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COMMODITY EXCHANGE REAUTHORIZATION ACT OF 2005

JULY 29, 2005.—Ordered to be printed

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

R E P O R T

[To accompany S. 1566]

The Committee on Agriculture, Nutrition, and Forestry, having considered the bill (S. 1566) to reauthorize the Commodity Exchange Act, and for other purposes, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE, NEED, AND BACKGROUND

The Commodity Futures Trading Commission (CFTC or the Commission) is due to be reauthorized by September 30, 2005. The CFTC is charged with protecting market users and the public from fraud and manipulation in the nation's futures markets while fostering open, competitive, and financially sound markets. The Commodity Exchange Act (CEA) is the basic law that empowers the CFTC with the regulatory authority to oversee futures markets.

Futures contracts for agricultural commodities have been traded in the United States for more than 150 years and have been regulated under Federal statutes since the 1920's. In recent years, trading in futures contracts has expanded rapidly beyond physical commodities into a vast array of financial instruments, including foreign currencies, U.S. and foreign government securities, and U.S.

and foreign stock indexes. More than one billion futures and option contracts were traded on U.S. futures exchanges in 2004. Futures and options exchanges play a vital role in the national economy as a price discovery mechanism and as risk management tools for individuals, farmers, and businesses throughout the nation. The responsibility of eliminating fraud and manipulation within these markets lies with the CFTC.

The Commodity Exchange Act (CEA) was passed in 1922, marking the beginning of the modern era of government regulation and oversight of the U.S. futures markets. The Commodity Futures Trading Commission (CFTC) was created in 1974 as the agency of the Federal government responsible for oversight and regulation of futures markets through the CEA. Landmark changes were made to the CEA in the Commodity Futures Modernization Act of 2000 (CFMA). Since its passage, futures markets have grown dramatically in volume.

II. LEGISLATIVE HISTORY AND COMMITTEE VOTES

The Committee on Agriculture, Nutrition, and Forestry held two full Committee hearings to consider the reauthorization of the Commodity Futures Trading Commission (CFTC) prior to its markup of this legislation.

The first hearing took place on March 8, 2005, and consisted of two panels. Sharon Brown-Hruska, Acting Chairman of the CFTC, testified before the committee that the CEA, as amended by the CFMA, is functioning exceptionally well. However, her testimony highlighted three areas of concern that have arisen since Congress last reauthorized the CFTC. First, she suggested Congress evaluate whether clarifications are necessary to the legal framework provided for exempt markets. Second, she stated Congress may wish to examine ways to further reduce the burdens of duplicate market regulation by multiple agencies. And third, Ms. Brown-Hruska recognized Congress's firm commitment to protecting customers from fraud and manipulation, and asked that Congress review whether CFTC has sufficient authority to police retail fraud.

Charles P. Carey, Chairman of the Chicago Board of Trade (CBOT), shared his views on CFTC reauthorization. Mr. Carey commended Congress for the passage of the CFMA, and also called attention to several issues he felt deserved discussion. He highlighted the challenges which have been presented from dual regulation by the CFTC and Securities and Exchange Commission (SEC) of certain products. Mr. Carey also expressed his concerns on how Congress may choose to address a particular court decision, *CFTC v. Zelener*. He stated that the decision held that CFTC has no anti-fraud jurisdiction over certain retail foreign currency (forex) transactions and could potentially lead to increased opportunities for fraud. Mr. Carey also discussed the challenges the futures industry has faced with respect to international expansion and cross-border business arrangements.

Terrence A. Duffy, Chairman of the Chicago Mercantile Exchange (CME), testified before the Committee. Mr. Duffy echoed the comments of others by applauding the success of the CFMA, but suggested some changes based on developments since the CFMA was enacted. One problem Mr. Duffy recognized is continuing fraud against retail customers in over-the-counter foreign

exchange markets. He stated this problem has been compounded by the CFTC v. Zelener decision, as the court adopted a narrow definition of a futures contract. Mr. Duffy also pointed out this problem extends beyond foreign exchange and could be applied to any commodity. He suggested a compromise be worked out between SEC and CFTC's jurisdiction in reference to single-stock futures products to avoid duplicate regulation.

James Newsome, President of New York Mercantile Exchange (NYMEX), testified on behalf of the exchange. Dr. Newsome spoke of the benefits to the market from the passage of the CFMA, and noted that the CFMA maintained the CFTC's exclusive jurisdiction over futures and options on futures. He also discussed the role of hedge funds in several markets, and explained their importance in these markets. Questions were raised regarding CFTC's anti-fraud authority over principal-to-principal transactions involving exempt commodities. Dr. Newsome suggested that Congress consider whether clarifications or guidance in this area is needed.

Frederick W. Schoenhut, Chairman of the New York Board of Trade (NYBOT), discussed his comments on CFTC reauthorization before the Committee. After stating that he believed the CFMA is working the way it was intended, Mr. Schoenhut expressed his support for a reauthorization bill that continues this regulatory structure. Three areas of the exchange self-regulatory structure which he felt should be maintained were then listed. The first was that each exchange should continue to determine the composition of its governing board. Second, that the structure for exchange compliance and disciplinary functions should also remain unchanged. And third, that exchanges be required to establish and enforce rules that minimize conflicts of interest in the decision making process.

