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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. GOODLATTE introduced the following bill; which was referred to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “CFTC Reauthorization
5 Act of 2005”.



1 **SEC. 2. COMMISSION AUTHORITY OVER AGREEMENTS, CON-**
2 **TRACTS OR TRANSACTIONS IN FOREIGN CUR-**
3 **RENCY.**

4 (a) IN GENERAL.—Section 2(c)(2) of the Commodity
5 Exchange Act (7 U.S.C. 2(c)(2)) is amended by striking
6 subparagraphs (B) and (C) and inserting the following:

7 “(B) AGREEMENTS, CONTRACTS, AND
8 TRANSACTIONS IN RETAIL FOREIGN CUR-
9 RENCY.—

10 “(i) This Act applies to, and the Com-
11 mission shall have jurisdiction over, an
12 agreement, contract, or transaction in for-
13 eign currency that—

14 “(I) is a contract of sale of a
15 commodity for future delivery (or an
16 option on such a contract) or an op-
17 tion (other than an option executed or
18 traded on a national securities ex-
19 change registered pursuant to section
20 6(a) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78f(a))); and

22 “(II) is offered to, or entered
23 into with, a person that is not an eli-
24 gible contract participant, unless the
25 counterparty, or the person offering to



1 be the counterparty, of the person
2 is—

3 “(aa) a financial institution;

4 “(bb)(AA) a broker or deal-
5 er registered under section 15(b)
6 (except paragraph (11) thereof)
7 or 15C of the Securities Ex-
8 change Act of 1934 (15 U.S.C.
9 78o(b), 78o-5); or

10 “(BB) an associated person
11 of a broker or dealer registered
12 under section 15(b) (except para-
13 graph (11) thereof) or 15C of the
14 Securities Exchange Act of 1934
15 (15 U.S.C. 78o(b), 780-5) con-
16 cerning the financial or securities
17 activities of which the broker or
18 dealer makes and keeps records
19 under section 15C(b) or 17(h) of
20 the Securities Exchange Act of
21 1934 (15 U.S.C. 78o-5(b),
22 78q(h));

23 “(cc) a futures commission
24 merchant registered under this
25 Act (that is not also a person de-



1 scribed in item (bb)), or an affili-
2 ated person of such a futures
3 commission merchant (that is not
4 also a person described in item
5 (bb)) if such futures commission
6 merchant makes and keeps
7 records under section 4f(c)(2)(B)
8 of this Act concerning the futures
9 and other financial activities of
10 such affiliated person;

11 “(dd) an insurance company
12 described in section 1a(12)(A)(ii)
13 of this Act, or a regulated sub-
14 subsidiary or affiliate of such an in-
15 surance company;

16 “(ee) a financial holding
17 company (as defined in section 2
18 of the Bank Holding Company
19 Act of 1956); or

20 “(ff) an investment bank
21 holding company (as defined in
22 section 17(i) of the Securities
23 Exchange Act of 1934 (15
24 U.S.C. 78q(i))).



1 “(ii) Notwithstanding item (cc) of
2 clause (i)(II) of this subparagraph, agree-
3 ments, contracts, or transactions described
4 in clause (i) of this subparagraph shall be
5 subject to subsection (a)(1)(B) of this sec-
6 tion and sections 4(b), 4b, 4c(b), 4o, 6(c)
7 and 6(d) (except to the extent that sections
8 6(c) and 6(d) prohibit manipulation of the
9 market price of any commodity in inter-
10 state commerce, or for future delivery on
11 or subject to the rules of any market), 6c,
12 6d, 8(a), 13(a), and 13(b) if such agree-
13 ments, contracts, or transactions are of-
14 fered, or entered into, by a person that is
15 registered as a futures commission mer-
16 chant or an affiliated person of a futures
17 commission merchant registered under this
18 Act that is not also a person described in
19 any of items (aa), (bb), (dd), (ee), or (ff)
20 of clause (i) of this subparagraph.

21 “(iii)(I) Notwithstanding item (cc) of
22 clause (i)(II), a particular person shall not
23 participate in the solicitation or rec-
24 ommendation of any agreement, contract,
25 or transaction described in clause (i) en-



1 tered into with or to be entered into with
2 a person described in such item, unless the
3 particular person—

4 “(aa) is registered in such capac-
5 ity as the Commission by rule, regula-
6 tion, or order shall determine; and

7 “(bb) is a member of a futures
8 association registered under section
9 17.

10 “(II) Subclause (I) shall not apply
11 to—

12 “(aa) any person described in
13 any of items (aa), (bb), (dd), (ee), or
14 (ff) of subparagraph (B)(i)(II); or

15 “(bb) any such person’s associ-
16 ated persons.

