon such person a complaint stating [his] *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 [Secretary of Agriculture] *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, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the [Secretary of Agriculture] *Commission* or before [a referee] *an Administrative Law Judge* designated by the [Secretary of Agriculture] *Commission*, which [referee] *Administrative Law Judge* shall cause all evidence to be reduced to writing and forthwith transmit the same to the [Secretary of Agriculture] *Commission*. For the purpose of securing effective enforcement of the provisions of this Act, and for the purpose of any investigation or proceedings under this Act, the provisions, including penalties, of the Interstate Commerce Act, as amended and supplemented (49 U.S.C. 12), relating to the attendance and testimony of witnesses and the production of documentary evidence, are made applicable to the power, jurisdiction, and authority of [the Secretary of Agriculture (or any person designated by him).] the Commission, and

any [referee] *Administrative Law Judge* designated pursuant to the provisions of this Act, and to any person subject thereto. Upon evidence received, the [Secretary of Agriculture] *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, 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 [Secretary of Agriculture] *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 a written petition, *within fifteen days after the notice of such order is given to the offending person*, praying that the order of the [Secretary of Agriculture] *Commission* be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the [Secretary of Agriculture] *Commission* and thereupon the [Secretary of Agriculture] *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 [Secretary of Agriculture] *Commission*, and the findings of the [Secretary of Agriculture] *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 Secretary of Agriculture, or] the *Commission* thereunder, the [Secretary] *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 less than \$500 nor more than \$10,000] *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 affirmation 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.

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 non-members) 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 Secretary of Agriculture or the Commission thereunder, the Commission may, upon notice and hearing 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 shall cease and desist from such violation, and if such contract market, director, officer, agent, or employee 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 contract market, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$10,000 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 order continues shall be deemed a separate offense.]

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 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 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 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 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.

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 [Secretary of Agriculture] 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 [Secretary of Agriculture] 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 [his] 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 [Secretary of Agriculture] *Commission* in the manner herein provided for an original application.

SEC. 8. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the [Secretary of Agriculture] *Commission* may make such investigations as [he] *it* may deem necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to any of the provisions of this Act, whether prior or subsequent to the enactment of this Act, and may publish from time to time, in [his] *its* discretion, the result of such investigation and such statistical information gathered therefrom as [he] *it* may deem of interest to the public, except data and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided*, That nothing in this section shall be construed to prohibit the [Secretary of Agriculture] *Commission* from making or issuing such reports as [he] *it* may deem necessary relative to the conduct of any board of trade or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further*, That the [Secretary of Agriculture] *Commission* in any report may include the facts as to any actual transaction. The [Secretary of Agriculture] *Commission*, upon [his] *its* own initiative or in cooperation with existing governmental agencies, shall investigate 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. [He] *It* shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as [he] *it* may deem 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.

Notwithstanding the foregoing provisions of this section or of any other law, the [Secretary of Agriculture] *Commission* may, in [his] *its* discretion, from time to time disclose and make public the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the [Secretary] *Commission* has information, and any other information in the possession of the [Department of Agriculture] *Commission* relating to the amount of commodities purchased or sold by each such trader; and when requested by any committee of either House of Congress, acting within the scope of its jurisdiction, shall furnish to such committee and make public the names and addresses of all traders on such boards of trade with respect to whom the [Secretary] *Commission* has information, and any other information in the possession of the [Department of Agriculture] *Commission* relating to the amounts of commodities purchased or sold by each such trader; and when requested by any department or agency of the Executive Branch of the Government of the United States, acting within the scope of its jurisdiction, may, in [his] *its* discretion, furnish to such department or agency any information in the possession of the [Department of Agriculture] *Commission* obtained in connection with the administration of this Act: *Provided, however*, That

information so furnished to any such 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, or the [Secretary of Agriculture] Commission, or the United States is a party.

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 recommendations for further legislation as it may deem advisable with respect to the administration of this Act and its powers and functions under this Act.

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 he may require and he and his duly authorized representatives 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 his 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.

SEC. 8a. The [Secretary of Agriculture] 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 [Secretary of Agriculture] Commission; and

(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 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 per centum 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 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

(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 [Secretary of Agriculture] *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) 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 [Secretary of Agriculture] *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 and to publish, 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 [Secretary of Agriculture] *Commission* disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers; and

[(7) to disapprove any bylaw, rule, regulation, or resolution made, issued or proposed by a contract market or by the governing board thereof or any committee which relates to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relates to other trading requirements, when he finds that such bylaw, rule, regulation, or resolution violates or will violate any of the provisions of this Act, or any of the rules, regulations, or orders of the Secretary of Agriculture or the Commission thereunder.]

(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 act of 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 and which, in the Commission's judgment, will of itself have a greater adverse impact on the market than the intervention action proposed pursuant to this subsection: 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.

SEC. 8b. It shall be unlawful for any person, against whom there is outstanding any order of the [Secretary of Agriculture] 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 ex-

change. 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, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. Otherwise the notice and reasons shall be kept confidential.

(2) (A) Any person suspended, expelled, disciplined by an exchange or denied access to it is entitled to Commission review of that decision, pursuant to such regulations as the Commission, by rule, prescribes.

(B) The Commission may, in its discretion, upon application of any person who is adversely affected by any other exchange action, review that 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.

(5) Nothing in this section shall require any person to resort to the procedure set forth in subsection (2), or prohibit any person from seeking any other form of relief available to him under State or Federal law, or limit the liability of any person to suit by any State or Federal regulatory or prosecutorial agency.

SEC. 9. (a) It shall be a felony punishable by a fine of not more than **[\$10,000]** \$100,000 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.

(b) It shall be a felony punishable by a fine of not more than **[\$10,000]** \$100,000 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.

(c) Except as provided in paragraphs (a) and (b) of this section, it shall be a misdemeanor punishable by a fine of not more than ~~[\$10,000]~~ \$100,000 or imprisonment for not more than one year, or both, together with the costs of prosecution, for any person to violate the provisions of section 4, section 4a, section 4b, section 4c, section 4d, section 4e, section 4h, section 4i, section 4k, section 4m, section 4o, section 17, 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.

(d) *It shall be a felony punishable by a fine of not more than \$10,000 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 use information acquired by virtue of his employment or position and participate, directly or indirectly, in any transaction in an actual commodity: Provided, That such prohibition against any transaction in an actual commodity shall not apply to a transaction in which such person 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 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 \$10,000 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"; 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".*

Sec. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the re-

remainder of the Act and of the application of such provisions to other persons and circumstances shall not be affected thereby.

SEC. 11. (Omitted)

[SEC. 12. The Secretary of Agriculture 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; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.]

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 the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978.

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 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 re-

sponsible in administrative proceedings under this Act for such violation as a principal.

(b) Nothing in this Act shall be construed as requiring [the Secretary of Agriculture or] 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 registered under section 4d, 4e, 4k, or 4m of this Act may, at any time within three 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.

(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 \$2,500, a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied in the form of depositions or verified statements of fact.

(c) After opportunity for hearing on complaints where the damages claimed exceed the sum of \$2,500 has been provided or waived and on complaints where damages claimed do not exceed the sum of \$2,500 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) 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) 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, may within three years of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the respondent, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Commission in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings and orders of the Commission shall be prima facie evidence of the facts therein stated and reviewable only for purposes of determining if such findings and orders are supported by substantial evidence. 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.

(g) Either party adversely affected by the entry of a reparation order by the Commission may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which said hearing was held: Provided, That in cases handled without a hearing in accordance with subsections (b) and (c) of this section or in which a hearing has been waived by agreement of the parties, appeal shall be to the district court of the United States for the district in which the appellee is located. Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Commission and shall state the grounds upon which the appeal is based, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation

order the appellant also files with the clerk 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 clerk of the court shall immediately forward a copy thereof to the Commission which shall forthwith prepare, certify, and file in said court a true copy of the Commission's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Commission. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings of fact and orders of the Commission shall be prima facie evidence of the facts therein stated and reviewable only for purposes of determining if such findings and orders are supported by substantial evidence. 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. Such petition and pleadings certified by the Commission upon which decision was made by it shall upon filing in the district court constitute the pleadings upon which the trial shall proceed, subject to any amendment allowed in that court.

(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.

(i) The provisions of this section shall not become effective until one year after the date of its enactment: Provided, That claims which arise within nine months immediately prior to the effective date of this section may be heard by the Commission after such one year period.

SEC. 15. The Commission shall take into consideration the public interest to be protected by the antitrust laws as well as the policies and purposes of this Act, and endeavor to take the least anticompetitive means of achieving the objectives 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.