The Chief Executive Officer of Eurex, US, Satish Nandapurker, was the next to appear before the Committee. Mr. Nandapurker concurred with earlier testimony that the CFMA has been a tremendous success and commended CFTC on an outstanding job with implementing the language.

The final witness of the first hearing was John M. Damgard, President of the Futures Industry Association (FIA). Mr. Damgard asked that any changes made to the CEA be made by the Senate Committee on Agriculture, Nutrition, and Forestry during reauthorization of the CFTC rather than another venue. He agreed that the fundamental reforms in the CFMA have worked well, and stated that he favors no change to the basic statutory design.

On March 10, 2005, the Committee met to hear testimony on CFTC reauthorization from representatives of the over-the-counter (OTC) markets and other witnesses.

First to testify was Jeffrey Sprecher, Chairman and Chief Executive Officer of Intercontinental Exchange (ICE). Mr. Sprecher thanked the Committee for its work in developing and adopting the CFMA, and listed three reasons why the legislation has been a success for his company. First, it provided legal certainty OTC products. Second, the CFMA created a new category of trading facility called the exempt commercial market (ECM). Lastly, the CFMA permitted the clearing of OTC transactions.

Robert G. Pickel, Executive Director and Chief Executive Officer for the International Swaps and Derivatives Association (ISDA), shared his views on CFTC reauthorization with the Committee.

Mr. Pickel noted that the principal interest of his company in the CFMA was and remains those provisions intended to provide legal certainty for OTC derivatives. He applauded the CFMA and stated that he does not believe there is a fundamental need for Congress to make substantive changes to those portions of the legislation governing OTC derivatives.

Oliver Ireland testified before the Committee on behalf of Huntsman Corporation and Industrial Energy Consumers of America (IECA). After reiterating that the CEA as amended by the CFMA functions exceptionally well, he stated that price volatility in the natural gas contracts suggest the market for natural gas may not be operating efficiently and the regulatory framework for these contracts should be reviewed. Mr. Ireland provided the Committee with several suggestions, some of which included regulating natural gas under the same framework of the CEA applicable to agricultural commodities and providing the CFTC backup authority to require large position reporting.

The second panel of the hearing included the testimony of Daniel J. Roth, President and Chief Executive Officer of the National Futures Association (NFA). Mr. Roth stated that although the CFMA is successful, it fails to achieve one of its customer protection objectives. He said that that CFTC's authority to protect retail customers investing in forex may be more uncertain now than before passage of the CFMA due to the CFTC v. Zelener court decision. Mr. Roth pointed out that the results of this decision are not solely a forex problem because nothing in the Zelener decision limited its rationale to forex products and that other commodities could be sold in the same fraudulent manner. Mr. Roth reiterated that the NFA, which is the self-regulatory body of the futures industry, believes this decision has created a customer protection issue, and Congress must address it.

John G. Gainie, President of the Managed Funds Association (MFA), provided testimony for the Committee. Mr. Gainie discussed the role of hedge funds in the futures markets, and referenced studies that concluded hedge funds do not cause volatility in the energy markets. He also urged cooperation between the SEC and CFTC to avoid duplicative regulation. Mr. Gainie asked that CFTC act on petitions from various futures exchanges which would relax speculative position limits on a number of agricultural products.

The final witness was Micah S. Green, President of the Bond Market Association (BMA). Mr. Green stated the CFMA is extremely successful, especially since it clarifies the exclusion from the CEA of OTC derivatives, swaps, and foreign exchange transactions. Mr. Green urged the Committee to not alter any of the fundamental elements of the CFMA with respect to OTC derivatives markets.

COMMITTEE VOTE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the votes of the Committee in its consideration of the Committee bill: The Committee met to mark up the bill on Thursday, July 21, 2005. The Committee ordered that the bill be favorably reported by a voice vote.

III. SECTION-BY-SECTION ANALYSIS

Section 1: Short title

The name of the Act is the “Commodity Exchange Reauthorization Act of 2005.”

Section 2: Contracts designed to defraud or mislead

Section 2 of the legislation amends Section 4b of the CEA, the CFTC’s main anti-fraud authority. Section 4b is revised to provide the CFTC with the authority to bring fraud actions in off-exchange principal-to-principal futures transactions. In November 2000, the 7th Circuit Court of Appeals ruled that the CFTC could only use Section 4b in intermediated transactions—those involving a broker, *Commodity Trend Service, Inc. v. CFTC*, 233 F.3d 981, 991–992 (7th Cir. 2000). As subsequently amended by the CFMA, the CEA now permits off-exchange futures and options transactions that are done on a principal-to-principal basis, such as energy transactions pursuant to CEA Sections 2(h)(1) and 2(h)(3).