17 “(C)(i)(I) This subparagraph shall apply to
18 any agreement, contract or transaction in for-
19 eign currency that is—

20 “(aa) offered to, or entered into
21 with, a person that is not an eligible
22 contract participant (except that this
23 subparagraph shall not apply if the
24 counterparty, or the person offering to
25 be the counterparty, of the person



1 that is not an eligible contract partici-
2 pant is a person described in any of
3 items (aa), (bb), (dd), (ee), or (ff) of
4 subparagraph (B)(i)(II)); and

5 “(bb) offered, or entered into, on
6 a leveraged or margined basis, or fi-
7 nanced by the offeror, the
8 counterparty, or a person acting in
9 concert with the offeror or
10 counterparty on a similar basis.

11 “(II) Subclause (I) shall not apply to—

12 “(aa) a security (as defined in section
13 1a(30)) that is not a security futures prod-
14 uct (as defined in section 1a(32)); or

15 “(bb) a contract of sale that—

16 “(AA) results in actual delivery
17 within 2 days; or

18 “(BB) creates an enforceable ob-
19 ligation to deliver between a seller and
20 buyer that have the ability to deliver
21 and accept delivery, respectively, in
22 connection with their line of business.

23 “(ii)(I) Agreements, contracts, or trans-
24 actions described in clause (i) of this subpara-
25 graph shall be subject to subsection (a)(1)(B)



1 of this section and sections 4(b), 4b, 4c(b), 4o,
2 6(e) and 6(d) (except to the extent that sections
3 6(e) and 6(d) prohibit manipulation of the mar-
4 ket price of any commodity in interstate com-
5 merce, or for future delivery on or subject to
6 the rules of any market), 6e, 6d, 8(a), 13(a),
7 and 13(b).

8 “(II) Subclause (I) of this clause shall not
9 apply to—

10 “(aa) any person described in any of
11 items (aa), (bb), (dd), (ee), or (ff) of sub-
12 paragraph (B)(i)(II); or

13 “(bb) any such person’s associated
14 persons.

15 “(iii)(I) A person shall not participate in
16 the solicitation or recommendation of any
17 agreement, contract, or transaction described in
18 clause (i) of this subparagraph unless the per-
19 son is registered in such capacity as the Com-
20 mission by rule, regulation or order shall deter-
21 mine, and is a member of a futures association
22 registered under section 17.

23 “(II) Subclause (i) shall not apply to any
24 person—



1 “(aa) any person described in any of
2 items (aa), (bb), (dd), (ee), or (ff) of sub-
3 paragraph (B)(i)(II); or

4 “(bb) any such person’s associated
5 persons.

6 “(iv) Sections 4(b) and 4b shall apply to
7 any agreement, contract, or transaction de-
8 scribed in clause (i) of this subparagraph as if
9 the agreement, contract, or transaction were a
10 contract of sale of a commodity for future deliv-
11 ery.

12 “(v) This subparagraph shall not be con-
13 strued to limit any jurisdiction that the Com-
14 mission may otherwise have under any other
15 provision of this Act over an agreement, con-
16 tract, or transaction that is a contract of sale
17 of a commodity for future delivery.

18 “(vi) This subparagraph shall not be con-
19 strued to limit any jurisdiction that the Com-
20 mission or the Securities and Exchange Com-
21 mission may otherwise have under any other
22 provision of this Act with respect to security fu-
23 tures products and persons effecting trans-
24 actions in security futures products.”.



1 (b) EFFECTIVE DATE.—Clause (iii) of section
2 2(c)(2)(B) and clause (iii) of section 2(c)(2)(C) of the
3 Commodity Exchange Act, as amended by subsection (a)
4 of this section, shall be effective 120 days after the date
5 of the enactment of this Act or such other time as the
6 Commodity Futures Trading Commission shall determine.

7 **SEC. 3. ANTIFRAUD AUTHORITY.**

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

10 (1) by redesignating subsections (b) and (c) as
11 subsections (c) and (d), respectively; and

12 (2) by striking “SEC. 4b.” and all that follows
13 through the end of subsection (a) and inserting the
14 following:

15 **“SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MIS-**
16 **LEAD.**

17 “(a) UNLAWFUL ACTIONS.—It shall be unlawful—

18 “(1) for any person, in or in connection with
19 any order to make, or the making of, any contract
20 of sale of any commodity in interstate commerce or
21 for future delivery that is made, or to be made, on
22 or subject to the rules of a designated contract mar-
23 ket, for or on behalf of any other person; or

24 “(2) for any person, in or in connection with
25 any order to make, or the making of, any contract



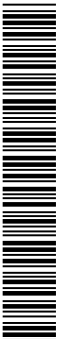
1 of sale of any commodity for future delivery, or
2 other agreement, contract, or transaction subject to
3 paragraphs (1) and (2) of section 5a(g), that is
4 made, or to be made, for or on behalf of, or with,
5 any other person, other than on or subject to the
6 rules of a designated contract market—