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 any other Federal agency which makes market investigations to avoid unnecessary duplication of information-gathering activities.*

(c) *The Department of Agriculture, Department of State, Department of Commerce, and any other government 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 the names of individual companies.*

SEC. 17. *It is unlawful for a futures commission merchant (or any employee thereof) to accept an order from any person to buy or sell any futures contract and for a commodity trading advisor to advise any person to buy or sell a futures contract unless he obtains a signed statement from such person, in such form as the Commission prescribes, which states that the person understands the speculative nature of futures contract trading, the high probability of loss of initial and later investments in futures contracts, and any other information the Commission prescribes.*

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) *In order to promote the use of forward contracting in the sale and purchase of agricultural commodities (including livestock), the Commission is authorized and directed to encourage and otherwise assist any insurance companies and other insurers which meet the requirements prescribed pursuant to this section to form, associate or otherwise join together in a pool to provide insurance coverage to protect the parties to any forward contract against financial loss resulting from failure of the other party to comply with the terms of the contract for future delivery: Provided, That no buyer or seller may be insured under this section with respect to any agricultural*

commodity contracted for sale through a board of trade as defined in section 2 of this Act.

(b) In order to promote the effective administration of the forward contracting insurance program and to assure that the objectives of this section are furthered, the Commission is authorized to prescribe appropriate requirements for insurance companies and other insurers participating in such pool including, but not limited to, minimum requirements for capital or surplus or assets.

(c) The Commission is authorized to enter into agreements with the pool formed or otherwise created under this section to assume not more than 50 per centum of the loss suffered by such pool in any year in excess of premiums collected during the duration of the pool: Provided, That the premium charged any insured shall not exceed 2 per centum of the total value of the contract being insured: Provided further, That the Commission shall from time to time negotiate with representatives of the pool to establish premiums which the Commission finds will provide profits to the members of the pool necessary to carry out the purposes of this section.

(d) Any payments made by the Commission as provided in subsection (c) of this section shall be reimbursed from funds of the Commodity Credit Corporation.

APPENDIX I

SIZE OF THE COMMODITY FUTURES BUSINESS IN 1973

During 1973, the number of futures transactions on U.S. commodity exchanges totalled 51,653,494 (both sides).

The "dollar value" of the commodities is based on figures supplied by each commodity exchange on which those commodities were traded. The "dollar value" is a somewhat theoretical amount, because it is the value if deliveries were made on all contracts traded. Actual delivery is made on only a small percentage (possibly about 3%).

Commodity :	<i>Estimated "value" of commodities traded¹</i>	1973
Soybeans -----	\$113,846,659,000	
Silver -----	65,866,451,800	
Corn -----	54,194,039,800	
Cattle -----	48,591,400,562	
Wheat -----	41,077,600,200	
International Money -----	36,830,000,000	
Soybean Oil -----	25,064,600,000	
Pork Bellies -----	23,805,410,190	
Soybean Meal -----	18,453,300,000	
Copper -----	13,559,116,630	
Live Hogs -----	13,389,728,997	
Cotton -----	12,898,000,000	
Sugar -----	11,617,398,530	
Eggs -----	8,266,058,247	
Cocoa -----	7,221,251,865	
Iced Broilers -----	5,079,500,000	
Coffee -----	4,450,106,025	
Silver Coins -----	3,558,292,460	
Lumber -----	2,753,502,815	
Potatoes -----	2,658,037,470	
Plywood -----	2,598,700,000	
Frozen Concentrated Orange Juice -----	1,260,000,000	
Platinum -----	1,210,888,140	
Oats -----	1,144,251,000	
Propane -----	250,000,000	
Coconut Oil -----	186,122,000	
Stud Lumber -----	101,500,000	
Frozen Boneless Beef -----	74,872,914	
Wool -----	65,000,000	
Grain Sorghums -----	44,696,052	
Palladium -----	14,365,250	
Skinned Hams -----	268,118	
Butter -----	263,914	
Mercury -----	74,100	
Total -----	\$520,131,456,079	

¹ Not all of these commodities are presently regulated under the Commodity Exchange Act.

APPENDIX II

COMMODITIES PRESENTLY REGULATED UNDER THE COMMODITY
EXCHANGE ACT

Barley	Grain sorghums
Butter	Irish potatoes
Corn	Livestock
Cotton	Livestock products
Cottonseed	Mill feeds
Cottonseed meal	Oats
Eggs	Onions
Fats and oils (including lard, tal- low, cottonseed oil, peanut oil, soybean oil, coconut oil and all other fats and oils)	Peanuts
Flaxseed	Rice
Frozen concentrated orange juice	Rye
	Soybeans
	Soybean meal
	Wheat
	Wool
	Wool tops

APPENDIX III

COMMODITIES CURRENTLY TRADED WHICH ARE NOT REGULATED UNDER
THE COMMODITY EXCHANGE ACT

Cocoa	Iced broilers
Coffee	Lumber
Copper	Mercury
Foreign currency:	Palladium
British Pound	Platinum
Canadian Dollar	Plywood
Deutschmark	Propane gas
Dutch Guilders	Silver
Japanese Yen	Sugar
Mexican Peso	Silver coins
Swiss Franc	
Canadian Silver Coins	

APPENDIX IV

COMMODITY FUTURES CONTRACTS TRADED, 1969-73—INCLUSIVE

	July 1-June 30	Per contract	1972-73	1971-72	1970-71	1969-70	1968-69
Corn ¹	5,000 bu.....		3,481,001	1,549,987	2,734,435	1,270,576	1,706,577
Lead broilers.....	28,000 lb.....		141,483	29,002	76,216	138,583	16,580
Live choice steers ¹	40,000 lb.....			11	367	25,309	46,058
Oats ¹	5,000 bu.....		73,264	37,542	76,482	104,101	136,864
Plywood.....	69,120 ft ²		274,533	146,914	180,295	15,098	
Rye ¹	5,000 bu.....				208	10,802	26,892
Silver.....	5,000 oz.....		1,237,642	633,641	469,752	103,929	
Soybean meal ¹	100 tons.....		723,404	485,789	634,181	717,504	405,644
Soybean oil ¹	60,000 lb.....		1,636,845	1,365,595	1,464,212	1,672,031	426,416
Soybeans ¹	5,000 bu.....		3,649,635	3,890,354	2,652,911	1,271,613	932,815
Wheat ¹	5,000 bu.....		1,335,775	514,566	582,359	540,827	1,119,659
Stud lumber.....			6,018				
Chicago Board of Trade.....			12,559,600	8,653,401	8,871,422	5,870,373	4,817,525
Corn ¹	5,000 bu.....		56,072	7,431	13,832	9,321	10,506
Oats ¹	5,000 bu.....		3,357	1,593	511	3,125	5,729
Rye ¹	5,000 bu.....				3	404	258
Silver.....	5,000 oz.....		114,636	71,128	35,285	5,535	3,939
Soybeans ¹	5,000 bu.....		79,185	70,022	33,282	15,454	9,936
U.S. silver coins.....	\$5,000.....		128,133	10,407			
Wheat ¹	5,000 bu.....		47,082	7,088	9,591	18,604	29,489
MidAmerica Commodity Exchange.....			428,465	167,669	92,505	52,443	59,857
Corn ¹	5,000 bu.....					3	57
Grain sorghums ¹	280,000 lb.....		2	40	433	791	2,247
Wheat ¹	5,000 bu.....		402,163	129,871	201,309	141,443	171,373
Kansas City Board of Trade.....			402,165	129,911	201,742	142,237	173,677
Corn ¹	5,000 bu.....			30	36		
Oats ¹	5,000 bu.....				4		
Pork bellies, frozen ¹	36,000 lb.....			4,574	1,057		
Rye ¹	5,000 bu.....						34
Wheat ¹	5,000 bu.....		167,472	55,393	53,765	41,882	65,510
Minneapolis grain exchange.....			167,472	59,997	54,862	41,882	65,544
Butter ¹	40,000 lb.....					4	9
Fresh eggs ¹	22,500 doz.....		652,541	374,248	523,863	629,471	256,712
Frozen beef ¹	36,000 lb.....				648	1,064	
Frozen eggs ¹	36,000 lb.....		61	30	5	58	2,098
Grain sorghums ¹	400,000 lb.....		1,367	5,682	3,511		
Hams, frozen, skinned ¹	36,000 lb.....			77	156	493	193
Idaho potatoes ¹	50,000 lb.....		6,314	7,250	32,725	90,246	88,347
Live cattle—midwest ¹	40,000 lb.....		2,105,272	961,314	605,717	860,982	609,621
Live feeder cattle ¹	42,000 lb.....		15,522	3,501			
Live hogs ¹	30,000 lb.....		791,823	366,378	191,043	119,708	12,744
Lumber.....	90,000 fbm.....		119,476	69,339	132,582	3,661	
Pork bellies ¹	36,000 lb.....		1,639,199	2,038,653	1,525,755	2,287,172	1,658,073
Turkeys, tom.....	30,000 lb.....					20	10
British pound.....	50,000.....		30,626	2,929			
Canadian dollar.....	200,000.....		43,158	16,749			
Deutschemark.....	500,000.....		27,937	6,693			
Italian lira.....	50,000,000.....		607	110			
Japanese yen.....	25,000,000.....		124,930	1,759			
Mexican peso.....	1,000,000.....		19,973	66			
Swiss franc.....	500,000.....		28,294	3,626			
Chicago Mercantile Exchange.....			5,607,100	3,858,404	3,016,005	3,992,879	2,627,767
Aluminum.....	50,000 lbs.....				2		
Apples.....	840 cartons.....				75	392	
Butter ¹	30,000 lbs.....		2				
Imported boneless beef ¹	30,000 lbs.....		1,596	1,137			
Nickel.....	2,000 lbs.....				60	323	
Potatoes—Idaho ¹	50,000 lbs.....		2	27		654	
Potatoes—Maine ¹	50,000 lbs.....		385,616	152,607	205,694	334,755	478,410
Palladium.....	100 ozs.....		1,424	92	233	2,791	23,811
Platinum.....	50 ozs.....		152,919	139,186	104,062	103,856	95,890
Plywood.....	70,000 ft ²			13,128	524	6,040	
Shell eggs ¹	22,500 doz.....				113		
Silver coins.....	10 bags.....		40,501	25,699	5,214		
New York Mercantile Exchange.....			582,058	331,876	315,977	448,811	598,290