Subsection 4b(a)(2) is amended by adding the words “or with” to address the principal-to-principal transactions. This new language clarifies that the CFTC has the authority to bring anti-fraud actions in off-exchange principal-to-principal futures transactions, including exempt commodity transactions in energy under Section 2(h) as well as all transactions conducted on derivatives transaction execution facilities. The new Section 4b clarifies that market participants in these transactions are not required to disclose information that may be material to the market price, rate or level of the commodity in such off-exchange transactions. It also codifies existing law that prohibits market participants from using half-truths in negotiations and solicitations by requiring a person to disclose all necessary information to make any statement they have made not misleading in any material respect. The prohibitions in subparagraphs (A) through (D) of the new Section 4b(a) would apply to all transactions covered by paragraphs (1) and (2). Derivatives clearing organizations (DCOs) are not subject to fraud actions under Section 4b in connection with their clearing activities.

The amendments to Section 4b(a) of the CEA regarding transactions currently prohibited under subparagraph (iv) (found in paragraph 2(D) of this bill) are not intended to affect in any way the CFTC’s historical ability to prosecute cases of indirect bucketing of orders executed on designated contract markets. See, e.g., *Reddy v. CFTC*, 191 F.3d 109 (2nd Cir. 1999); *In re DeFrancesco, et al.*, CFTC Docket No. 02–09 (CFTC May 22, 2003) (Order Making Findings and Imposing Remedial Sanctions as to Respondent Brian Thornton).

Section 3: Criminal and civil penalties

Section 3 of the legislation amends CEA Section 9 to double the civil and criminal penalties available for certain criminal violations of the CEA such as manipulation, false reporting, and conversion. The maximum fines for individuals under Section 9 are increased from \$500,000 to \$1 million, and the maximum prison sentence is increased from 5 to 10 years. In a similar vein, Section 3 includes amendments to the procedural enforcement provisions in Sections 6(c), 6b, and 6c of the CEA to increase the civil monetary penalties

to \$1 million or triple the monetary gain to the person for each violation of manipulation or attempted manipulation.

Section 9 of the CEA makes it a felony for any person to knowingly make false, misleading or inaccurate reports regarding the price of any commodity, including electricity and natural gas. Most of the other provisions of Section 9 similarly identify types of misconduct that constitute felonies. The CFTC lacks criminal powers, but it has brought civil enforcement proceedings under Section 9 throughout its history. In fact, in the last 25 years the CFTC has brought over 70 civil injunctive or administrative actions under Section 9, so it is well-established that the CFTC has such authority. Recently, the CFTC has used Section 9 to obtain settlements totaling nearly \$300 million for false reporting violations by energy trading firms in connection with natural gas and electricity transactions that were falsely reported in an attempt to manipulate prices. These included charges based on the reporting of transactions that arguably were done under Section 2(g) of the CEA. The Committee concurs with the CFTC's consistent position that even if a transaction is excluded from CFTC jurisdiction under Section 2(g), the false reporting of such a transaction is a separate act and remains a violation of Section 9 so the CFTC has authority to prosecute.

Regarding natural gas markets, the Committee expects the CFTC to aggressively oversee those markets to ensure that they are free from improper trading practices. The Committee is particularly concerned about the high volatility, but there are varying views about its cause. The volatility in prices for natural gas futures trading on the NYMEX has risen significantly since the year 2000. This price volatility raises costs for participants in the physical market for natural gas. The NYMEX completed a study in March, 2005, analyzing, among other issues, volatility in the natural gas markets. The study concluded that divergent trends in natural gas supply and demand have led to the tight balance between supply and demand, higher gas prices, and increased gas volatility.

Natural gas is vitally important to the United States economy, and businesses that continually need natural gas depend on the futures markets for risk control and price discovery purposes. The high price volatility in the natural gas futures markets hurts consumers, farmers, and manufacturers. The Committee will continue to monitor the price volatility in the natural gas markets.

The legislative change to Section 9 clarifies the CFTC's authority to bring civil and administrative actions, and would ensure that the CFTC can continue to bring false reporting cases in the energy arena for acts or omissions that occurred prior to enactment. The bill expressly provides that these amendments simply restate, without substantive change, existing CFTC civil enforcement authority. This clarifying change does not grant any new statutory authority, and the provisions of this section, as restated, continue to apply to any action pending on or commenced after the date of enactment for any alleged violation occurring before, on, or after the date of enactment.

Section 4: Clarification of authority

The Committee finds that there is a significant customer protection problem with respect to retail forex fraud. Since the clarification of the CFTC’s anti-fraud authority regarding foreign currency trading in the Commodity Futures Modernization Act of 2000, the CFTC has brought 79 retail forex fraud enforcement actions involving over 23,000 victims and \$350 million invested.

Section 4 of the bill, “Clarification of Authority,” addresses several of the problems in the area of retail forex trading pursuant to Section 2(c) of the CEA. This section amends Sections 2(c)(2)(B) and (C) of the CEA to address three substantive areas: (i) the Zelener decision, *CFTC v. Zelener*, 373 F.3d 861 (7th Cir. 2004); (ii) solicitors; and (iii) affiliates and notice-registered broker-dealers (BDs). In addition, the amendments also include a non-substantive, structural change to make Section 2(c)(2)(B) easier to explain in CFTC enforcement cases, and certain technical amendments to the reservation of CFTC anti-fraud authority in Section 2(c)(2)(C) with respect to retail forex transactions by registered futures commission merchants (FCMs).

