

The background of the slide is a faded, high-angle photograph of a classical building. It features a prominent portico with several tall, fluted columns supporting a pediment. The building's facade is light-colored, and the overall image has a soft, ethereal quality. The text is overlaid on the left side of this image.

Over-The-Counter and Exchange-Traded Transactions Effected by Banks, Brokers and Dealers with U.S. Customers and Counterparties

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The material that follows summarizes some of the more significant exemptions and requirements applicable to banks, brokers and dealers who seek to enter into transactions with U.S. persons, either as a counterparty and principal (in the case of over-the-counter derivative transactions) or as broker and agent (in the case of exchange-traded transactions). The tables are presented separately for OTC and exchange-traded instruments, and are further organized by product (for example, the relevant information is presented separately for agricultural, non-agricultural, and security-based swaps), the types of U.S. person that are permitted to trade the product in question (for example, eligible contract participants or eligible commercial entities), and the terms of any applicable registration or other regulatory requirements, including any relevant exemptions.

OVER-THE-COUNTER DERIVATIVES

Product	Type of U.S. Person	Registration / Applicable Requirements	Comments
Swaps (Non-Agricultural Commodities)	Eligible Contract Participants (“ECPs”)	No registration is required and these transactions are effectively excluded from all relevant provisions of the CEA. However, both parties must be ECPs. <i>See</i> CEA §2(g).	<p>The contracts may not involve agricultural commodities (which for this purpose includes all agricultural products and not merely those specifically enumerated in CEA §1a(4)), must be subject to individual negotiation and may not be executed on a “trading facility.”</p> <p>CEA §22(a)(4) provides that swap agreements will not be unenforceable solely because of a failure to comply with the terms or conditions of an exemption from the CEA or CFTC regulations.</p>
Swaps (Non-Agricultural Commodities)	Banks	No registration is required and these transactions are effectively excluded from all relevant provisions of the CEA and the securities laws (other than securities antifraud and anti-manipulation provisions) if (i) the counterparty is an ECP, and (ii) the swap is offered, entered into or provided by a U.S. bank, foreign bank (including a branch or agency of a foreign bank), Edge Act corporation, agreement corporation, trust company, or a subsidiary of any of the foregoing if it is regulated as if it were part of the entity and the subsidiary is not an FCM or broker-dealer. <i>See</i> CFMA §§301-303, 402, 407.	<p>A “covered swap agreement” cannot involve an agricultural commodity and: (i) must be entered into solely between ECPs and not be executed or traded on a trading facility; <u>or</u> (ii) involves an excluded commodity and is executed on an electronic trading facility on a principal-to-principal basis between ECPs trading for their own accounts or as described in CEA §1a(12)(B)(ii) relating to investment advisers and other asset managers.</p> <p>CFMA §408 separately provides that no covered swap agreement will be unenforceable solely because of a failure to comply with the terms or conditions of an exemption from the CEA or regulations of the CFTC.</p>

Product	Type of U.S. Person	Registration / Applicable Requirements	Comments
Swaps (Security-Based)	Eligible Contract Participants	Registration with the CFTC or SEC is not required. In addition, security-based swaps are not securities for the purposes of the Securities Act and the Exchange Act. However, security-based swaps are subject to the antifraud, manipulation and insider trading provisions of the Securities Act and the Exchange Act. Securities Act §2A; Exchange Act §3A; CEA §2(g).	A security-based swap agreement is a swap agreement of which a material term is based on the price, yield, value, or volatility of a security, group or index of securities, or any interest therein.
Swaps (Agricultural Commodities)	Eligible Swap Participants (“ESPs”)	<p>No registration is required, but both parties must be ESPs.</p> <p>CFTC Regulation 35.2 exempts certain “swap agreements” from all provisions of the CEA and CFTC Rules with the exception of CEA §2(a)(1)(B) (relating to contracts based on equity and certain debt securities), §§4b and 4o (antifraud), §§6(c) and 9(a)(2) (manipulation) and CFTC Rule 32.9 (antifraud). [NOTE: The CFTC has not revised Regulation 35.2 to reflect subsequent changes to the CEA. Regulation 35.2, therefore, continues to refer to CEA § 2(a)(1)(B), now classified at § 2(a)(1)(C).]</p>	<p>Under CFTC Regulation 35.2, a “swap agreement” will be exempt from the exchange-trading requirements of CEA §4(a) if: (1) it is entered into solely by “eligible swap participants” acting on their own behalf or on behalf of another eligible swap participant (generally, regulated entities such as broker-dealers, banks and insurance companies; entities with total assets in excess of \$10 million; and collective investment vehicles with assets in excess of \$5 million that are not formed specifically for the purpose of being an “eligible swap participant”); (2) it is not standardized as to its material economic terms (ISDA forms are acceptable for this purpose); (3) the creditworthiness of a party having actual or potential obligations under the swap agreement is a material consideration in entering into or determining the terms of the swap agreement; and (4) the swap agreement is not entered into or traded on or through a multilateral execution facility (i.e., an exchange or electronic trading system).</p> <p>Regulation 35.2 is potentially applicable to swaps involving non-agricultural commodities (including interest rates, certain securities, and foreign currencies). The exemption provided by CEA §2(g) (<i>see</i> “Swaps (Non-Agricultural Commodities)”) is more comprehensive, however, and there is therefore ordinarily no reason to rely upon Regulation 35.2 for swaps involving anything other than agricultural commodities.</p>

Product	Type of U.S. Person	Registration / Applicable Requirements	Comments
Excluded Commodity Swaps, Forwards, Options, etc.	Eligible Contract Participants	No registration is required, but both parties must be ECPs and the transactions may not be executed or traded on a trading facility, CEA §2(d)(1), unless it is an <u>electronic</u> trading facility, in which case the contracts must be effected by ECPs on a principal-to-principal basis. CEA §§2(d)(2), 2(e).	The term “excluded commodity” means an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure. It also includes any other rate, differential, index or measure of economic or commercial risk, return or value that is not based in substantial part on the value of a narrow group of commodities not described above. CEA §1a(13).
Exempt Commodity Swaps, Forwards, Options, etc.	Eligible Contract Participants	No registration is required, but both parties must be ECPs and the transactions may not be executed or traded on a trading facility. CEA §2(h)(1).	The term “exempt commodity” is defined to mean a commodity that is not an excluded commodity or an agricultural commodity. Exempt commodities include metals, energy products and certain other tangible and intangible property. CEA §1a(14). Transactions effected in reliance on the exemptions provided in Section 2(h) remain subject to the antifraud and anti-manipulation provisions of the CEA.
	Eligible Commercial Entities	No registration is required and the transactions may be executed or traded on an <u>electronic</u> trading facility if they are entered into on a principal-to-principal basis between eligible commercial entities. CEA §§2(h)(3)-(4).	
Foreign Exchange (“FX”)	Eligible Contract Participants	No registration is required, unless the FX transactions are traded on an organized exchange. CEA §§2(c)(2)(A), 2(d)(1), 2(g).	Rolling spot, FX options and similar transactions may be subject to these restrictions. <i>But see CFTC v. Zelener</i> , 373 F.3d 861 (7 th Cir. 2004). Outright FX transactions (spot and forward) without offset are separately exempt from the CEA under the “forward contract” exemption. <i>See</i> CEA §1a(19).
	Retail	One party must be a financial institution (including a bank, foreign bank, and branch or agency of a foreign bank); registered broker-dealer; FCM; a broker-dealer or FCM affiliate that is subject to holding company risk assessment recordkeeping requirements; investment bank holding company; or financial holding company, unless the transaction is traded on a futures or options exchange. CEA §2(c)(2)(B).	