See footnote at end of table.

COMMODITY FUTURES CONTRACTS TRADED, 1969-73—INCLUSIVE—Continued

July 1-June 30	Per contract	1972-73	1971-72	1970-71	1969-70	1968-69
Coconut oil ¹	60,000 lb.....	6,150				
Shell eggs ¹	22,500 doz.....	2,770				
Pacific Commodity Exchange.....		8,920				
Cotton No. 1.....	50,000 lb.....					388
Cotton No. 2.....	50,000 lb.....	433,638	410,756	165,516	33,000	153,800
Orange juice, frozen, concentrated ¹	15,000 lb.....	119,300	132,585	116,879	86,637	179,906
Wool (old and new) ¹	6,000 lb.....	4,811	3,157	3,756	4,924	7,859
Wool top ¹	5,000 lb.....			40	83	103
Propane.....	100,000 gal.....	3,578	681	919		
Tomato paste.....	26,500 lb.....		257	65		
New York Cotton Exchange and Assoc.....		561,327	547,436	287,247	124,644	342,056
Cottonseed oil ¹	60,000 lb.....	6		50		38
Fishmeal.....	100 tons.....	10,361	51	311	695	861
Foreign currency.....		18,417	24,766	3,026	28	
Pepper.....	11,200 lb.....		1,733		5	5
Pork bellies ¹	18,000 lb.....		54			
International Commercial Exchange.....		28,784	26,604	3,387	728	904
Cocoa.....	30,000 lb.....	989,456	210,433	280,336	337,040	475,760
New York Cocoa Exchange.....		389,956	210,433	280,336	337,040	475,760
Coffee "C" ¹	37,500 lb.....	19,980	94	175		
Coffee "U" ¹	32,500 lb.....			1	5	137
Molasses.....	40,000 gal.....				445	
Sugar No. 8 world.....	112,000 lb.....			76,105	442,383	564,227
Sugar No. 10.....	112,000 lb.....	22,049	15,791	7,132	15,044	9,499
Sugar No. 11.....	112,000 lb.....	1,018,591	652,344	286,644	1,710	
New York Coffee and Sugar Exchange.....		1,060,620	668,229	370,057	459,587	573,863
Copper.....	25,000 lb.....	434,847	216,008	227,824	138,201	36,486
Hides ¹	40,000 lb.....				70	680
Lead.....	60,000 lb.....			18	56	233
Mercury.....	10 flasks.....	87	97	550	539	1,952
Propane.....	100,000 gal.....		1	800	520	1,624
Rubber.....	22,400 lb.....				40	53
Silver.....	10,000 oz.....	1,090,679	619,269	682,065	667,236	533,380
Tin.....	11,200 lb.....		2	37	103	254
Zinc.....	60,000 lb.....				29	129
Commodity Exchange, Inc.....		1,525,613	835,377	911,294	806,794	574,791
Cocoa.....	15,000 lb.....	3,929	6,828	3,719		
Coffee.....		1,982				
Copper.....	25,000 lb.....	5,118	5,545	2,103		
Diamonds.....	20 carats.....	2,678	896			
Gold.....	200 oz.....		475			
Silver.....	5,000 oz.....	118,603	54,338	28,193		
Silver coins.....	\$5,000.....		493	391		
Sugar.....	56,000 lb.....	52,015	24,748	3,856		
West Coast Commodity Exchange.....		182,343	93,323	38,262		
Total all futures contracts.....		23,504,598	15,582,660	14,443,096	12,277,418	10,310,034
Change from previous year (percent).....		+50.83	+7.89	+17.64	+19.08	+17.20

¹ Future contracts trading in 1972-73 regulated under the Commodity Exchange Act.

APPENDIX V

NAMES AND ADDRESSES OF COMMODITY EXCHANGES

ACTIVE CONTRACT MARKETS

- Chicago Board of Trade, 141 West Jackson Boulevard, Chicago, Illinois 60604.
- Chicago Mercantile Exchange, 444 West Jackson Boulevard, Chicago, Illinois 60606.
- MidAmerica Commodity Exchange, 175 West Jackson Boulevard, Chicago, Illinois 60604.
- The Board of Trade of Kansas City, Missouri, Inc., 4800 Main Street, Suite 274, Kansas City, Missouri 64112.
- Minneapolis Grain Exchange, 150 Grain Exchange Building, Minneapolis, Minnesota 55415.
- Citrus Associates of the New York Cotton Exchange, Inc., 37 Wall Street, New York, New York 10005.
- New York Cotton Exchange, 37 Wall Street, New York, New York 10005.
- New York Mercantile Exchange, 6 Harrison Street, New York, New York 10013.
- Wool Associates of the New York Cotton Exchange, Inc., 37 Wall Street, New York, New York 10005.
- Pacific Commodities Exchange, Inc., P.O. Box 2227, San Francisco, California 94126.

INACTIVE CONTRACT MARKET

- Memphis Board of Trade Clearing Association, 1390 Channel Avenue, P.O. Box 13302, Memphis, Tennessee 38113.

NONREGULATED EXCHANGES

- Commodity Exchange, Inc., 81 Broad Street, New York, New York 10004.
- New York Cocoa Exchange, Inc., 127 John Street, New York, New York 10038.
- New York Coffee & Sugar Exchange, 79 Pine Street, New York, New York 10005.

APPENDIX VI

SPECULATIVE LIMITS ON POSITIONS AND DAILY TRADING

Net position limits apply to the maximum net long or net short position which any person may hold or control in any one commodity on any contract market. Daily trading limits apply to the maximum

which a person may buy or sell on any one business day in any one commodity on any one contract market. The Federal limits on net positions and daily trading which have been set by the Commodity Exchange Commission are listed in Table 1.

For some commodity futures contracts regulated under the Commodity Exchange Act and all unregulated contracts, there are no Federal speculative limits. For many of these contracts, however, the exchanges have established limits. Examples of some of the speculative limits established by the exchanges for regulated commodities are given in Table 2. Examples of some of the exchange limits for unregulated commodities are shown in Table 3.