In *Zelener*, the 7th Circuit held that the contracts at issue were spot contracts, not futures contracts, even though no deliveries of foreign currency were ever made. The amendments to Section 2(c)(2)(B)(i) address the Zelener holding by providing the CFTC with clear anti-fraud jurisdiction over forex transactions: (i) offered to, or entered into with, a person that is not an eligible contract participant (*i.e.*, a retail customer); (ii) offered or entered into on a leveraged, margined, or financed on a similar basis; and (iii) offered or entered into for purposes other than commercial or personal use of such foreign currency. Personal use transactions, which are outside the CFTC’s jurisdiction under this bill, include only situations where a retail customer takes immediate ownership and possession of foreign currency. This is the bank, or Thomas Cook, exception.

If the test in Section 2(c)(2)(B)(i) is met, the CEA applies. Courts will no longer have to decide whether retail transactions that meet these requirements are futures contracts in order to permit the CFTC to pursue an action for fraud. But since anti-fraud Section 4b of the CEA is limited by its terms to futures, a new forex provision (Section 2(c)(2)(D)) is added to ensure that Section 4b applies to all covered retail forex transactions—*e.g.*, rolling spot or other futures look-alike products. CEA Section 4(b) also is included in new Section 2(c)(2)(D) to cover foreign markets.

In addition, the amendments address the role of individuals who solicit or are otherwise engaged in retail forex transactions. For FCMs and BDs to qualify for the otherwise regulated exception to CFTC jurisdiction of their retail forex activities, each person who participates in the solicitation or recommendation of the transaction must register with the CFTC or SEC and be a member or associate of NFA or a registered securities association, as applicable. Also, Section 2(c)(2)(B)(i) clarifies that if the CFTC has jurisdiction over the transaction, it also has jurisdiction over individuals who engage in any activity in connection with the transaction. Similar language is added to the reservation of CFTC anti-fraud authority for transactions by registered FCMs in Section 2(c)(2)(C).

The amendments would no longer permit unregistered affiliates of FCMs and BDs to qualify for the otherwise regulated exception to CFTC jurisdiction of their retail forex transactions. The result is that such affiliates must register or the retail forex business must be done within the registered FCM or BD itself. In addition, notice-registered BDs will no longer qualify for the otherwise regulated exception to CFTC jurisdiction. The exception is available only to fully-registered BDs, not notice-registered BDs who undertake this type of registration with the SEC solely for the purpose of trading security futures products. This carve-out addresses the possibility that entities could avoid CFTC fraud jurisdiction by notice-registering as BDs with the SEC without a bona fide intention to trade security futures products.

The amendments also make a non-substantive change to the structure of Section 2(c)(2)(B) to make it more easily comprehensible by reorganizing Subclauses (II) and (III). As amended, subclause (II) describes BDs, and subclause (III) describes FCMs.

Finally, the amendments include several changes to Section 2(c)(2)(C), which reserves CFTC anti-fraud authority for the retail forex transactions of registered FCMs. First, the word “except” is inserted at the beginning of the parenthetical, as it appears that it was inadvertently omitted from the CFMA. Inserting this word confirms that the provisions of CEA Sections 6(c) and 6(d), which enable CFTC to bring administrative enforcement actions, are available for retail forex fraud cases. Second, the amendments clarify that CFTC anti-fraud authority is reserved with respect to the retail forex activities of all persons registered as FCMs, even those that are dually registered. Third, they reserve CFTC anti-fraud authority for transactions offered by, in addition to those entered into by, registered FCMs. Last, the amendments explicitly reserve CEA Sections 2(a)(1)(B) (principal-agent liability); 4(b) (foreign markets); 4(o) (fraud by Commodity Pool Operators and Commodity Trade Advisors); 13(a) (aiding and abetting liability); and 13(b) (controlling person liability) with respect to fraudulent forex activities where a registered FCM is the counterparty. While the secondary liability provisions of principal-agent, aiding-abetting, and controlling-person liability were implied in the CFMA, these amendments make that reservation of CFTC anti-fraud authority explicit. The amendments are not intended to suggest, nor do they create a negative inference, that these secondary liability provisions are not available in actions brought under other sections of the CEA where CFTC anti-fraud or anti-manipulation authority is reserved.

Section 5: Authorization of appropriations

Section 5 authorizes such sums as are necessary to carry out the Commodity Exchange Act through 2010.

Section 6: Liaison with Department of Justice

This section requires that CFTC maintain a liaison with the Department of Justice to coordinate civil and criminal investigations and prosecutions of violations of the CEA.

Section 7: Single stock futures margining pilot program

Following enactment of the CFMA, the CFTC and SEC jointly promulgated rules relating to the margining of security futures

products. With very limited exceptions, however, portfolio margining for these products was not made available, which many have argued has contributed to the low volume of trading in securities futures product markets. This section authorizes a two-year portfolio margining pilot program for security futures products that would be eligible to continue beyond this initial period depending upon the conclusions of a report on the pilot program submitted to the House and Senate Agriculture Committees by the Board of Governors of the Federal Reserve System after consultation with the CFTC and the SEC not later than two years after enactment of this Act. Accordingly, these amendments are intended to promote innovation and fair competition between economically similar markets, and to allow customers to benefit from the use of a risk-based margining system.