Product	Type of U.S. Person	Registration / Applicable Requirements	Comments
OTC Commodity Options (Non-Agricultural)	Producers, processors, commercial users or merchants	<p>CFTC Rule 32.4 imposes a general ban on the trading of OTC commodity options. This general ban is subject to an exception for “trade options” that do not involve certain agricultural commodities.</p> <p>CFTC Rules 32.8 (unlawful representations) and 32.9 (antifraud) continue to apply.</p> <p><i>See also</i> “Swaps (Non-Agricultural Commodities).”</p>	<p>Under CFTC Rule 32.4, the general ban on OTC commodity options does not apply to any option offered by a person which has a reasonable basis to believe: (1) that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or the byproducts thereof; and (2) that the producer, processor, user or merchant is offered or has entered into the commodity option transaction solely for reasons related to its business as such.</p> <p>FCMs are not permitted to grant (write) OTC options unless the SEC has adopted a net capital “haircut” for options involving that commodity. <i>See</i> CFTC Regulation 1.19(c); CFTC Regulation 1.17(c)(5)(vi); SEC Regulation 15c3-1a.</p>
OTC Commodity Options (Agricultural Commodities)	Producers, processors, commercial users or merchants	<p>CFTC Rule 32.2 bans OTC options on certain domestic agricultural commodities. This general ban is subject to an exception where the offeree (which does not have to be the purchaser) is a commercial user of the underlying commodity and both parties have a net worth of at least \$10 million.</p>	<p>Under CFTC Rule 32.13(g), OTC options on agricultural products may be offered by a person which has a reasonable basis to believe: (1) that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or the byproducts thereof; (2) that the producer, processor, user or merchant is offered or has entered into the commodity option transaction solely for reasons related to its business as such; and (3) each party has a net worth of at least \$10 million.</p> <p>FCMs are not permitted to grant (write) OTC options on agricultural commodities. <i>See</i> CFTC Regulation 1.19(c); CFTC Regulation 1.17(c)(5)(vi); SEC Regulation 15c3-1a.</p>

EXCHANGE-TRADED PRODUCTS

Product	Type of U.S. Person	Registrations / Applicable Requirements	Comments
U.S. Futures, Options on Futures	All	Registration as an FCM or introducing broker is required. Contracts must be traded on or subject to the rules of the exchange. Off-exchange transactions (including block trades, exchanges for physicals and exchanges for swaps) permitted only in accordance with relevant exchange rules.	<p>Section 4d(a) of the CEA makes it unlawful for any person to engage as an FCM or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts for sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless such person is registered with the CFTC.</p> <p>Section 4(a) of the CEA make it unlawful for any person to enter into, offer to enter into, or confirm the execution of any futures contract traded on an exchange in the United States unless such contract is executed on or subject to the rules of that exchange (a “contract market”). CFTC Regulation 1.38 requires that all such transactions be effected openly and competitively during the trading hours set by the exchange unless the trade is executed non-competitively in accordance with relevant exchange rules.</p> <p>CFTC Regulation 33.2 applies these provisions to options on futures contracts traded on U.S. exchanges.</p>
Foreign Futures and Options on Futures	All	CFTC registration is not required if a foreign firm’s home country regulator demonstrates that it provides a comparable system of regulatory relief and enters into an information sharing agreement with the CFTC. A firm subject to regulation by that foreign regulator must obtain confirmation from its regulator that Rule 30.10 relief is available before dealing with U.S. persons. A firm that has received Rule 30.10 relief may engage in the offer and sale of foreign futures and options contracts listed on that exchange - or, where the regulator is not an exchange, listed on exchanges in the same country - to U.S. persons without registering with the CFTC. In some cases, regulatory authorities in these jurisdictions have obtained “expanded relief” that allows their member firms to engage in futures and futures options transactions with U.S. customers on any exchange (and not merely those in the regulator’s “home country”).	<p>The CFTC regularly updates the listing of exempt foreign regulators. The following are among the foreign regulators recognized as having a comparable regulatory system:</p> <ul style="list-style-type: none"> Sydney Futures Exchange (expanded relief) – ASX Futures Proprietary Limited (expanded relief) – Bolsa de Mercadorias & Futuros – Winnipeg Commodity Exchange – Montreal Exchange (expanded relief) – Toronto Futures Exchange – Marché à Terme International de France – Eurex Deutschland – Tokyo Grain Exchange – Tokyo Commodity Exchange – MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija – MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Variable – New Zealand Futures and Options Exchange (expanded relief) – Financial Services Authority (expanded relief) – Singapore Exchange SGX Derivatives (f/k/a Singapore International Monetary Exchange) <p>http://cftc.gov/opa/backgrounder/opap30bkoia.htm</p>

Product	Type of U.S. Person	Registrations / Applicable Requirements	Comments
Foreign Stock Index Futures, Options on Futures	All	An FCM or Rule 30.10 exempt foreign firm (<i>see</i> “Foreign Futures and Options on Futures”) may engage in foreign stock index futures and futures options transactions with U.S. persons only if the stock index in question has been approved for that purpose by the CFTC.	A list of the exempt stock indices is available at http://www.cftc.gov/opa/backgroundunder/opapart30.htm . Care needs to be taken with respect to option products to ensure that the option in question is, in fact, an option on a futures contract (which will be permitted if authorized by the CFTC) and not an option on the index itself, which would be a security, the offering of which is subject to a variety of requirements under the U.S. securities laws.
Foreign Government Debt Futures, Options on Futures	All	May be offered to and traded by U.S. persons only if the foreign government debt security has been declared to be an “exempt security” for this purpose by the SEC.	Government debt instruments issued by the following countries have been designated as exempt by the SEC under Rule 3a12-8: Argentina – Australia – Austria – Belgium – Brazil – Canada – Denmark – Finland – France – Germany – Ireland – Italy – Japan – Mexico – The Netherlands – New Zealand – Spain – Sweden – Switzerland – United Kingdom – Venezuela.

SECURITIES PRODUCTS

Product	Type of U.S. Person	Registrations / Applicable Requirements	Comments
U.S. Securities	All	Registration with the SEC as a broker-dealer is required.	Section 15(a)(1) of the Exchange Act prohibits any person from acting as a broker or dealer in interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security unless such broker or dealer is registered with the SEC as such.
Foreign Securities – Unsolicited	All	Under SEC Rule 15a-6, no registration is required as a broker-dealer for the execution of unsolicited customer transactions. In addition, the foreign securities will not be required to be registered under the Securities Act of 1933. While most states have exemptions from registration for unsolicited transactions, a foreign broker-dealer should check the specific exemptions under applicable state law.	A foreign broker-dealer may execute unsolicited orders for U.S. persons. According to the SEC, solicitation includes “any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates ... or to develop an ongoing securities business relationship.” Illustrative examples include: telephone calls encouraging the use of the broker-dealer; advertising the broker-dealer’s services in periodicals of general circulation within the U.S.; conducting investment seminars for U.S. persons; and recommending the purchase or sale of a security with the anticipation that a transaction will result. <i>See</i> Exchange Act Release No. 27,017 (July 11, 1989), 54 Fed. Reg. 30013 (July 18, 1989) http://www.sec.gov/rules/final/34-27017.pdf .