TABLE 1.—SPECULATIVE LIMITS ON POSITION AND DAILY TRADING UNDER THE COMMODITY EXCHANGE ACT

Commodity	Net position limits (long or short in 1 market)		Daily trading limits on purchases or on sales in 1 market	
	One future	All futures combined	One future	All futures combined
Wheat, oats, barley, flaxseed (bushels in 1 grain).....	2,000,000	¹ 2,000,000	2,000,000	¹ 2,000,000
Rye (bushels).....	500,000	500,000	500,000	500,000
Corn, soybeans (bushels).....	3,000,000	3,000,000	3,000,000	3,000,000
Cotton (bales).....	² 30,000	² 30,000	² 30,000	None
Eggs (carlots) ³	150	150	150	150
Potatoes (carlots):				
March future.....	⁴ 150	} ⁴ 350	⁴ 150	} ⁴ 350
April future.....	150		150	
May future.....	150		150	
Other futures.....	300		300	

¹ 3,000,000 bu if 1,000,000 bu or more of total represent spreading or the closing of spreads in the same grain between markets.

² Does not apply, except during delivery month, to trades or positions which represent straddling or the closing of straddles between futures or markets. Limits do not apply to bona fide hedging transactions or positions. For complete information see specific orders of the Commodity Exchange Commission.

³ 1 carlot equals 22,500 doz.

⁴ 1 carlot equals 50,000 lb.

TABLE 2.—EXAMPLES OF EXCHANGE SPECULATIVE LIMITS ON POSITIONS AND DAILY TRADING IN REGULATED COMMODITIES NOT COVERED BY ORDERS OF THE COMMODITY EXCHANGE COMMISSION

Commodity	Contract units	Net position limits (contracts)		Daily trading limits (contracts) on purchases or on sales	
		One future	All futures combined	One future	All futures combined
Chicago Board of Trade:					
Soybean oil, lb.....	60,000	320	320	None	None
Soybean meal, tons.....	100	480	480	None	None
Chicago Mercantile Exchange:					
Butter, lb.....	39,000	150	150	225	225
Frozen eggs, lb.....	38,000				
Oct. future.....		150	} 150	150	} 150
Nov. future.....		125		125	
Dec. future.....		100		100	
Jan. future.....		100		100	
Live hogs, lb.....	30,000	300	750	450	1,125
Frozen pork bellies, lb.....	36,000				
Feb. future.....		150	} 250	225	} 375
Mar. future.....		150		225	
May future.....		200		300	
July future.....		150		225	
Aug. future.....		150		225	
Frozen skinned hams, lb.....	36,000	150	150	225	225
Live beef cattle, lb.....	40,000	300	None	450	None
Live feeder cattle, lb.....	42,000	300	None	450	None

TABLE 3.—EXAMPLES OF EXCHANGE SPECULATIVE LIMITS ON POSITIONS AND DAILY TRADING IN
NONREGULATED COMMODITIES

Commodity	Contract units	Net position limits		Daily trading limits on purchases or on sales	
		One future	All futures combined	One future	All futures combined
Chicago Board of Trade:					
Iced broilers.....lb.....	28,000	300	300	None	None
Silver.....Troy oz.....	5,000	None	None	None	None
Stud lumber.....fbm.....	100,000	300	300	None	None
Plywood.....ft ²	69,120	100	100	None	None
Chicago Mercantile Exchange:					
Lumber.....fbm.....	100,000	300	1,000	600	2,000

APPENDIX VII

REQUIRED REPORTS ON TRADING ACTIVITY

Each trader is required to file reports with the Commodity Exchange Authority when he holds or controls open contracts in any one future of any commodity on any one contract market equal to or exceeding the following amounts:

Commodity:	Quantity
Wheat.....	bushels..... 200,000
Corn.....	bushels..... 200,000
Oats.....	bushels..... 200,000
Rye.....	bushels..... 200,000
Barley.....	bushels..... 200,000
Flaxseed.....	bushels..... 200,000
Soybeans.....	bushels..... 200,000
Grain sorghums.....	pounds..... 11,200,000
Cotton.....	bales..... 5,000
Wool.....	pounds..... 150,000
Wool tops.....	pounds..... 125,000
Butter.....	carlots..... 25
Eggs—shell.....	carlots..... 25
Frozen whole.....	contract units..... 25
Frozen plain whites.....	contract units..... 25
Frozen plain yolks.....	contract units..... 25
Potatoes.....	carlots..... 25
Lard.....	pounds..... 1,000,000
Tallow.....	pounds..... 1,000,000
Cottonseed oil.....	pounds..... 1,500,000
Soybean oil.....	pounds..... 1,500,000
Cottonseed meal.....	tons..... 2,500
Soybean meal.....	tons..... 2,500
Mill feeds.....	tons..... 1,000
Live cattle.....	contract units..... 25
Cattle products.....	contract units..... 25
Live hogs.....	contract units..... 25
Frozen pork bellies.....	contract units..... 25
Frozen skinned hams.....	contract units..... 25
Hides.....	contract units..... 25
Frozen concentrated orange juice.....	contract units..... 25

APPENDIX VIII

EXAMPLES OF TYPICAL EXCHANGE LIMITS ON DAILY PRICE
FLUCTUATIONS

In order to restrain the market's reaction to sudden, unusual or catastrophic developments that affect price immediately and sharply,

exchanges—in most cases—sets limits on how much a futures price can go up or down in one trading day. Such limits provide time for margin calls and a temporary breathing spell until traders can assess the situation which led to the substantial change in price.

Limits on daily price fluctuations can cause problems, however. For example, when marketing conditions bring price increases in the cash market that are greater than those permitted on the futures markets, "shorts" may be locked into a market and unable to trade out their positions. Under these emergency conditions, exchange officials often increase the amount by which the daily futures price can change by changing the limit or removing the limit entirely.

Examples of typical exchange limits on daily price fluctuations are as follows:

Commodity and contract market

	<i>Amount</i>
Chicago Board of Trade:¹	
Wheat	20¢ per bushel.
Corn	10¢ per bushel.
Oats	6¢ per bushel.
Soybeans	20¢ per bushel.
Crude soybean oil.....	1¢ per lb.
Soybean meal.....	\$10 per ton.
Plywood	\$7 per 1,000 sq. ft.
Stud lumber.....	\$5 per 1,000 bd. ft.
Iced broilers.....	\$2 per 100 lbs.
Silver	10¢ per oz.
Chicago Mercantile Exchange:	
Eggs, frozen.....	1.5¢ per lb.
Eggs, shell.....	2¢ per doz.
Frozen pork bellies.....	1.5¢ per lb.
Live hogs.....	1.5¢ per lb.
Cattle, live.....	1¢ per lb.
Cattle, feeder.....	1¢ per lb.
Turkey	1.5¢ per lb.
Boneless beef.....	1.5¢ per lb.
Milo	15¢ per cwt.
Frozen skinned hams.....	1.5¢ per lb.
Butter	1.5¢ per lb.
Lumber	\$5 per 1,000 bd. ft.
Potatoes, Idaho.....	² 35¢ per cwt.
New York Mercantile Exchange:	
Potatoes, Maine.....	³ 50¢ per cwt.
Boneless beef.....	⁴ 1.5¢ per lb.
Platinum	⁵ \$15 per oz.
Palladium	⁶ \$4 per oz.
Silver coins.....	⁷ \$150 per bag.
New York Cotton Exchange: Cotton.....	
° 2¢ per lb.	
Pacific Commodity Exchange: Coconut oil.....	
° 1¢ per lb.	
Minneapolis Grain Exchange:¹ Wheat.....	
20¢ per bushel.	

¹ These figures indicate the limits which are normally in effect for daily price fluctuations. Successive limit price moves in the same direction and for several contracts will bring about automatic percentage increases in the limit for that particular commodity. The increased limit will automatically revert to its original level after designated periods of time or patterns of price behavior in the market.

² 50¢ during last two trading days of delivery month.

³ No limit on last trading day.

⁴ 2¢ per lb. in the delivery month.

⁵ Trades in any month shall not be made in any one day at an advance of more than \$10 per ounce, above the lowest previous price of such month on that day or at a decline of more than \$10 per ounce, below the highest previous price of such month on that day.

⁶ No limit in delivery month on or after first notice day.

⁷ No limit in delivery month.

APPENDIX IX

GLOSSARY OF TERMS USED IN COMMODITY FUTURES TRADING*

BASIS—The difference between the price of the cash commodity and the price of a designated futures contract for that commodity. Some cash commodities are priced and traded in relation to futures prices.

BROKER—One who executes the buy and sell orders of a customer for a commission.

BUCKETING—Directly or indirectly taking the opposite side of a customer's order into the handling brokers own account or into an account in which he has an interest, without bona fide speculation on an Exchange.

CASH COMMODITY—The physical or actual commodity as distinguished from the "futures."

CONTRACT MARKET—Exchange or Board of Trade where futures contracts are traded and so designated by the Secretary of Agriculture under authority of the C. E. Act, Sec. 5.