The Committee has heard from several interested parties about portfolio margining for security options. These parties have expressed interest in seeing portfolio margining expanded to both security options and security futures products. The Committee looks forward to working with all interested parties and the Senate Committee on Banking on this issue.

Section 8: Broad-based index definitions

Section 8 of the bill is designed to bring clarity to security futures product (SFPs) definitions, which include both futures on individual securities as well as on narrow-based security indexes. SFPs are considered to be both securities and futures. SFPs are jointly regulated by the CFTC and the SEC. The CFTC has exclusive jurisdiction over futures on broad-based security indexes.

The current statutory test for narrow-based security indexes is quite detailed. This test, which was established in 2000 through the enactment of the CFMA, was tailored to fit the U.S. equity markets. The U.S. equity markets are by far the largest, deepest and most liquid securities markets in the world. The narrow-based security index test was not intended to apply to debt instruments or foreign equity markets, and therefore, should not be applied to them.

Section 8 provides clarity in this area by requiring the CFTC and the SEC to jointly promulgate final rules within 180 days providing criteria which will be used to exclude indexes on U.S. debt instruments, foreign equities, foreign debt instruments and other U.S. securities from the definition of narrow-based security index. The Committee believes that the CFTC and SEC should tailor their rule for foreign equity markets (which are significantly smaller than U.S. equity markets) and debt instruments based on the size and nature of those markets, including the potential for insider trading and market manipulation. Section 8 sets forth in subsection (b) certain criteria which direct the agencies to use in connection with promulgating their joint rule and is consistent with the approach the CFTC has taken over the last twenty years with respect to granting no-action letters for the sale of futures on foreign security indexes to U.S. investors. In addition, the Committee believes Section 8 is consistent with Congressional intent and language in the CFMA. For these reasons, the Committee would encourage the CFTC and SEC, in the strongest possible terms, to proceed quickly in adopting final rules in this area.

IV. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following evaluation is made concerning the regulatory impact of carrying out the changes proposed in this legislation:

The Commodity Futures Trading Commission is responsible for ensuring the economic utility of futures markets by encouraging their competitiveness and efficiency, ensuring their integrity, and protecting market participants against manipulation, abusive trading practices, and fraud. Futures and options contracts traded on U.S. exchanges regulated by the CFTC totaled nearly 1.5 billion contracts traded during fiscal 2004. These transactions occurred on the ten futures exchanges designated as contract markets by the CFTC and involved transactions on traders' own accounts and on the accounts of their customers. The Commission oversees the activities of more than 2,500 businesses and 50,000 individuals involved in the regulated futures industry taking and executing orders on behalf of customers, advising those customers, managing their trading, and/or handling their funds. This bill does not have a major impact on this already regulated marketplace. In addition to its oversight of the regulated futures markets, the Commission has anti-fraud and anti-manipulation authority with respect to certain off-exchange transactions. These contracts are otherwise exempt from most Commission regulation except those provisions directed at prohibiting fraud and manipulation. The sale of forex contracts to the retail public is an area of particular concern addressed in this bill. Fraud by firms selling retail forex has been a significant problem that has been of particular concern to the Commission. While the total amount of fraud or firms involved in that fraud is not known, the Commission has brought almost 80 cases since the CFMA clarified that the CFTC has the authority to bring enforcement actions for fraud by firms selling retail forex contracts to the public. The total amount of customer losses suffered by over 23,000 victims in these cases was approximately \$350,000,000. Under this bill, those persons currently unregistered under the CEA who are in the business of selling retail forex contracts, and who would like to legitimately remain in that business, would have to submit the same sort of information to the NFA as is submitted currently by persons in the regulated futures industry. It is not known how many persons will choose to register under this bill, if enacted; however, current applicants for licenses as commodity brokers, known as associated persons under the CEA, spend approximately thirty minutes completing the application forms, which are available on the internet.

V. COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, July 28, 2005.

Hon. SAXBY CHAMBLISS,
 Chairman, Committee on Agriculture, Nutrition, and Forestry,
 U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Commodity Exchange Reauthorization Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa E. Zimmerman.
 Sincerely,

DOUGLAS HOLTZ-EAKIN,
 Director.

Enclosure.

S. 1566—Commodity Exchange Reauthorization Act of 2005

Summary: The legislation would extend the authority to appropriate funds for the Commodity Futures Trading Commission (CFTC) through 2010. The bill also would amend and clarify the CFTC’s jurisdiction over certain futures transactions and financial products. CBO estimates that implementing the legislation would cost \$89 million in 2006 and \$512 million over the 2006–2010 period, assuming appropriation of the necessary amounts.