Product	Type of U.S. Person	Registrations / Applicable Requirements	Comments
Foreign Securities - Solicited	Major U.S. Institutional Investors	<p>No registration is required for solicited transactions with a major U.S. institutional investor if the foreign broker-dealer engages a U.S. registered broker-dealer to act as an intermediary for such transactions.</p> <p>Additional requirements apply to transactions involving options on securities or on stock indices. See "Foreign Securities – Solicited – Options."</p>	<p>In general, SEC Rule 15a-6(a)(3) permits unregistered foreign broker-dealers to solicit and take orders for transactions from "U.S. institutional investors" and "major U.S. institutional investors" provided that the associated persons of the foreign broker-dealer involved in these transactions satisfy certain qualification requirements.</p> <p>Those associated persons that satisfy these qualification requirements may visit U.S. institutional investors in the U.S. as long as an employee of the U.S. registered broker-dealer participates in that visit and in telephone calls with U.S. institutional investors.</p> <p>In addition, without being "chaperoned," personnel of a foreign broker may (i) engage in oral communications from outside the U.S. where such communications take place outside of the NYSE trading hours (9:30 a.m. – 4:00 p.m. New York time), so long as the foreign broker-dealer does not accept orders to effect transactions other than those involving foreign securities, and (ii) make up to 30 visits to major U.S. institutional investors per year, provided that they do not accept orders while present in the United States.</p> <p>The U.S. registered broker-dealer is responsible for performing each of the following activities:</p> <ul style="list-style-type: none"> • effecting the transactions, other than negotiating their terms;* • issuing all required confirmations and statements; • as between the foreign broker-dealer and the registered broker dealer, extending or arranging for the extension of any credit in connection with the transactions; • maintaining Exchange Act required books and records relating to the transactions;** and • complying with SEC Rules 15c3-1 and 15c3-3. <p>* Notwithstanding this requirement, the foreign broker-dealer may be responsible for executing transactions in foreign securities traded in foreign markets or on foreign exchanges.</p> <p>** The foreign broker-dealer may process all records related to the transaction, as long as the registered broker-dealer obtains physical possession of the records or copies.</p>

Product	Type of U.S. Person	Registrations / Applicable Requirements	Comments
Foreign Securities – Solicited – Exchange-Traded Options	Eligible Broker-Dealers or Eligible Institutions	No registration as a broker-dealer is required under Section 15 of the Exchange Act provided that the foreign exchange in question has received no-action relief under Sections 6 and 15 of the Exchange Act to the effect that the SEC staff will not recommend enforcement action against the exchange or its members in connection with the sale of the options to Eligible Broker-Dealers and Eligible Institutions.	<p>Members of the foreign exchange are required to obtain written representations from each Eligible Broker-Dealer or Eligible Institution seeking to purchase or sell options that:</p> <ul style="list-style-type: none"> (1) it is an Eligible Broker-Dealer or Eligible Institution; (2) it has received the foreign exchange’s Options Disclosure Document; (3) its transactions in options will be for its own account or for the account of another Eligible Broker-Dealer or Eligible Institution or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act; (4) it will not transfer any interest or participation in an option it has purchased or written to any other U.S. person, or to any person in the United States, that is not an Eligible Broker-Dealer or Eligible Institution; (5) it will cause any disposition of an option it has purchased or written to be effected only on the foreign exchange and settled by the foreign exchange’s approved clearing house; (6) it understands that Equity Options on equity securities of U.S. issuers that are traded on the foreign exchange are not available for distribution to U.S. persons at this time; (7) if it is an Eligible Broker-Dealer or Eligible Institution acting on behalf of another Eligible Broker-Dealer or Eligible Institution that is not a managed account, it has obtained from the other a written representation to the same effect as the foregoing and will provide it to the foreign exchange member upon demand; and (8) it will notify the foreign exchange member of any change in the foregoing representations prior to placing any future order, and the foregoing representations will be deemed to be made with respect to each order it gives to the foreign exchange member.

Product	Type of U.S. Person	Registrations / Applicable Requirements	Comments
Foreign Domiciled Hedge Fund (Futures)	Accredited Investors	In general, broker-dealer registration is required (and sales personnel must be Series 7 qualified) for any entity other than the issuer to engage in sales of a hedge fund product to U.S. persons. See “Foreign Securities – Solicited – Major U.S. Institutional Investors.”	The offering should be restricted to accredited investors in order to maintain a registration exemption for private offerings. See Securities Act Rule 506.
	Qualified Eligible Persons (“QEPs”) and Accredited Investors	In addition to applicable securities law requirements (see “- Accredited Investors”), registration with the CFTC as a commodity pool operator (“CPO”) is not required as long as all investors are QEPs (or, if the investors are not individuals, QEPs or accredited investors). CFTC Regulation 4.14(a)(4).	CPO registration or an exemption therefrom is required if the fund will trade futures or is a fund of funds that will invest in other funds that trade futures. The operator of a fund that trades only “foreign futures” may alternatively rely on a separate exemption. See CFTC Regulation 30.5.
Foreign Domiciled Hedge Fund (Securities)	Accredited Investors and Qualified Purchasers (“QPs”)	In general, broker-dealer registration is required (and sales personnel must be Series 7 qualified) for any entity other than the issuer to engage in sales of a hedge fund product to U.S. persons. See “Foreign Securities – Solicited – Major U.S. Institutional Investors.”	Unless an exemption is available, every “investment company” must register with the SEC under the 1940 Act. Section 3(c)(7) of the 1940 Act provides an exemption if the fund is sold to persons who are QPs and the fund is sold in privately offered. Investors must also be accredited investors in order for the hedge fund to maintain a registration exemption for private offerings under the Securities Act.
	Accredited Investors	In general, broker-dealer registration is required (and sales personnel must be Series 7 qualified) for any entity other than the issuer to engage in sales of a hedge fund product to U.S. persons. See “Foreign Securities – Solicited – Major U.S. Institutional Investors.”	Unless an exemption is available, every “investment company” must register with the SEC under the 1940 Act. Section 3(c)(1) of the 1940 Act provides an exemption if the fund is sold to not more than 100 beneficial owners and the fund is sold in an exempt private offering. Investors must also be accredited investors in order for the fund to maintain a registration exemption for private offerings under the Securities Act. If the trading adviser to the hedge fund is an SEC-registered SEC investment adviser that receives performance allocations (incentive fees), sales are further limited to persons who are Qualified Clients. Investment Advisers Act Regulation 205-3.

Glossary

1940 Act – The Investment Company Act of 1940, as amended. 15 U.S.C. §§ 80-1 *et seq.*

Accredited Investor - An “accredited investor” is defined in Securities Act Rule 501 to include:

- (a) any natural person whose net worth, or joint net worth with a spouse, at the time of purchase exceeds \$1,000,000;
- (b) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of the two most recent years and has a reasonable expectation of meeting the same income level in the current year;
- (c) a corporation, Massachusetts or similar business trust, partnership or organization defined in Section 501(c)(3) of the Internal Revenue Code, not formed for the specific purpose of acquiring the interests offered, with total assets in excess of \$5,000,000;
- (d) any trust with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the interests offered, whose purchase is directed by a person who has such knowledge and expertise in financial and business matters that such person is capable of evaluating the merits and risks of the prospective investment or whose trustee is a bank or savings and loan association; and
- (e) any entity in which all of the equity owners are accredited investors.