CLEARING HOUSE—The separate agency associated with a futures exchange through which futures contracts are offset or fulfilled and through which financial settlement is made (also **CLEARING ASSOCIATION**).

CLEARING MEMBER—A member of the Clearing House or Association. Each clearing member must also be a member of the Exchange. Each member of the exchange, however, need not be a member of the clearing association. If he is not, all of his trades must be registered and eventually settled through a clearing member.

CLEARING PRICE—*See* **SETTLEMENT PRICE**.

COMMERICAL—A company that merchandises or processes cash grain and other commodities.

COMMISSION HOUSE—A firm that specializes in executing buying or selling orders for customers in spot or cash and/or futures markets for a commission or does not itself deal in futures or actuals.

CONTRACT GRADES—The grades of a commodity listed in the Rules of an Exchange as those that can be used to deliver against a futures contract.

DAY ORDER—Orders that are placed for execution, if possible, during only one trading session. If the order cannot be executed that day, it is automatically canceled.

DELIVERY—The tender and receipt of the actual (cash) commodity, or of warehouse receipts covering such commodity, in settlement of a futures contract.

DELIVERY MONTH—The specified month within which a futures contract matures and can be settled by delivery.

DIFFERENTIALS—The price differences between grades of a commodity.

* *Note:* The inclusion of this glossary is intended for the convenience of Members of the Senate, their staff, and interested public. It is not, under any circumstances, to be deemed a set of legal definitions, nor a guide to interpretation of the present Act, H.R. 13113, or statements in the Committee report.

DISCRETIONARY ACCOUNT—An account for which buying and selling orders can be placed by a broker or other person, without the prior consent of the account owner for each such individual order; a blanket agreement having been initially granted by the account owner for such action, and requires an initial customer deposit of a minimum of \$5,000 under present CBOT and C.M.E. Rules.

DOUBLE HEDGING—As used by the CEA it implies a situation where a trader holds a long position in the futures market in excess of the speculative limit as an offset to a fixed price sale even though he has an ample supply of the commodity on hand to fill all sales commitments.

FLOOR BROKER—One who is registered with the CEA as a Floor Broker who may or may not be a member of a futures commission merchant (a firm trading on the Exchange), and who executes orders for others, himself, or the futures commission merchant's house account.

FLOOR TRADER—One who is employed by a futures commission merchant and who is not registered with the CE Auth. as Floor Broker, and who may execute only orders for the futures commission merchant's house account or for himself.

FUTURES CONTRACT—Contracts for the purchase and sale of commodities for delivery some time in the future on an organized exchange and subject to all terms and conditions included in the Rules of that Exchange.

FUTURES COMMISSION MERCHANT—Individuals, associations, partnerships, corporations and trusts engaging in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on and subject to the Rules of any contract market.

HEDGE—Hedging is the sale of futures against the purchase of the cash commodity or its equivalent as protection against a price decline; or the purchase of futures against forward sales or anticipated requirements of the physical commodity as protection against a price advance.

LIFE OF CONTRACT—The duration of the period in which trading can take place. In some cases this phrase is used to denote only the period already passed in which trading has already occurred. Example: "The life-of-contract high so far is \$2.50."

LONG—The buying side of an open futures contract. A long position is subject to receipt of the cash commodity if it is not offset with a sale of a futures contract.

INITIAL MARGIN—Customers' funds put up as security for a guarantee of contract fulfillment, and as defined by the Rules of the Exchange.

MARGIN MAINTENANCE—Additional funds required to be deposited by customers as the price of the commodity bought or sold fluctuates, and as defined by the Rules of the Exchange.

MARKET ORDER—An order to buy or sell a futures contract at whatever price it is obtainable at the time it is entered in the ring.

MATURITY—The time at which the futures contract can be settled by delivery of the actual commodity; the period between first day and last trading day.

MEMBERS' RATE—The commission charge for the executing of an order for a person who is a member of and thereby has a seat on the exchange. It is less than the commission charged to a customer who does not have a seat on the exchange. A member who also belongs to the Clearing Association pays no commission for his trades. He just pays clearances and other fees.

NON-MEMBER TRADERS—Speculators and hedgers who trade on the Exchange through a member.

OFFSET—Usually, the liquidation of a long or short futures position by an equal and opposite futures transaction. Open positions can be offset at any time during the life of a futures contract.

OMNIBUS ACCOUNT—An account which a member of one exchange has with, usually, a clearing member or another exchange and for which the first member is not required to disclose the names or other information concerning the one account, which actually represents the accounts of a number of customers of the first member.

OPEN CONTRACTS, OPEN INTEREST—The obligation entered into by a party to a futures contract either to buy or to sell the commodity specified. The obligation is "open" until it is settled by an offsetting transaction or by delivery.

OPEN INTEREST—The number of contracts which remain to be settled. It is equal to either the number of long positions in a market or the number of short positions. Since it takes both a long and a short to make one contract, the number of longs and shorts in a market are always equal.

OPTION—Commonly but incorrectly used to indicate a specific futures delivery month.

PIT—The place on an Exchange trading floor designated for the execution of orders.

POSITION—To be either long or short in the market.

POSITION LIMIT—The maximum number of futures contracts one can hold under the Rules of the CEA.

ROUND LOT—A full contract as opposed to the smaller job lot.

ROUND TURN—The completion of both a purchase and an offsetting sale, or a sale and an offsetting purchase.

SCALPING—Trading for small gains, many times for less than a full cent profit. It usually involves establishing and liquidating a position quickly, possibly within the same day.

SETTLEMENT PRICE—The daily price established by the clearinghouse, usually the closing price, which is used to adjust variation margin payments between clearinghouse and its members.

SHORT—The selling side of an open futures contract. A short position is subject to making delivery of the cash commodity if it is not offset with the purchase of a futures contract.

SOLICITOR—Customers' man assigned by a warehouse to obtain orders and give advice to clients.

SPECULATOR—A person entering into futures contracts for any purpose other than hedging.

SPOT PRICE—The price at which the physical commodity is selling.

SPREAD—(1) The purchase of one futures contract against the sale of another contract in a different future, a different commodity, or a different market. (2) The price difference between two futures in the same or different markets.

STRADDLE—The usually simultaneous purchase of one futures month and the sale of another either in the same or different commodity, or Exchange.

TELEPHONE MAN—Man assigned to a telephone post on the floor of the Exchange, whose duty it is to represent the company by receiving and transmitting orders to the floor brokers or traders.

TRADING LIMIT—The maximum price movement up or down permitted in one trading session under the Rules of an Exchange.

VOLUME OF TRADE—The number of transactions occurring during a specified period of time. It may be quoted as the number of contracts traded or in the total of physical units, such as bales or bushels, pounds or dozens.

WASH TRADING—Entering into, or purporting to enter into, transactions for the purpose of giving the appearance that purchases and sales are being or have been made without actually taking a position in the market.

APPENDIX X

SUMMARY OF THE PRESENT COMMODITY EXCHANGE ACT, AS AMENDED

<u>Act</u>	<u>7 U.S.C.</u>	
§ 1	§ 1	Short title, "Commodity Exchange Act."
§ 2(a)	§ 2	Definitions: Person - plural or singular, includes individuals, -- associations, partnerships, corporations, and trusts. Commodity - list of particular commodities subject to regulation. Future delivery - not to include any sale of any cash commodity for deferred shipment or delivery. Board of Trade - any exchange or association, incorporated or unincorporated, of persons engaged in buying or selling any commodity or receiving the same for sale on consignment. Interstate commerce - between any state, territory, or possession, or D. C., and any place outside thereof; or between points within the same state, territory, or possession, or D. C., but through any place outside thereof, or within any territory or possession, or D. C. Cooperative association of producers - cooperative association not less than 50 percent owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with the Capper-Volstead Act, and to include any organization acting for a group of such associations and owned or controlled by them, and business done for the United States or any agency thereof is not to be considered either member or non-member business for the purpose of determining compliance with the Capper-Volstead Act. Member of a contract market - to include owners or holders of membership or membership representation on contract markets or holders of members' trading privileges on such markets. Futures commission merchant - one who solicits or accepts future delivery orders on contract markets and who accepts property (or extends credit) to margin or secure trades or contracts resulting from orders. Floor broker - one who executes, for others, orders on the market. Commission - the Secretaries of Agriculture and Commerce and the Attorney General, or their designees.
§ 2(a)	§ 4	Liability of principal for act of agent within the scope of his employment or office.