CBO also estimates that enacting the bill would increase revenue collections by \$30 million in 2006, \$150 million over the 2006–2010 period, and \$300 million over the 2006–2015 period because it would increase the maximum penalty for price manipulation of commodities. (Civil penalties are recorded in the federal budget as revenues.) Enacting the bill would not affect direct spending.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The bill would impose private-sector mandates, as defined in UMRA, on certain entities involved in retail foreign currency transactions, by changing the criteria to qualify for exclusion from CFTC jurisdiction with regard to those transactions. CBO expects that the direct cost of those mandates would not exceed the annual threshold established by UMRA (\$123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of the bill is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit). For this estimate, CBO assumes that the bill will be enacted by the end of 2005, that the estimated amounts will be appropriated for each fiscal year, and that outlays will follow historical trends for spending by the CFTC.

| | By fiscal year, in millions of dollars— | | | | | |
|-------------------------------------|---|------|------|------|------|------|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
| SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| CFTC Spending Under Current Law: | | | | | | |
| Budget Authority ^a | 94 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 95 | 11 | 0 | 0 | 0 | 0 |

| | By fiscal year, in millions of dollars— | | | | | |
|--|---|------|------|------|------|------|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
| Proposed Changes: | | | | | | |
| Estimated Authorization Level | 0 | 100 | 103 | 106 | 110 | 113 |
| Estimated Outlays | 0 | 89 | 101 | 104 | 107 | 111 |
| CFTC Spending Under the Bill: | | | | | | |
| Estimated Authorization Level ^a | 94 | 100 | 103 | 106 | 110 | 113 |
| Estimated Outlays | 95 | 100 | 101 | 104 | 107 | 111 |
| CHANGES IN REVENUES | | | | | | |
| Estimated Revenues | 0 | 30 | 30 | 30 | 30 | 30 |

^aThe 2005 level is the amount appropriated for that year for the Commodity Futures Trading Commission.

Basis of estimate: CBO estimates that implementing the bill would cost \$89 million in 2006 and \$512 million over the 2006–2010 period to continue current activities of the CFTC and for new tasks specified in the bill. Enacting the legislation would increase revenues by \$30 million a year, CBO estimates, for increasing civil monetary penalties for price manipulation of commodities.

Spending subject to appropriation

The legislation would extend the authority to appropriate funds for the CFTC through 2010 and would amend and clarify the jurisdiction of the CFTC over certain futures transactions and financial products. Finally, the bill would establish a pilot program involving changes in margin requirements for certain futures products.

For 2005, the CFTC received an appropriation of \$94 million. Based on the agency's current budget and adjusting for anticipated inflation, CBO estimates that extending the authorization of appropriations for the current functions of the CFTC would require \$98 million in funding for 2006 and \$522 million in appropriations over the 2006–2010 period. Based on information provided by the CFTC, CBO estimates that the agency would require 10 additional personnel to manage the increased workload anticipated because of the legislation's impact on the agency's jurisdiction over certain future transactions. We estimate that salaries, benefits, and overhead for those additional staff would cost about \$2 million in 2006 and \$10 million over the 2006–2010 period.

Revenues

The legislation would increase tenfold the maximum penalties for manipulation of prices in the commodities market. According to the CFTC, collections for these penalties have averaged about \$40 million between 2002 and 2004, but were much lower over the previous three-year period. Considering that the CFTC has the authority to assess penalties in amounts less than the maximum penalty set in law, the deterrent effect of increased penalties, and the cyclical nature of violations of these laws over the last several years, CBO expects that, on average, collections from penalties would increase by about \$40 million per year. CBO estimates that, under the bill, revenues would increase by \$30 million in 2006, \$150 million over the 2006–2010 period, and \$300 million over the 2006–2015 period, net of income and payroll tax offsets.

Estimated impact on state, local, and tribal governments: The bill contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, and tribal governments.

Estimated impact on the private sector: The CFTC has jurisdiction over certain retail foreign currency agreements, contracts, and transactions. The bill may expand the range of such products over which the CFTC has jurisdiction. Under current law, some entities are excluded from the jurisdiction of the CFTC for such transactions. The bill would impose private-sector mandates, as defined in UMRA, on certain entities involved in retail foreign currency transactions by changing the criteria to qualify for an exclusion from CFTC jurisdiction with regard to those transactions. The bill would no longer permit unregistered affiliates of futures commission merchants (FCMs), unregistered affiliates of broker dealers, or “notice registered” broker dealers to be excluded from the jurisdiction of the CFTC regarding their retail foreign currency transactions. For registered FCMs and registered broker dealers to qualify for exclusion, the bill would require that each person who participates in the solicitation or recommendation of such transactions must register with the CFTC or Securities and Exchange Commission and be a member of the National Futures Association or a registered securities association, as applicable.

Some entities that would no longer qualify for exclusion from CFTC jurisdiction under the bill could take certain actions to continue to qualify. For example, unregistered affiliates of broker dealers may move their foreign currency activities into the operations of the registered broker dealer. Based on information from government sources, CBO expects that the direct cost of the mandates in the bill would not exceed the annual threshold established by UMRA (\$123 million in 2005, adjusted annually for inflation).

Estimate prepared by: Federal costs: Melissa E. Zimmerman; Federal revenues: Annabelle Bartsch and Melissa E. Zimmerman; impact on state, local, and tribal governments: Sarah Puro; impact on the private sector: Judith Ruud.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1566 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

* * * * *

SEC. 2 * * *

[Sec. 2(a)(1)](C) Notwithstanding any other provision of law—
* * *

(v)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) **[other than]** *or* a security futures product, or any derivatives transaction execution facility on which such **[contract or option]** *contract, option, or security futures product* is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of

margin (initial and maintenance) for such stock index futures contract (or option thereon) **other than** or security futures products.