CEA – The Commodity Exchange Act, as amended. 7 U.S.C. § 1 *et seq.*

CFTC – The Commodity Futures Trading Commission.

CFMA – The Commodity Futures Modernization Act of 2000. Public Law No. 106-554.

Eligible Broker-Dealer – For purposes of SEC no-action relief relating to foreign options, an “eligible broker-dealer” is a registered broker-dealer that is a “Qualified Institutional Buyer” (*see* below), or an international organization excluded from the definition of “U.S. person” in Rule 902(k)(2)(vi) of Regulation S under the Securities Act, that has had prior actual experience with traded options in the U.S. options market.

Eligible Commercial Entity – An “eligible commercial entity” is defined in CEA §1a(11) to include certain eligible contract participants which have a demonstrable ability to make or take delivery of the commodity, incur risks (other than price risk) related to the commodity, are dealers providing risk management or hedging services or engaging in market-making activities with commercial entities, or meet certain other criteria.

Eligible Contract Participant (“ECP”) – An “eligible contract participant” is defined in CEA §1a(12) to include, *inter alia*, various regulated entities such as financial institutions, insurance companies, and investment companies; commodity pools with total assets over \$5 million; business organizations with total assets over \$10 million; employee benefit plans with total assets over \$5 million; government entities; broker-dealers; investment bank holding companies; futures commission merchants; floor brokers and floor traders; and individuals with assets in excess of \$10 million.

Eligible Institution – For purposes of SEC no-action relief relating to foreign options, an “eligible institution” is an entity that is a “Qualified Institutional Buyer” (*see* below), or an international organization excluded from the definition of “U.S. person” in Rule 902(k)(2)(vi) of Regulation S under the Securities Act, that has had prior actual experience with traded options in the U.S. options market.

Eligible Swap Participant (“ESP”) – An “eligible swap participant” is defined generally to include regulated entities such as broker-dealers, banks, and insurance companies; entities with total assets in excess of \$10 million; and collective investment vehicles with assets in excess of \$5 million that are not formed specifically for the purpose of being an “eligible swap participant.”

Exchange Act – The Securities Exchange Act of 1934, as amended. 15 U.S.C. § 78a *et seq.*

Excluded Commodity - “Excluded commodity” is defined in CEA §1a(13) to include, *inter alia*, interest rates, exchange rates, currencies, securities, security indices, credit risks or measures, debt or equity interests, indices or measures of inflation, or other macroeconomic indices or measures.

Foreign Broker-Dealer – A “foreign broker-dealer” is defined with reference to Section 3(a)(4) of the Exchange Act, which defines a broker as “any person engaged in the business of effecting transactions in securities for the account of others” and SEC Rule 15a-6, which defines a foreign broker-dealer as a “non-U.S. resident person ... that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of ‘broker’ ... in section 3(a)(4) of the [Exchange] Act.”

Futures Commission Merchant (“FCM”) – A “futures commission merchant” is defined in CEA §1a(20) as “an individual, association, partnership, corporation or trust that (A) is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and (B) 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.”

Institutional Investor – An “institutional investor” is defined in SEC Rule 15a-6 as (a) a registered investment company; (b) a bank; (c) a savings and loan association; (d) an insurance company; (e) a business development company; (f) a small business development company; (g) an employee benefit plan: (x) which has total assets in excess of \$5 million; or (y) whose investment decisions are directed by specified investment managers; (h) a private business development company; (i) an organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5 million; or (j) any trust with total assets in excess of \$5 million whose investment decisions are directed by a sophisticated investor. A U.S.-affiliated foreign broker-dealer may enter into transactions with any entity, including any investment adviser (whether or not registered under the Investment Advisers Act), that owns or controls (or, in the case of an investment adviser, has under management) in excess of \$100 million in aggregate financial assets (i.e., cash, money-market instruments, securities of unaffiliated issuers, futures and options on futures and other derivative instruments).

Introducing Broker – An “introducing broker” is defined in CEA §1a(23) as any person (except individuals who are registered as an associated person of an FCM) “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 or derivatives transaction execution facility who does not accept any money, securities, or property or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.”

Major U.S. Institutional Investor – A “major U.S. institutional investor” is defined in SEC Rule 15a-6(b)(4) as: (a) a U.S. institutional investor that has, or has under management, total assets in excess of \$100 million; or (b) a registered investment adviser that has total assets under management in excess of \$100 million.

NFA – The National Futures Association.

Qualified Client (“QC”) – A “qualified client” is defined in Rule 205-3 under the Investment Advisers Act of 1940 and generally includes:

- (a) any person with a net worth, including assets held jointly with a spouse, in excess of \$1,500,000 (as used in the foregoing sentence, “net worth” means the excess of total assets at fair market value over total liabilities);
- (b) any person with at least \$750,000 under the management of fund’s adviser;
- (c) any person that is a “qualified purchaser” as defined in Section 2(a)(51)(A) of the Investment Company Act and as discussed above; or
- (d) any person who is (i) an executive officer, director, trustee, general partner, or person servicing in a similar capacity of the fund; or (ii) an employee of the fund (other than those in a clerical, secretarial or administrative capacities) who, in connection with his or her regular functions or duties, participates in the investment activities of the fund, provided that such person has been performing such duties for or on behalf of the fund, or substantially similar functions or duties for or on behalf of another company, for at least 12 months.

Qualified Eligible Person (“QEP”) – A “qualified eligible person” is defined in CFTC Rule 4.7 and includes the following:

- (a) An individual whose net worth, or joint net worth with a spouse, at the time of purchase exceeds \$1,000,000 and who satisfies any one of the following three portfolio requirements:
 - (i) Owns securities (including pool participations) of issuers not affiliated with him and other investments with an aggregate market value of at least \$2,000,000; or
 - (ii) Has had on deposit with a futures commission merchant, for his own account at any time during the six-month period before purchasing the interest, at least \$200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or
 - (iii) Owns a portfolio comprised of a combination of the funds or property described in (i) and (ii) above in which the sum of funds or property includable under (i), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under (ii), expressed as a percentage of the minimum amount required thereunder, equals at least 100%. Example: \$1,000,000 in securities and other property (50% of requirement in (i)) and \$100,000 in exchange-specified initial margin and option premiums (50% of requirement in (ii)).
- (b) An individual who had, in each of the last 2 years, income in excess of \$200,000 or joint income with a spouse in excess of \$300,000 and has a reasonable expectation of reaching the same income level in the current year, and who satisfies any one of the three portfolio requirements mentioned above in (a);
- (c) A natural person who is not a resident of the United States, its territories or possessions;
- (d) A corporation, Massachusetts or similar business trust, partnership or organization defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, other than a commodity pool, not formed for the specific purpose of acquiring the interests offered, with total assets in excess of \$5,000,000, and who satisfies any one of the three portfolio requirements mentioned above in (a);

- (e) A trust, not formed for the specific purpose of participating in the fund, in which the trustee or other person authorized to make the investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a QEP, and who satisfies any one of the three portfolio requirements mentioned above in (a); and
- (f) An entity in which all of the unit owners or participants are QEPs.

Qualified Institutional Buyer (“QIB”) – A “qualified institutional buyer” is defined in Rule 144A of the Securities Act and includes the following:

- (a) Any of the following entities, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:
 - (i) any insurance company as defined in section 2(a)(13) of the Securities Act;
 - (ii) any investment company registered under the Investment Company Act or any business development company as defined in section 2(a)(48) of that Act;
 - (iii) any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;
 - (iv) any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
 - (v) any employee benefit plan within the meaning of title I of the Employee Retirement Income Security Act of 1974;
 - (vi) any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (a)(1)(i)(D) or (E) of Section 5 of the Securities Act, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.
 - (vii) any business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
 - (viii) any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, or Massachusetts or similar business trust; and
 - (ix) any investment adviser registered under the Investment Advisers Act.