7 “(A) to cheat or defraud or attempt to
8 cheat or defraud such other person;

9 “(B) willfully to make or cause to be made
10 to such other person any false report or state-
11 ment or willfully to enter or cause to be entered
12 for such other person any false record;

13 “(C) willfully to deceive or attempt to de-
14 ceive such other person by any means whatso-
15 ever in regard to any order or contract or the
16 disposition or execution of any order or con-
17 tract, or in regard to any act of agency per-
18 formed, with respect to any order or contract
19 for or, in the case of paragraph (2), with such
20 other person; or

21 “(D)(i) to bucket an order if such order is
22 either represented by such person as an order
23 to be executed, or is required to be executed, on
24 or subject to the rules of a designated contract
25 market; or



1 “(ii) to fill an order by offset against the
2 order or orders of any other person, or willfully
3 and knowingly and without the prior consent of
4 such other person to become the buyer in re-
5 spect to any selling order of such other person,
6 or become the seller in respect to any buying
7 order of such other person, if such order is ei-
8 ther represented by such person as an order to
9 be executed, or is required to be executed, on or
10 subject to the rules of a designated contract
11 market unless such order is executed in accord-
12 ance with the rules of the designated contract
13 market.

14 “(b) CLARIFICATION.—Subsection (a)(2) shall not
15 obligate any person, in or in connection with a transaction
16 in a contract of sale of a commodity for future delivery,
17 or other agreement, contract or transaction subject to
18 paragraphs (1) and (2) of section 5a(g), with another per-
19 son, to disclose to such other person nonpublic information
20 that may be material to the market price, rate or level
21 of such commodity or transaction, except as necessary to
22 make any statement made to such other person in or in
23 connection with such transaction, not misleading in any
24 material respect.”.



1 **SEC. 4. PORTFOLIO MARGINING AND SECURITY INDEX**
2 **ISSUES.**

3 (a) The agencies represented on the President's
4 Working Group on Financial Markets shall work to ensure
5 that the Securities and Exchange Commission (SEC), the
6 Commodity Futures Trading Commission (CFTC), or
7 both, as appropriate, have taken the actions required
8 under subsection (b).

9 (b) The SEC, the CFTC, or both, as appropriate,
10 shall take action under their existing authorities to
11 permit—

12 (1) by September 30, 2006, risk-based portfolio
13 margining for security options and security futures
14 products; and

15 (2) by June 30, 2006, the trading of futures on
16 certain security indexes by resolving issues related to
17 debt security indexes and foreign security indexes.

18 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

19 Section 12(d) of the Commodity Exchange Act (7
20 U.S.C. 16) is amended to read as follows:

21 “(d) There are authorized to be appropriated such
22 sums as are necessary to carry out this Act for each of
23 the fiscal years 2006 through 2010.”



1 **SEC. 6. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) Section 4a(e) of the Commodity Exchange Act (7
3 U.S.C. 6a(e)) is amended in the last proviso by striking
4 “section 9(c)” and inserting “section 9(a)(5)”.

5 (b) Section 4f(c)(4)(B)(i) of such Act (7 U.S.C.
6 6f(c)(4)(B)(i)) is amended by striking “compiled” and in-
7 serting “complied”.

8 (c) Section 4k of such Act (7 U.S.C. 6k) is amended
9 by redesignating the second paragraph (5) as paragraph
10 (6).

11 (d) The Commodity Exchange Act is amended—

12 (1) by redesignating the first section 4p (7
13 U.S.C. 6o-1), as added by section 121 of the Com-
14modity Futures Modernization Act of 2000, as sec-
15tion 4q; and

16 (2) by moving such section to after the second
17 section 4p, as added by section 206 of Public Law
18 93-446.

19 (e) Subsections (a)(1) and (d)(1) of section 5c of such
20 Act (7 U.S.C. 7a-2(a)(1), (d)(1)) are each amended by
21 striking “5b(d)(2)” and inserting “5b(c)(2)”.

22 (f) Sections 5c(f) and 17(r) of such Act (7 U.S.C.
23 7a-2(f), 21(r)) are each amended by striking “4d(3)” and
24 inserting “4d(c)”.



1 (g) Section 8(a)(1) of such Act (7 U.S.C.
2 12(a)(1)(B)) is amended in the matter following subpara-
3 graph (B)—

4 (1) by striking “commenced” the 2nd place it
5 appears; and

6 (2) by inserting “commenced” after “in a judi-
7 cial proceeding”.

8 (h) Section 22(a)(2) of such Act (7 U.S.C. 25(a)(2))
9 is amended by striking “5b(b)(1)(E)” and inserting
10 “5b(c)(2)(H)”.