(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), **other than** or for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

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

* * * * *

(D)(i) * * *

[(XI) THE MARGIN REQUIREMENTS] (XI) MARGIN REQUIREMENTS.—

(aa) *IN GENERAL.*—The margin requirement for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(bb) *PILOT PROGRAM FOR MARGINING SECURITY FUTURES PRODUCTS.*—Notwithstanding any other provision of law, for a period of 2 years beginning on the date of enactment of this item, an entity that is designated or registered as a contract market or derivatives transaction execution facility under section 5 and that is also notice-registered as a national securities exchange under section 6(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)), and its clearing organization, a futures commission merchant registered under this Act, and a broker or dealer registered under section 15(b) of that Act (15 U.S.C. 78o(b)), shall not be required to comply with item (aa) or subparagraph (C)(v)(IV).

(cc) *ACTING IN RELIANCE.*—Any entity acting in reliance upon item (bb) shall not be required to comply with regulations promulgated under section 7(c)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(2)(B)), or with the rules of a self-regulatory organization (as defined in section 3(a)(26) of that Act (15 U.S.C. 78c(a)(26)), pertaining to levels of initial and maintenance margin, or with any regulation that operates to preclude the implementation of risk-based portfolio margining systems.

(dd) *PROMULGATION OF FINAL RULES.*—Subject to item (ee), an entity designated or registered as a contract market

or derivatives transaction execution facility under section 5 and that is notice-registered as a national securities exchange under section 6(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)) and its clearing organization shall be permitted to promulgate final rules to—

(AA) set margin requirements for security futures products, held in any account, in accordance with subparagraph (C)(v)(I); and

(BB) permit futures commission merchants registered under this Act, and brokers and dealers registered under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), to collect initial and maintenance margin for security futures products, held in any account, in accordance with the rules.

(ee) **EFFECTIVE DATE AND REVIEWABILITY OF FINAL RULES.**—Final rules promulgated by any entity under item (dd) shall become effective in accordance with section 5c(c), and, notwithstanding any other provision of law, shall not be subject to any other approval or review requirements.

(ff) **REPORT.**—Not later than 2 years after the date of enactment of this item, the Board of Governors of the Federal Reserve System, after consultation with the Commission and the Securities and Exchange Commission, shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the pilot program for margining security futures products.

(gg) **CONTINUATION OF PILOT PROGRAM.**—The pilot program for margining security futures products shall continue to apply unless the report under item (ff) concludes that the pilot program has resulted in undue risks to the financial integrity of the relevant contract markets or derivatives transaction execution facilities, or to their respective clearing systems, or has resulted in systemic risk to financial markets or undue risk to customers. * * *

[Sec. 2(a)](2)(A) * * *

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(C) LIAISON WITH DEPARTMENT OF JUSTICE.—

(i) **IN GENERAL.**—The Commission shall, in cooperation with the Attorney General, maintain a liaison between the Commission and the Department of Justice to coordinate civil and criminal investigations and prosecutions of violations of this Act as appropriate.

(ii) **DESIGNATION.**—The Attorney General shall designate a person as liaison and take such steps as are necessary to facilitate communications described in clause (i). * * *

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.—* * *

(2) COMMISSION JURISDICTION.—

(A) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—This Act applies to, and the Commission shall have jurisdiction over, an agree-

ment, contract, or transaction described in paragraph (1) that is—

(i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange; or

[(ii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.

[(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

[(i) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934); and

[(ii) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

[(I) a financial institution;

[(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o 095) or a futures commission merchant registered under this Act;

[(III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o 095), or an affiliated person of a futures commission merchant registered under this Act, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o 095(b), 78q(h)) or section 4f(c)(2)(B) of this Act;

[(IV) an insurance company described in section 1a(12)(A)(ii) of this Act, or a regulated subsidiary or affiliate of such an insurance company;

[(V) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or

[(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934).

[(C) Notwithstanding subclauses (II) and (III) of subparagraph (B)(ii), agreements, contracts, or transactions described in subparagraph (B) shall be subject to sections 4b, 4c(b), 6(c) and 6(d) (to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, and 8(a) if they

are entered into by a futures commission merchant or an affiliate of a futures commission merchant that is not also an entity described in subparagraph (B)(ii) of this paragraph.】

(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—

(i) IN GENERAL.—This Act applies to, and the Commission shall have jurisdiction over, any agreement, contract, or transaction in foreign currency (including agreements, contracts, or transactions described in subsection (a)(1)(A)), and any person who engages in any activity in connection with any agreement, contract, or transaction in foreign currency, that is—

(I) offered to, or entered into with, a person that is not an eligible contract participant;

(II) offered, or entered into, on a leveraged, margined, or financed on a similar basis; and

(III) offered, or entered into, for purposes other than commercial or personal use of such foreign currency, except that personal use shall include only those agreements, contracts, or transactions in which a person takes immediate ownership and possession of foreign currency.