Qualified Purchaser (“QP”) - A “qualified purchaser” is defined in Section 2(a)(51) of the Investment Company Act and includes the following:

- (a) any natural person (including any person who holds a joint, community property or other similar shared ownership interest in an issuer that is excepted under Section 3(c)(7) with that person’s qualified purchaser spouse) who owns not less than \$5,000,000 in “investments” (as defined by the SEC);
- (b) any company (including a corporation, partnership or trust) that owns not less than \$5,000,000 in investments and that is owned by or for two or more natural persons who are related as siblings or spouses (or former spouses), or direct lineal descendants by birth or adoption, spouses of these persons, the estates of these persons, or foundations, charitable organizations or trusts established by or for the benefit of these persons and not formed for the specific purpose of acquiring the interest unless each beneficial owner is a qualified purchaser;
- (c) any trust not formed for the specific purpose of acquiring the securities offered if the person authorized to make decisions for the trust and each person who has contributed assets to the trust is a qualified purchaser;
- (d) any person (*i.e.*, any legal entity) acting for its own account, or for the account of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis not less than \$25,000,000 in investments and not formed for the specific purpose of acquiring the interest unless each beneficial owner is a qualified purchaser; and
- (e) an entity owned solely by qualified purchasers.

SEC – The Securities and Exchange Commission.

Securities Act – The Securities Act of 1933, as amended. 15 U.S.C. § 77a *et seq.*

Appendix I – Relevant Provisions of the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*)

§ 1a(4). Commodity

The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85-839 (7 U.S.C. § 13-1), and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.

§ 1a(12). Eligible contract participant

The term “eligible contract participant” means—

(A)

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iv) a commodity pool that

(I) has total assets exceeding \$5,000,000; and

(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

(v) a corporation, partnership, proprietorship, organization, trust, or other entity:

(I) that has total assets exceeding \$10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (i), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that

(aa) has a net worth exceeding \$1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business;

(viii)

(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer 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-5(b), 78q(h)); [or]

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

(ix) a futures commission merchant subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades,

acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(B)

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 *et seq.*), a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C)

any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

§ 1a(13). Excluded commodity

The term “excluded commodity” means—

- (i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;
- (ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—
 - (I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or
 - (II) based solely on one or more commodities that have no cash market;
- (iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or
- (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—
 - (I) beyond the control of the parties to the relevant contract, agreement, or transaction; and
 - (II) associated with a financial, commercial, or economic consequence.

§ 1a(14). Exempt commodity

The term “exempt commodity” means a commodity that is not an excluded commodity or an agricultural commodity.

§ 1a(19). Future delivery

The term “future delivery” does not include any sale of any cash commodity for deferred shipment or delivery.

§ 2(a). Jurisdiction of Commission; Commodity Futures Trading Commission

(1) Jurisdiction of Commission

...

(C) Designation of boards of trade as contract markets; contracts for future delivery; security futures products; filing with Board of Governors of Federal Reserve System; judicial review

Notwithstanding any other provision of law—

(i) This chapter shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 77b(1) of title 15 or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)]), including any group or index of such securities, or any interest therein or based on the value thereof.

(ii) This chapter shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty”) and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof); provided, however, that no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery, unless the board of trade or the derivatives transaction execution facility, and the applicable contract, meet the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 77c of title 15 or section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)], (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)]);

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

(III) Such group or index of securities shall not constitute a narrow-based security index.

(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(56)] and section 1a

of this title subject to all rules and regulations applicable to security futures products under this chapter and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)].

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)]), or except as provided in clause (ii) of this subparagraph or subparagraph (D), any group or index of such securities or any interest therein or based on the value thereof.

(v)

(I) Notwithstanding any other provision of this chapter, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option 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 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 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 security futures products, under this clause to the Commission.

(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)].

(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 12a(9) of this title to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.

(VI) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause (III), under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or

in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

§ 2(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 agreement, 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 (15 U.S.C. §78f(a)).

(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 (15 U.S.C. §78f(a)); 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-5) 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-5), 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-5(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 1841 of title 12); 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 (i))).

(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.

§ 2(d). Excluded derivative transactions

(1) In general

Nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

(B) the agreement, contract, or transaction is not executed or traded on a trading facility.

(2) Electronic trading facility exclusion

Nothing in this Act (other than section 5a (to the extent provided in section 5a(g), 5b, 5d, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii);

(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants described in subparagraph (A), (B)(ii), or (C) of section 1a(12)) at the time at which the persons enter into the agreement, contract, or transaction; and

(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.

§ 2(e). Excluded electronic trading facilities

(1) In general

Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to an electronic trading facility that limits transactions authorized to be conducted on its facilities to those satisfying the requirements of subsection (d)(2), (g), or (h)(3) of this section.

(2) Effect on authority to establish and operate

Nothing in this Act shall prohibit a board of trade designated by the Commission as a contract market or derivatives transaction execution facility, or operating as an exempt board of trade from establishing and operating an electronic trading facility excluded under this Act pursuant to paragraph (1).

(3) Effect on transactions

No failure by an electronic trading facility to limit transactions as required by paragraph (1) of this subsection or to comply with subsection (h)(5) of this section shall in itself affect the legality, validity, or enforceability of an agreement, contract, or transaction entered into or traded on the electronic trading facility or cause a participant on the system to be in violation of this Act.

(4) Special rule

A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.

§ 2(g). Excluded swap transactions

No provision of this Act (other than section 5a (to the extent provided in section 5a(g) of this title), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

- (1) entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;
- (2) subject to individual negotiation by the parties; and
- (3) not executed or traded on a trading facility.

§ 2(h). Legal certainty for certain transactions in exempt commodities

(1) Except as provided in paragraph (2), nothing in this Act shall apply to a contract, agreement, or transaction in an exempt commodity which—

- (A) is entered into solely between persons that are eligible contract participants at the time the persons enter into the agreement, contract, or transaction; and
- (B) is not entered into on a trading facility.

(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

- (A) sections 5b and 12(e)(2)(B);

(B) sections 4b, 4o, 6(b), 6(c), 6c, 6d, and 8a, and the regulations of the Commission pursuant to section 4c(b) proscribing fraud in connection with commodity option transactions, to the extent the agreement, contract, or transaction is not between eligible commercial entities (unless one of the entities is an instrumentality, department, or agency of a State or local governmental entity) and would otherwise be subject to such sections and regulations; and

(C) sections 6(b), 6(d), 6c, 6d, 8a, and 9(a)(2), to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and the agreement, contract, or transaction would otherwise be subject to such sections.

(3) Except as provided in paragraph (4), nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity which is—

(A) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities at the time the persons enter into the agreement, contract, or transaction; and

(B) executed or traded on an electronic trading facility.

(4) An agreement, contract, or transaction described in paragraph (3) of this subsection shall be subject to—

(A) sections 5a (to the extent provided in section 5a(g)), 5b, 5d, and 12(e)(2)(B);

(B) sections 4b and 4o and the regulations of the Commission pursuant to section 4c(b) proscribing fraud in connection with commodity option transactions to the extent the agreement, contract, or transaction would otherwise be subject to such sections and regulations;

(C) sections 6(b) and 9(a)(2), to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and to the extent the agreement, contract, or transaction would otherwise be subject to such sections; and

(D) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility.