- § 2(b) § 3 Transactions in interstate commerce--part of that current of commerce usual in the commodity trade whereby commodity and commodity products and by-products thereof are sent from one state, with the expectation that they will end their transit, after purchase, in another.
- § 3 § 5 Finding that futures transactions are affected with a national public interest, and need for regulation for protection of interstate commerce and the national public interest therein.
- § 4 § 6 Prohibition of trading in regulated commodities except on boards of trade designated as contract markets; record keeping requirements.
- § 4a § 6a Authority of the Commodity Exchange Commission to fix and proclaim limits on speculative futures trading. Paragraph (3) defines bona fide hedging transactions and positions not subject to such limits. Paragraph (4) provides that futures commission merchants and floor brokers are subject to the limits only insofar as they deal for their own accounts.
- § 4b § 6b Prohibition against cheating, defrauding, false reports and records, deceit, bucketing, in connection with certain transactions.
- § 4c § 6c Prohibition against (A) wash sales, cross trades, accommodation trades, fictitious sales, (B) privileges, indemnities, bids, offers, puts, calls, advanced guaranties, decline guaranties, (C) transactions used to cause prices not true and bona fide prices, to be reported, registered, or recorded.
- § 4d § 6d Registration requirement for futures commission merchants; segregation requirement for customers' funds; provisions regarding use of customers' funds.
- § 4e § 6e Registration requirement for floor brokers.
- § 4f(1) § 6f(1) Provisions regarding application for registration as futures commission merchant, information to be supplied.
- § 4f(2) § 6f(2) Provisions for minimum capital requirements for futures commission merchants.
- § 4g § 6g Authority to require futures commission merchants and floor brokers to report transactions and positions, their own and their customers', to require keeping of books and records, and to inspect same.

- § 4h § 6h Prohibition against operating a place of business where orders for futures contracts are solicited or accepted unless such orders are to be executed by or through a member of a contract market, and against misrepresentation by any person that he is a member of a contract market, or a registered futures commission merchant, or an agent of either, in connection with orders or contracts, and against misrepresentation in connection with the handling of such orders or contracts that the same are to be executed on, or by or through any member of, any contract market.
- § 4i § 6i Provision for reporting and record keeping by traders, of large positions, as the Secretary of Agriculture may require.
- § 5 § 7 Conditions and requirements for designation of a board of trade as a "contract market."
- (a) Location at a terminal market or provision for delivery at delivery point or points and upon terms and conditions approved by the Secretary.
- (b) Reporting of details and terms of all transactions by the board or the members thereof.
- (c) Prevention of dissemination of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of commodities.
- (d) Prevention of manipulation and cornering.
- (e) Rights of cooperative associations of producers.
- (f) Provision for enforcement of Secretary's orders denying trading privileges and Secretary's disapproval of bylaws, rules, regulations, or resolutions.
- § 5a § 7a Duties of contract markets.
- (1) Furnish the Secretary copies of bylaws, rules, regulations, and resolutions, and changes and proposed changes therein.
- (2) Record keeping.
- (3) Provision for warehouse record keeping and inspection.
- (4) Secretary's authority to order a period, upon expiration of a future, for delivery of cash commodities in satisfaction of contracts, to prevent "squeezes" and market congestion endangering price stability.

- § 7 § 11 Provision for a board of trade, designated a contract market, to have such designation vacated and set aside; provision for redesignation.
- § 8 § 12 Provision for investigations and public reports by the Secretary.
- § 8 § 12-1 Authorization for Secretary's making public, names and addresses of traders and amounts of commodities purchased or sold by each such trader; Secretary's furnishing information to other departments or agencies of the Executive Branch of the Government.
- § 8a § 12a Authority of the Secretary:
- (1) register futures commission merchants and floor brokers upon application;
 - (2) refuse to register any person (A) if already under suspension or revocation, (B) if found after opportunity for hearing, unfit, for cause, (C) for failure of an applicant for registration as futures commission merchant, to establish that he meets minimum financial requirements; provision for appeal;
 - (3) suspend or revoke registration of any person registered under the Act; basis therefor;
 - (4) fix and establish fees and charges for registrations and renewals thereof;
 - (5) general rule making authority;
 - (6) communicate to committees or officers of contract markets and publish facts concerning any transaction or market operation, including the names of parties thereto which, in the judgment of the Secretary, disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers;
 - (7) disapprove contract market bylaws, etc., relating to terms and conditions in contracts or other trading requirements; basis therefor: finding of violation;
- § 8b § 12b Provision for enforcement of Secretary's denials of trading privileges.
- § 9(a) § 13(a) Felony--embezzlement, stealing, purloining, or with criminal intent converting, customers' funds received by futures commission merchant--fine up to \$10,000, prison up to 5 yrs., or both.
- § 9(b) § 13(b) Felony--manipulations, corners, 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--fine up to \$10,000, prison up to 5 yrs., or both.

- § 9(c) § 13(c) Misdemeanor--violation of the provisions of section 4, 4a, 4b, 4c, 4d, 4e, 4h, 4i, or 8b (7 U.S.C. 6-6e, 6h, 6i, or 12b), or to fail to evidence any contract mentioned in section 4 (7 U.S.C. 6) by a record in writing as therein required-- fine up to \$10,000, prison up to 1 yr., or both.
- § 10 § 17 Separability provision--if any provision or the application thereof to any person or circumstances held invalid, validity of remainder of Act and application of such provisions to other persons and circumstances not to be affected thereby.
- § 11 § 14 Violations prior to November 1, 1922.
- § 12 § 16 Authority of Secretary to cooperate with other Departments, etc., appoint etc., officers and employees, make expenditures, etc., necessary to the administration of this Act; authorization for appropriations.
- § 13 § 13c Person who willfully aids, abets, or acts in combination or concert with any other person in, or who willfully causes, any violation of the Act, regulations, or orders, responsible as a principal in administrative proceedings. Secretary or Commission not required to report minor violations for prosecution, whenever it appears that the public interest does not require such action.

COMMODITY FUTURES TRADING COMMISSION
ACT OF 1974

REPORT

Together With

MINORITY VIEWS AND ADDITIONAL
MINORITY VIEWS

ON

H.R. 13113

A BILL TO AMEND THE COMMODITY EXCHANGE ACT
TO STRENGTHEN THE REGULATION OF FUTURES
TRADING, TO BRING ALL AGRICULTURAL AND OTHER
COMMODITIES TRADED ON EXCHANGES UNDER REGU-
LATION, AND FOR OTHER PURPOSES



APRIL 4, 1974.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commodity Futures Trading Commission Act of 1974".

TITLE I—COMMODITY FUTURES TRADING COMMISSION

SEC. 101. (a) Section 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2, 4), is amended—

(1) By inserting "(1)" after the subsection designation.

(2) By striking the last sentence of section 2(a) and inserting in lieu thereof the following new sentence: "The words 'the Commission' shall mean the Commodity Futures Trading Commission established under paragraph (2) of this subsection."

(3) By adding at the end thereof the following new paragraphs:

"(2) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of a Chairman and four other Commissioners, 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 (A) 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 (B) 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.

"(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, by and with the advice and consent of the Senate, 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 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, 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 of 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 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) 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.

“(8) The Commission shall, in cooperation with the Secretary of Agriculture, establish a separate office within the Department of Agriculture to be staffed with employees of the Commission for the purpose of maintaining 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 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.

“(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 Com-

mittee on Agriculture and the Senate Committee on Agriculture 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 and the Senate Committee on Agriculture 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) Section 12 of the Commodity Exchange Act, as amended (7 U.S.C. 16), is amended by striking such section and inserting in lieu thereof the following:

“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 the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978.”

SEC. 102. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraph:

“(60) Chairman, Commodity Futures Trading Commission.”

(b) Section 5315 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraph:

“(100) Members, Commodity Futures Trading Commission.”

(c) Section 5316 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraphs:

“(135) General Counsel, Commodity Futures Trading Commission.

“(136) Executive Director, Commodity Futures Trading Commission.”

Sec. 103. The Commodity Exchange Act, as amended, is amended—

(a) By striking the word “Secretary” and the words “Secretary of Agriculture” wherever such words appear therein (except where the words “Secretary of Agriculture” first appear in section 5(a) (7 U.S.C. 7) or where said words would be stricken by subsection (b), (c), or (d) of this section) and by inserting in lieu thereof the word “Commission”.

(b) By striking the words “the Secretary of Agriculture or” wherever they appear in the phrase “the Secretary of Agriculture or the Commission”.

(c) By striking the words “the Secretary of Agriculture, who shall thereupon notify the other members of” from section 6(a) thereof (7 U.S.C. 8).