(ii) EXCLUSIONS.—Subparagraph (B)(i) shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is—

(I) a financial institution;

(II) a broker or dealer registered under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except notice registration under paragraph (11)(A) of that section) or under section 15C of that Act (15 U.S.C. 78o–5), provided that each person who participates in the solicitation or recommendation of the agreement, contract, or transaction is—

(aa) registered under section 15(b) or 15C of that Act (15 U.S.C. 78o(b), 78o–5);

(bb) an individual registered with a securities association registered under section 15A(a) of that Act (15 U.S.C. 78o–3(a)); and

(cc) a member or associate of a securities association registered under section 15A(a) of that Act (15 U.S.C. 78o–3(a));

(III) a person that is registered as a futures commission merchant under this Act, provided that each person who participates in the solicitation or recommendation of the agreement, contract, or transaction is—

(aa) registered under section 4d, 4k, or 4m; and

(bb) a member or associate of a futures association registered under section 17;

(IV) an insurance company described in section 1a(12)(A)(ii), or a regulated subsidiary or affiliate of such an insurance company;

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

(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q)).

(C) Notwithstanding subclause (III) of subparagraph (B)(ii), agreements, contracts, or transactions described in subparagraph (B), and persons who engage in any activity in connection with agreements, contracts, or transactions described in subparagraph (B), shall be subject to subsection (a)(1)(B) and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b) if the agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant under this Act.

(D) Sections 4(b) and 4b shall apply to any agreement, contract, or transaction in foreign currency described in subparagraphs (B) and (C) as though the agreement, contract, or transaction were a contract of sale of a commodity for future delivery. * * *

* * * * *

ISEC. 4b * * *

[(a) It shall be unlawful (1) for any member of a registered entity, 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 registered entity, 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, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or by products thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

[(i) to cheat or defraud or attempt to cheat or defraud such other person;

[(ii) 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;

[(iii) 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

[(iv) 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.]

SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MISLEAD.

(a) *UNLAWFUL ACTIONS.—It shall be unlawful—*

(1) *for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person;*

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

(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 or willfully to enter or cause to be entered for such other person any false record;*

(C) *willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with such other person; or*

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

(ii) *to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such other person to become the buyer in respect to any selling order of such other person, or become the seller in respect to any buying order of such other person, if such order is either represented by such person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market unless such order is executed in accordance with the rules of the designated contract market.*

(b) *CLARIFICATION.—Subsection (a)(2) shall not obligate any person, in or in connection with a transaction in a contract of sale of a commodity for future delivery, or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g), with another person, to disclose to such other person nonpublic information that may be material to the market price, rate or level of such commodity or transaction, except as necessary to make any statement made to such other person in or in connection with such transaction, not misleading in any material respect.*

[(b)] (c) Nothing in this section or in any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month, from executing such buying and selling orders at the market price: Provided, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: And provided further, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

[(c)] (d) Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market. * * *

* * * * *

SEC. 6 * * *

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that such contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 5 through 5b or section 5f or that such contract market or derivatives transaction execution facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission or the Commission thereunder, *or, in any case of manipulation of, or an attempt to manipulate, the price of any commodity, a civil penalty of not more than \$1,000,000 for each such violation.* Such suspension or revocation shall only be after a notice to the officers of the contract market or derivatives transaction execution facility affected and upon a hearing on the record: Provided, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person 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 person will pay the costs of the proceedings if the court so directs, *except that if the failure or refusal to obey or comply with the order involved any offense under section 9(a)(2), the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 9(a)(2).* * * *

[Sec. 6](c) * * * Upon evidence received, the Commission may—

(1) prohibit such person from trading on or subject to the rules of any registered entity and require all registered entities to refuse such person all privileges thereon for such period as may be specified in the order,

(2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person,

(3) assess such person—

(A) a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation, or

(B) in any case of manipulation of, or attempt to manipulate, the price of any commodity, a civil penalty of not more than the greater of \$1,000,000 or triple the monetary gain to such person for each such violation, and

(4) * * *

SEC. 6c. * * *

[(d)(1) In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation a civil penalty in the amount of not more than the higher of \$100,000 or triple the monetary gain to the person for each violation.]

(d) CIVIL PENALTIES.—

(1) IN GENERAL.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

(A) a civil penalty in the amount of not more than the greater of \$100,000 or triple the monetary gain to the person for each violation; or

(B) in any case of manipulation of, or an attempt to manipulate, the price of any commodity, a civil penalty in the amount of not more than the greater of \$1,000,000 or triple the monetary gain to the person for each violation.

(2) If a person on whom such a penalty is imposed fails to pay the penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover the penalty by action in the appropriate United States district court. * * *

* * * * *

SEC. 9 * * *

(a) It shall be a felony punishable by a fine of not more than \$1,000,000 [(or \$500,000 in the case of a person who is an individual)] or imprisonment for not more than [five years] 10 years, or both, together with the costs of prosecution, for: * * *

[(f)] (e) It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of, or willfully and knowingly to disclose for any purpose

inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties[.]; or

* * * * *

*(f) COMMISSION ADMINISTRATIVE AND CIVIL AUTHORITY.—The Commission may bring an administrative or civil action under this Act for an alleged violation of any provision of this section. * * **

* * * * *

SEC. 12 * * *

(d) There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 1995 through **[2005] 2010.** * * *