(5) An electronic trading facility relying on the exemption provided in paragraph (3) shall—

(A) notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in paragraph (3), which notice shall include—

(i) the name and address of the facility and a person designated to receive communications from the Commission;

(ii) the commodity categories that the facility intends to list or otherwise make available for trading on the facility in reliance on the exemption set forth in paragraph (3);

(iii) certifications that—

(I) no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the facility is a person described in any of subparagraphs (A) through (H) of section 8a(2);

(II) the facility will comply with the conditions for exemption under this paragraph; and

(III) the facility will notify the Commission of any material change in the information previously provided by the facility to the Commission pursuant to this paragraph; and

(iv) the identity of any derivatives clearing organization to which the facility transmits or intends to transmit transaction data for the purpose of facilitating the clearance and settlement of transactions conducted on the facility in reliance on the exemption set forth in paragraph (3);

(B)

(i)

(I) provide the Commission with access to the facility's trading protocols and electronic access to the facility with respect to transactions conducted in reliance on the exemption set forth in paragraph (3); or

(II) provide such reports to the Commission regarding transactions executed on the facility in reliance on the exemption set forth in paragraph (3) as the Commission may from time to time request to enable the Commission to satisfy its obligations under this Act;

(ii) maintain for 5 years, and make available for inspection by the Commission upon request, records of activities related to its business as an electronic trading facility exempt under paragraph (3), including—

(I) information relating to data entry and transaction details sufficient to enable the Commission to reconstruct trading activity on the facility conducted in reliance on the exemption set forth in paragraph (3); and

(II) the name and address of each participant on the facility authorized to enter into transactions in reliance on the exemption set forth in paragraph (3); and

(iii) upon special call by the Commission, provide to the Commission, in a form and manner and within the period specified in the special call, such information related to its business as an electronic trading facility exempt under paragraph (3), including information relating to data entry and transaction details in respect of transactions entered into in reliance on the exemption set forth in paragraph (3), as the Commission may determine appropriate—

(I) to enforce the provisions specified in subparagraphs (B) and (C) of paragraph (4);

(II) to evaluate a systemic market event; or

(III) to obtain information requested by a Federal financial regulatory authority in order to enable the regulator to fulfill its regulatory or supervisory responsibilities;

(C)

(i) upon receipt of any subpoena issued by or on behalf of the Commission to any foreign person who the Commission believes is conducting or has conducted transactions in reliance on the exemption set forth in paragraph (3) on or through the electronic trading facility relating to the transactions, promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner reasonable under the circumstances, or as specified by the Commission; and

(ii) if the Commission has reason to believe that a person has not timely complied with a subpoena issued by or on behalf of the Commission pursuant to clause (i), and the Commission in writing has directed that a facility relying on the exemption set forth in paragraph (3) deny or limit further transactions by the person, the facility shall deny that person further trading access to the facility or, as applicable, limit that person's access to the facility for liquidation trading only;

(D) comply with the requirements of this paragraph applicable to the facility and require that each participant, as a condition of trading on the facility in reliance on the exemption set forth in paragraph (3), agree to comply with all applicable law;

(E) have a reasonable basis for believing that participants authorized to conduct transactions on the facility in reliance on the exemption set forth in paragraph (3) are eligible commercial entities; and

(F) not represent to any person that the facility is registered with, or designated, recognized, licensed, or approved by the Commission.

(6) A person named in a subpoena referred to in paragraph (5)(C) that believes the person is or may be adversely affected or aggrieved by action taken by the Commission under this section, shall have the opportunity for a prompt hearing after the Commission acts under procedures that the Commission shall establish by rule, regulation, or order.

§ 4. Regulation of futures trading and foreign transactions

(a) Restriction on futures trading

Unless exempted by the Commission pursuant to subsection (c) of this section, it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;

(2) such contract is executed or consummated by or through a contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each contract market or derivatives transaction execution facility member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

§ 4b. Fraud, false reporting, or deception prohibited

(a) Contracts designed to defraud or mislead; bucketing orders

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 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—

(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.

(b) Buying and selling orders for commodity

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 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) Inapplicability to transactions on foreign exchanges

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.

§ 4d(a). Registration requirements; duties of merchants in handling customer receipts

It shall be unlawful for any person to engage as futures commission merchant or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless—

(1) such person shall have registered, under this Act, with the Commission as such futures commission merchant or introducing broker and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, if a futures commission merchant, whether a member or nonmember of a contract market or derivatives transaction execution facility, 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 clearing house organization of such contract market or derivatives transaction execution facility, 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 derivatives transaction execution facility or with any member of such contract market or derivatives transaction execution facility, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: Provided further, That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: Provided further, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

§ 4o. Fraud and misrepresentation by commodity trading advisors, commodity pool operators, and associated persons

(1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

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

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

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

§ 9. Violations generally; punishment; costs of prosecution

(a) Felonies generally

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, or both, together with the costs of prosecution, for:

...

(2) 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 registered entity, 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 interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, subsections (a) through (e) of subsection 4c, section 4h, section 4o(1), or section 19.

§ 22(a)(4). Contract enforcement between eligible counterparties

No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants, and no hybrid instrument sold to any investor, shall be void, voidable, or unenforceable, and no such party shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, transaction, or instrument under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, transaction, or instrument to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.

Appendix II – Relevant Provisions of the Commodity Futures Modernization Act of 2000 (Pub. L. 106-554, 114 Stat. 2763)(

§ 301. Swap Agreement

(a) Amendment- Title II of the Gramm-Leach-Bliley Act (Public Law 106-102) is amended by inserting after section 206 the following new sections:

SEC. 206A Swap Agreement.

(a) In General - Except as provided in subsection (b), as used in this section, the term “swap agreement” means any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act as in effect on the date of the enactment of this section), other than a person that is an eligible contract participant under section 1a(12)(C) of the Commodity Exchange Act, the material terms of which (other than price and quantity) are subject to individual negotiation, and that--

(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, or commodity swap;

(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).

(b) Exclusions - The term “swap agreement” does not include—

(1) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

(2) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 relating to foreign currency;

(3) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis;

(4) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

(5) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934; or

(6) any agreement, contract, or transaction that is--

(A) based on a security; and

(B) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising.

(c) Rule of Construction Regarding Master Agreements - As used in this section, the term “swap agreement” shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap agreement pursuant to subsections (a) and (b), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap agreement pursuant to subsections (a) and (b), except that the master agreement shall be considered to be a swap agreement only with respect to each agreement, contract, or transaction under the master agreement that is a swap agreement pursuant to subsections (a) and (b).

SEC. 206B. Security-Based Swap Agreement.

As used in this section, the term “security-based swap agreement” means a swap agreement (as defined in section 206A) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

SEC. 206C. Non-Security-Based Swap Agreement.

As used in this section, the term “non-security-based swap agreement” means any swap agreement (as defined in section 206A) that is not a security-based swap agreement (as defined in section 206B).

(b) Security Definition - As used in the amendment made by subsection (a), the term “security” has the same meaning as in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934.

§ 302. Amendments to the Securities Act of 1933.

(a) Enforcement Focus - The Securities Act of 1933 is amended by inserting after section 2 (15 U.S.C. § 77b) the following new section:

SEC. 2A. Swap Agreements.