(d) By striking “the Secretary of Agriculture (or any person designated by him),” from section 6(b) thereof (7 U.S.C. 15).

(e) By striking the word “he”, “his”, or “He” wherever such word is used therein to refer to the Secretary of Agriculture, and by inserting in lieu thereof the word “it”, “its”, or “It”, respectively.

(f) By striking the words “United States Department of Agriculture” and “Department of Agriculture” wherever they appear therein and by inserting in lieu thereof the word “Commission”.

(g) By inserting in section 5(a) (7 U.S.C. 7) after the words “Secretary of Agriculture” where the same first appear therein the words “or the Commission”.

Sec. 104. All of the personnel of the Commodity Exchange Authority, property, records, and unexpended balance of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with administration of the Commodity Exchange Act shall be transferred to the Commodity Futures Trading Commission upon the effective date of this Act.

Sec. 105. Section 8 of the Commodity Exchange Act, as amended (7 U.S.C. 12, 12-1), is amended by adding at the end thereof the following new paragraphs:

“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 recommendations for further legislation as it may deem advisable with respect to the administration of this Act and its powers and functions under this Act.

“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 he may require and he and his duly authorized representatives 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 his 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.”

SEC. 106. The Commodity Exchange Act, as amended, is amended by adding at the end thereof the following new section:

“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 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.

“(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 \$2,500, a hearing need not be held and proof in support of the complaint and in support of the respondent’s answer may be supplied in the form of depositions or verified statements of fact.

“(c) After opportunity for hearing on complaints where the damages claimed exceed the sum of \$2,500 has been provided or waived and on complaints where damages claimed do not exceed the sum of \$2,500 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) 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) 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 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) of this section, an order of the Commission awarding reparations shall be final and conclusive.

“(g) 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.

“(i) The provisions of this section shall not become effective until one year after the date of its enactment: *Provided*, That claims which arise within nine months immediately prior to the effective date of this section may be heard by the Commission after such one year period.”

SEC. 107. The Commodity Exchange Act, as amended, is amended by adding at the end thereof the following new section:

“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.”

TITLE II—REGULATION OF TRADING AND EXCHANGE ACTIVITIES

SEC. 201. Section 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2, 4), is amended—

(a) By striking after the word “eggs,” the word “onions,”.

(b) By striking the period at the end of the third sentence of the section and substituting therefor the following: “, 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 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 217 of the Commodity Futures Trading Commission Act of 1974: *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 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.”

SEC. 202. Section 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2, 4), is amended by adding at the end of paragraph (1) the following new sentences: “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 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."

SEC. 203. The Commodity Exchange Act, as amended, is amended by inserting after section 4i (7 U.S.C. 6i), the following new section:

"Sec. 4j. (1) The Commission shall within six 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 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 six 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. 204. (a) The Commodity Exchange Act, as amended, is amended by adding the following new section:

“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 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 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) or 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 date thereof, 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, the effective period of such registration shall be set by the Commission, not to exceed two years from the effective date thereof and not to be less than one year from the effective date thereof.”

(b) Section 6(b) of the Commodity Exchange Act, as amended (7 U.S.C. 9), is amended by inserting after the words “futures commission merchant” each time those words appear, the following: “or any person associated therewith as described in section 4k of this Act.”

(c) Section 8a(1) of the Commodity Exchange Act, as amended (7 U.S.C. 12a(1)), is amended by inserting after the words “futures commission merchants” the following: “and persons associated therewith as described in section 4k of this Act.”

SEC. 205. (a) The Commodity Exchange Act, as amended, is amended by adding the following new sections:

“SEC. 4l. 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;

“(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. 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.

"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 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) Except as hereinafter provided, such registration shall become effective thirty days after the receipt of such application by the Commission, or within such shorter period of time as the Commission may determine.

"(3) All registrations under this section shall expire on the 30th day of June of each year, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

"(4) (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.

“(5) 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.

“(6) 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.

“(7) 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—

“(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 market.

“Sec. 4o. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator registered under this Act, 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.”

(b) Section 6(b) of the Commodity Exchange Act, as amended (7 U.S.C. 9), is amended by inserting immediately before the words “or as floor broker” each time those words appear, the following: “commodity trading advisor, commodity pool operator.”

(c) Section 8a(1) of the Commodity Exchange Act, as amended (7 U.S.C. 12a(1)), is amended by inserting immediately before the words “and floor brokers” the following: “commodity trading advisors, commodity pool operators.”

SEC. 206. The Commodity Exchange Act, as amended, is amended by adding the following new section:

“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. 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.”

SEC. 207. Section 5 of the Commodity Exchange Act, as amended (7 U.S.C. 7), is amended by adding after subsection (f) thereof the following new subsection:

“(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.”

SEC. 208. Section 5a of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended—

(a) By inserting after the word "purposes" in subsection (7) the following: "*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".

(b) By striking out "and" at the end of subsection (8).

(c) By striking out the period at the end of subsection (9) and inserting in lieu thereof a semicolon.

(d) By adding at the end of subsection (9) thereof the following new subsection:

"(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;"

SEC. 209. Section 5a of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended by adding a new subsection (11) as follows:

"(11) provide a fair and equitable 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, (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".

SEC. 210. Section 5a of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended by inserting the following new subsection (12) as follows:

"(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. The Commission shall approve, within thirty days of their receipt 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 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."

SEC. 211. The Commodity Exchange Act, as amended, is amended by inserting the following new section immediately after section 6b (7 U.S.C. 13a):

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

(1) By substituting a comma for the period at the end of the fourth sentence in paragraph (b) and adding thereafter the following: “and may assess such person a civil penalty of not more than \$100,000 for each such violation.”

(2) By adding in the sixth sentence in paragraph (b), a comma after the word “petition” and inserting thereafter and before the word “praying” the following phrase: “within fifteen days after the notice of such order is given to the offending person.”

(3) By adding after paragraph (c) thereof the following new paragraph:

“(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.”

(b) Section 6b of the Commodity Exchange Act, as amended (7 U.S.C. 13a), is amended to read as follows:

“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 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 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 mate-

rially impair the contract market's ability to carry on its operations and duties."

(c) Section 6(c) of the Commodity Exchange Act, as amended (7 U.S.C. 13b), is amended by deleting the words "not less than \$500 nor more than \$10,000" and substituting therefor the words "not more than \$100,000".

(d) Section 9 of the Commodity Exchange Act, as amended (7 U.S.C. 13), is amended as follows:

(1) Subsection (a) is amended by striking "\$10,000" and substituting therefor "\$100,000".

(2) Subsection (b) is amended by striking "\$10,000" and substituting therefor "\$100,000".

(3) Subsection (c) is amended by striking "\$10,000" and substituting therefor "\$100,000".

SEC. 213. Section 8a of the Commodity Exchange Act, as amended (7 U.S.C. 12a), is amended by striking subsection (7) and inserting in lieu thereof the following new subsection:

"(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".

SEC. 214. Section 8a of the Commodity Exchange Act, as amended (7 U.S.C. 12a), is amended by adding the following new subsection (8):

"(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".

SEC. 215. Section 8a of the Commodity Exchange Act, as amended (7 U.S.C. 12a), is amended by adding the following new subsection (9):

“(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 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.”

SEC. 216. The Commodity Exchange Act, as amended, is amended by inserting the following new section immediately after section 8b (7 U.S.C. 12b):

“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, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. Otherwise the notice and reasons shall be kept confidential.

“(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. 217. (a) 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, pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract contrary to any rule, regulation, or order of the Commodity Futures Trading Commission designed to insure 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. If the Commission determines that any such transaction is a contract for future delivery within the meaning of the Commodity Exchange Act, as amended, such transaction shall be regulated in accordance with the provisions of such Act.

(b) The provisions of section 9(c) of the Commodity Exchange Act, as amended, shall be applicable with respect to persons who violate the provisions of this section.

TITLE III—ENABLING AUTHORITY FOR CREATION OF
NATIONAL FUTURES ASSOCIATIONS

Sec. 301. The Commodity Exchange Act, as amended, is amended by adding the following new section:

“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 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 with in 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 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 (7 U.S.C. 9), 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) provide 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, and other qualifications (including, in the case of an applicant for membership, financial responsibility) of the appli-

cant and that the association shall adopt procedures for verification of qualifications of the applicant.

“(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.

“(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 \$5,000, (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.

"(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 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) 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.

“(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.

“(k) (1) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice 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 for 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 title 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 title 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 title 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 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) 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.”