(a) Non-Security-Based Swap Agreements - The definition of “security” in section 2(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

(b) Security-Based Swap Agreements -

(1) The definition of “security” in section 2(a)(1) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration statement with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration statement with respect to such a swap agreement shall be void and of no force or effect.

(3) The Commission is prohibited from--

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability;

under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(4) References in this title to the “purchase” or “sale” of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), as the context may require.

(b) Anti-Fraud and Anti-Manipulation Enforcement Authority - Section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)) is amended to read as follows:

(a) It shall be unlawful for any person in the offer or sale of any securities or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly--

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(c) Limitation - Section 17 of the Securities Act of 1933 is amended by adding at the end the following new subsection:

(d) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 2A(b) of this title.

§ 303. Amendments to The Securities Exchange Act of 1934.

(a) Enforcement Focus - The Securities Exchange Act of 1934 is amended by inserting after section 3 (15 U.S.C. § 78c) the following new section:

SEC. 3A. Swap Agreements.

(a) Non-Security-Based Swap Agreements - The definition of “security” in section 3(a)(10) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

(b) Security-Based Swap Agreements -

(1) The definition of “security” in section 3(a)(10) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such a swap agreement shall be void and of no force or effect.

(3) Except as provided in section 16(a) with respect to reporting requirements, the Commission is prohibited from--

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability;

under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(4) References in this title to the “purchase” or “sale” of a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require.

(b) Anti-Fraud, Anti-Manipulation Enforcement Authority - Paragraphs (2) through (5) of section 9(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78i(a)(2)-(5)) are amended to read as follows:

(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that

the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(4) If a dealer or broker, or the person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(c) Limitation - Section 9 of the Securities Exchange Act of 1934 is amended by adding at the end the following new subsection:

(i) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.

(d) Regulations on the Use of Manipulative and Deceptive Devices - Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. § 78j) is amended--

(1) in subsection (b), by inserting “or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),” before “any manipulative or deceptive device”; and

(2) by adding at the end the following:

Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) to the same extent as they apply to securities. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) to the same extent as they apply to securities.

(e) Broker, Dealer Anti-Fraud, Anti-Manipulation Enforcement Authority - Section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(c)(1)) is amended to read as follows:

(c)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(B) No municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or to attempt to induce the purchase or sale of, any government security or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(f) Limitation - Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o) is amended by adding at the end the following new subsection:

(i) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.

(g) Anti-Insider Trading Enforcement Authority - Subsections (a) and (b) of section 16 (15 U.S.C. §§ 78p(a), (b)) of the Securities Exchange of 1934 are amended to read as follows:

(a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership and such purchases and sales of such security-based swap agreements as have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving any such equity security within any period of less than six months, unless such security or security-based swap agreement was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security or security-based swap agreement purchased or of not repurchasing the security or security-based swap agreement sold for a period exceeding six months.

§ 402. Definitions.

(a) Bank - In this title, the term “bank” means--

(1) any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act);

(2) any foreign bank or branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978);

(3) any Federal or State credit union (as defined in section 101 of the Federal Credit Union Act);

(4) any corporation organized under section 25A of the Federal Reserve Act;

(5) any corporation operating under section 25 of the Federal Reserve Act;

(6) any trust company; or

(7) any subsidiary of any entity described in paragraph (1) through (6) of this subsection, if the subsidiary is regulated as if the subsidiary were part of the entity and is not a broker or dealer (as such terms are defined in section 3 of the Securities Exchange Act of 1934) or a futures commission merchant (as defined in section 1a(20) of the Commodity Exchange Act).

(b) Identified Banking Product - In this title, the term “identified banking product” shall have the same meaning as in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act, except that in applying such section for purposes of this title—

(1) the term “bank” shall have the meaning given in subsection (a) of this section; and

(2) the term “qualified investor” means eligible contract participant (as defined in section 1a(12) of the Commodity Exchange Act, as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000).

(c) Hybrid Instrument - In this title, the term “hybrid instrument” means an identified banking product not excluded by section 403 of this Act, offered by a bank, having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities (as defined in section 1a(4) of the Commodity Exchange Act).

(d) Covered Swap Agreement- In this title, the term “covered swap agreement” means a swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act), including a credit or equity swap, based on a commodity other than an agricultural commodity enumerated in section 1a(4) of the Commodity Exchange Act if--

(1) the swap agreement--

(A) is entered into only between persons that are eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act, as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) at the time the persons enter into the swap agreement; and

(B) is not entered into or executed on a trading facility (as defined in section 1a(33) of the Commodity Exchange Act); or

(2) the swap agreement--

(A) is entered into or executed on an electronic trading facility (as defined in section 1a(10) of the Commodity Exchange Act);

(B) is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of the Commodity Exchange Act;

(C) is entered into only between persons that are eligible contract participants as described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of the Commodity Exchange Act, as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000, at the time the persons enter into the swap agreement; and

(D) is an agreement, contract or transaction in an excluded commodity (as defined in section 1a(13) of the Commodity Exchange Act).

§ 407. Exclusion of Covered Swap Agreements.

No provision of the Commodity Exchange Act (other than section 5b of such Act with respect to the clearing of covered swap agreements) shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a covered swap agreement offered, entered into, or provided by a bank.

§ 408. Contract Enforcement.

(a) Hybrid Instruments - No hybrid instrument shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, a hybrid instrument under any provision of Federal or State law, based solely on the failure of the hybrid instrument to satisfy the predominance test set forth in section 405(b) of this Act or to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act or any regulation of the Commodity Futures Trading Commission.

(b) Covered Swap Agreements - No covered swap agreement shall be void, voidable, or unenforceable, and no party to a covered swap agreement shall be entitled to rescind, or recover any payment made with respect to, a covered swap agreement under any provision of Federal or State law, based solely on the failure of the covered swap agreement to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act or any regulation of the Commodity Futures Trading Commission.

(c) Preemption - This title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

- (1) a hybrid instrument that is predominantly a banking product; or
- (2) a covered swap agreement.

Appendix III – Relevant CFTC Regulations

CFTC Regulation 1.17 – Minimum financial requirements for futures commission merchants and introducing brokers.

...

(c) Definitions: For the purposes of this section:

...

(5) The term *adjusted net capital* means net capital less:

...

(vi) In the case of securities options and/or other options for which a haircut has been specified for the option or for the underlying instrument in Regulation 240.15c3–1 appendix A of this title, the treatment specified in, or under, Regulation 240.15c3–1 appendix A, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix.

CFTC Regulation 1.19 – Prohibited trading in certain “puts” and “calls”.

No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except:

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this Act;

(b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this Act; or

(c) For futures commission merchants, any option permitted under Regulation 32.4 of this chapter, *provided however*, that a capital treatment for such options is referenced in Regulation 1.17(c)(5)(vi).

CFTC Regulation 1.38 – Execution of transactions.

(a) *Competitive execution required; exceptions.* All purchases and sales of any commodity for future delivery, and of any commodity option, 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 trading in such commodity or commodity option: Provided, however, That this requirement shall not apply to transactions which are executed non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the non-competitive execution of such transactions.

(b) *Noncompetitive trades; exchange of futures, etc.; requirements.* Every person handling, executing, clearing, or carrying trades, transactions or positions which are not competitively executed, including transfer trades or office trades, or trades involving the exchange of futures for cash commodities or the exchange of futures in connection with cash commodity transactions, shall identify and mark by appropriate symbol or designation all such transactions or contracts and all orders, records, and memoranda pertaining thereto.