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. Section 9 of the Commodity Exchange Act, as amended (7 U.S.C. 13), is amended by adding the following new subsections:

“(d) It shall be a felony punishable by a fine of not more than \$10,000 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.

“(e) It shall be a felony punishable by a fine of not more than \$10,000 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’; 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.’”

SEC. 402. Section 4c of the Commodity Exchange Act, as amended (7 U.S.C. 6c), is amended—

(a) By inserting “(a)” after “SEC. 4c.”

(b) By striking paragraph (B) in its entirety and inserting in lieu thereof the following:

“(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) By adding at the end thereof the following new subsection:

“(b) No person shall offer to enter into, 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 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."

(d) By striking the last sentence of subsection (a) as designated by this section.

Sec. 403. Section 4a(1) of the Commodity Exchange Act, as amended (7 U.S.C. 6a), is amended by inserting, following the word "straddles" in the last sentence of such paragraph the words "or 'arbitrage'" and by adding the following new sentences at the end of such paragraph: "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'."

Sec. 404. Section 4a(3) of the Commodity Exchange Act, as amended (7 U.S.C. 6a), is amended by deleting the period at the end of the first sentence and adding "as such terms shall be defined by the Commission within ninety days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this Act."; and by deleting, effective immediately on enactment of this Act, the remainder of paragraph (3): *Provided*, That notwithstanding any other provision of law, the Secretary of Agriculture, immediately upon the enactment of the Commodity Futures Trading Commission Act of 1974, is authorized and directed to promulgate regulations defining bona fide hedging transactions and positions: *And provided further*, That until the Secretary issues such regulations defining bona fide hedging transactions and positions and such regulations are in full force and effect, such terms shall continue to be defined as set forth in the Commodity Exchange Act prior to its amendment by the Commodity Futures Trading Commission Act of 1974.

Sec. 405. Section 4b of the Commodity Exchange Act, as amended (7 U.S.C. 6b), is amended—

(a) By deleting the word "cotton" where it appears in the last full paragraph of such section, and inserting in lieu thereof the words "a commodity".

(b) By striking the period at the end of such section and adding the following: ": *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. 406. Section 5a(6) of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended by deleting the semicolon at the end of said subsection and inserting in lieu thereof the following: "and adopted by the Commission;".

Sec. 407. Section 5a(8) of the Commodity Exchange Act, as amended (7 U.S.C. 7a), is amended—

(a) By deleting the words "not been disapproved by the Secretary of Agriculture pursuant to paragraph (7) of section 8a" and inserting in lieu thereof the words "been approved by the Commission pursuant to paragraph (12) of section 5a".

(b) By deleting the word "so", and inserting the words "by the Commission" immediately before the semicolon at the end of such subsection.

SEC. 408. Section 6(b) of the Commodity Exchange Act, as amended (7 U.S.C. 9), is amended—

(a) By striking in the second sentence "a referee" and inserting in lieu thereof "an Administrative Law Judge".

(b) By striking the word "referee" each other place it appears and inserting in lieu thereof "Administrative Law Judge".

SEC. 409. Section 9(c) of the Commodity Exchange Act, as amended (7 U.S.C. 13), is amended by inserting after "section 4i" the following: "section 4k, section 4m, section 4o,".

SEC. 410. Section 5108(c) of title 5 of the United States Code is amended by adding after paragraph (11) thereof the following new paragraph:

"(12) The Commodity Futures Trading Commission, subject to the standards and procedures prescribed by this chapter, may place an additional twenty positions in GS-16, GS-17, and GS-18 for purposes of carrying out its functions."

SEC. 411. All operations of the Commodity Exchange Commission and of the Secretary of Agriculture under the Commodity Exchange Act, including all pending administrative proceedings, shall be transferred to the Commodity Futures Trading Commission as of the effective date of this Act and continue to completion. All rules, regulations, and orders heretofore issued by the Commodity Exchange Commission and by the Secretary of Agriculture under the Commodity Exchange Act to the extent not inconsistent with the provisions of this Act shall continue in full force and effect unless and until terminated, modified, or suspended by the Commodity Futures Trading Commission.

SEC. 412. Pending proceedings under existing law shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended, in effect prior to the effective date of this Act.

SEC. 413. 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 the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 414. The Commodity Exchange Act, as amended, is amended by adding the following new section at the end thereof:

"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 Commis-

sion 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 of any person and trade secrets or names of customers except as provided in section 8 of this Act.”

SEC. 415. Section 4g of the Commodity Exchange Act, as amended, is amended by inserting “(1)” after the section designation and by adding the following new subsections:

“(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) 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.

“(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. 416. The Commodity Exchange Act, as amended, is amended by adding at the end thereof the following new 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. 417. The Commodity Futures Trading Commission shall submit to the Congress, not later than June 30, 1976, a report respecting the need for legislation insuring owners of commodity futures accounts and persons handling or clearing trades in such accounts against loss by reason of the insolvency or financial failure of a futures commission merchant carrying such accounts. The report shall contain the recommendations of the Commission concerning the form and nature of any such legislation.

SEC. 418. (a) Except as otherwise provided specifically in this Act, the effective date of this Act shall be the 180th day after enactment. The Commission referred to in section 101 is hereby established effective immediately on enactment of this Act. Sections 102 and 410 shall

be effective immediately on enactment of this Act. Activities necessary to implement the changes effected by this Act may be carried out after the date of enactment and before as well as after the 180th day thereafter. Activities to be carried out after the date of enactment and before the 180th day thereafter may include, but are not limited to the following: designation of boards of trade as contract markets, registration of futures commission merchants, floor brokers, and other persons required to be registered under the Act, approval or modification of bylaws, rules, regulations, and resolutions of contract markets, and issuance of regulations, effective on or after the 180th day after enactment; appointment and compensation of the members of the Commission; hiring and compensation of staff; and conducting of investigations and hearings. Nothing in this Act shall limit the authority of the Secretary of Agriculture or the Commodity Exchange Commission under the Commodity Exchange Act, as amended, prior to the 180th day after enactment of this Act.

(b) Funds appropriated for the administration of the Commodity Exchange Act, as amended, may be used to implement this Act immediately after the date of enactment of this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Office of the White House Press Secretary
(Des Moines, Iowa)

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am pleased to announce that I have signed into law H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This act will provide the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. This is an objective which I fully support.

This legislation was prompted by increasing concern that Federal regulation of commodity futures trading is too narrow in scope and that the present regulatory system is inadequate. In the past few years, the Federal Government has disposed of large accumulations of minerals and agricultural commodities. But present stocks are not large enough to stabilize prices. The recent market situation has been characterized by widely swinging prices. The futures markets have become increasingly important to our marketing system -- with the value of futures trading now totaling \$500 billion annually.

The increased trading has attracted more speculators and vastly increased the potential for unethical and illegal practices. This has resulted in failures of financial firms and losses by innocent investors.

Consumers also have suffered since the gyrations of the futures markets have, in some cases, driven up prices to consumers.

It is important that futures trading take place under conditions in which traders and the public have full confidence in the system. This new law is an important step in this direction.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the new Commodity Futures Trading Commission to compromise traditional Executive Branch functions. I find these provisions unacceptable as well as being unnecessary for the effective operation of the Commission.

The first one would require the concurrent submission of Commission budget requests to Congress and to the President or to the Office of Management and Budget. This would in effect undercut the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget. It also represents a retreat from my goal of reduced federal spending, since it will make it more difficult for me to review all requests for federal spending in advance of submission to Congress.

Second, as with the budget requests, it would require concurrent submission of the Commission's legislative proposals. If extended to other agencies, such a requirement would make it difficult for me to develop and present to the Congress a coherent, coordinated legislative program.

Third, the Commission is empowered to appoint an Executive Director by and with the advice and consent of the Senate. This raises serious constitutional questions, by providing for an Executive Branch appointment in a manner not contemplated by the Constitution. This encroachment on the separation of powers can easily be corrected by deletion of the request for Senate confirmation of the Executive Director.

MORE

Nevertheless, because of the need for better regulation of commodity futures trading, I have signed H.R. 13113, notwithstanding my strong objections to these three provisions which erode necessary Executive control. I will submit to the Congress legislation which would correct these three provisions and I will strongly urge its passage during this session of the 93rd Congress.

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(11)

October 11, 1974

Dear Mr. Director:

The following bills were received at the White House on October 11th:

H.J. Res. 898 ✓	H.R. 11510 ✓
H.R. 3903 ✓	H.R. 13113 ✓
H.R. 9075 ✓	H.R. 13261 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.