CFTC Regulation 4.14 – Exemption from registration as a commodity trading advisor.

This section is organized as follows: Paragraph (a) of this section specifies the criteria that must be met to qualify for exemption from registration under this section, including the notice of exemption from registration and continuing obligations of persons who have claimed exemption under paragraph (a)(8) of this section; paragraph (b) of this section concerns “cash market transactions”; and paragraph (c) of this section specifies the effect of registration on a person who has claimed an exemption from registration under this section or who is eligible to claim an exemption from registration hereunder.

(a) A person is not required to register under the Act as a commodity trading advisor if:

...

(4) It is registered under the Act as a commodity pool operator and the person’s commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so registered.

CFTC Regulation 30.5 – Alternative procedures for non-domestic persons.

Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing with the National Futures Association a Form 7–R completed and filed in accordance with the instructions thereto and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must engage in all transactions subject to regulation under Part 30 through a registered futures commission merchant or a foreign broker who has received confirmation of an exemption pursuant to Regulation 30.10 in accordance with the provisions of Regulation 30.3(b).

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through which business is done, with any registered futures association, or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to Regulation 30.10 with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the National Futures Association. For the purposes of this section, the term “communication” includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(b) *Termination of agreement.* Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant or any other person that is party to the agreement shall immediately notify the National Futures Association and the futures commission merchant through which business is done, as appropriate. Upon notice, a futures commission merchant shall not accept from the person that has entered into such agreement any order, other than liquidating order(s), for, or on behalf of a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or

delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

(c) *Applicability of other rules.* Any person who is located outside of the United States, its territories or possessions, and who, in accordance with the provisions of paragraph (a) of this section, is exempt from registration as an introducing broker, commodity pool operator or commodity trading advisor under this part, shall nonetheless comply with the provisions of Regulation 30.6 of this part and Regulations 1.37 and 1.57 of this chapter as if registered in such capacity.

(d) *Access to records.* Any person exempt from registration with the Commission in accordance with the provisions of paragraph (a) of this section must, upon the request of any representative of the Commission or U.S. Department of Justice, provide such records as such person is required to maintain under this part as requested at the place in the United States designated by the representative within 72 hours after the person receives the request.

CFTC Regulation 30.10 – Petitions for exemption.

(a) Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(b) Any foreign person that files a petition for an exemption under this section shall be eligible for such an exemption notwithstanding its presence in the United States through U.S. bank branches or divisions if, in conjunction with a petition for confirmation of relief granted under an existing Commission order issued pursuant to this section, it complies with the following conditions:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or foreign options customer to the foreign person or otherwise be involved in the foreign person's business in foreign futures or foreign option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or foreign option business or purchase or sell foreign futures or foreign option contracts on behalf of any foreign futures or foreign option customers or otherwise engage in any activity subject to regulation under this part or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate Commission registrant;

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and foreign option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foregoing undertakings and consent to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures or foreign option customers for the purpose of facilitating or effecting transactions in foreign futures or foreign option contracts.

CFTC Regulation 32.2 – Prohibited transactions.

Notwithstanding the provisions of Regulation 32.11, no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice if the transaction is or is held out to be of the character of, or is commonly known to the trade as an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guarantee," or "decline guarantee," except as provided under Regulation 32.13 of this Part.

CFTC Regulation 32.4 – Exemptions.

(a) Except for the provisions of Regulations 32.2, 32.8 and 32.9, which shall in any event apply to all commodity option transactions, the provisions of this part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(b) The Commission may, by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, other than Regulations 32.2, 32.8 and 32.9, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

CFTC Regulation 32.8 – Unlawful representations; execution of orders.

It shall be unlawful for:

(a) Any person required to be registered with the Commission in accordance with this part expressly or impliedly to represent that the Commission, by declaring effective the registration of such person or otherwise, has directly or indirectly approved such person, or any commodity option transaction solicited or accepted by such person;

(b) Any person in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction expressly or impliedly to represent that compliance with the provisions of this part constitutes a guarantee of the fulfillment of the commodity option transaction;

(c) Any person, upon receipt of an order for a commodity option transaction, unreasonably to fail to secure prompt execution of such order.

CFTC Regulation 32.9 – Fraud in connection with commodity option transactions.

It shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever; in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

CFTC Regulation 32.13 – Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

...

(g) *Exemption.*

(1) The provisions of Regulations 3.13, 32.2, 32.11 of this chapter and this section shall not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than \$10 million or the party's obligations on the option are guaranteed by a person which has a net worth of \$10 million and has a majority ownership interest in, is owned by, or is under common ownership with, the party to the option.

(2) Provided, however, that Regulation 32.9 continues to apply to such option transactions.

CFTC Regulation 33.2 – Applicability of Act and Rules; Scope of Part 33.

(a) Except as otherwise specified in this part and unless the context otherwise requires:

(1) Each board of trade designated, or applying for designation, by the Commission as a contract market for the purpose of trading commodity options pursuant to this part shall be deemed for such purpose to be a "board of trade," "exchange," and a "contract market" and, with respect to commodity option transactions conducted pursuant to such designation, shall comply with and be subject to all of the provisions of the Act relating to boards of trade, exchanges, or contract markets as though such provisions were set forth herein; and

(2) The provisions of sections 1a, 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a(a), 5b, 6, 6a, 6b, 6c, 7, 8(a)–(e), 8a, 8b, 8c, and 16 of the Act shall apply to commodity option transactions that are subject to the requirements of this part as though such provisions were set forth herein and included specific references to commodity option transactions. Nothing contained in this section shall be construed to confer designation as a contract market absent issuance of an order of the Commission so designating an applicant board of trade.

(b) The provisions of this part apply to commodity option transactions except for transactions which are governed by Part 32 of this chapter.

CFTC Regulation 35.2 – Exemption.

A swap agreement is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such agreement, is exempt for such activity from all provisions of the Act (except in each case the provisions of sections 2(a)(1)(B), 4b, and 4o of the Act and Regulation 32.9 of this chapter as adopted under section 4c(b) of the Act, and the provisions of sections 6(c) and 9(a)(2) of the Act to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market), provided the following terms and conditions are met:

- (a) The swap agreement is entered into solely between eligible swap participants at the time such persons enter into the swap agreement;
- (b) The swap agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;
- (c) The creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms of the swap agreement; and
- (d) The swap agreement is not entered into and traded on or through a multilateral transaction execution facility;

Provided, however, That paragraphs (b) and (d) of Rule 35.2 shall not be deemed to preclude arrangements or facilities between parties to swap agreements, that provide for netting of payment obligations resulting from such swap agreements nor shall these subsections be deemed to preclude arrangements or facilities among parties to swap agreements, that provide for netting of payments resulting from such swap agreements; *Provided further,* That any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited thereto, the applicability of other regulatory regimes.

Appendix IV – Relevant Provisions of the Securities Act of 1933 (15 U.S.C. § 77a et seq.)

§ 2A. Swap Agreements

(a) Non-Security-Based Swap Agreements. - The definition of “security” in section 2(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

(b) Security-Based Swap Agreements. -

(1) The definition of “security” in section 2(a)(1) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such swap agreement shall be void and of no force or effect.

(3) The Commission is prohibited from—

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability; under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(4) References in this title to the “purchase” or “sale” of a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require.

Appendix V – Relevant Provisions of the Exchange Act (15 U.S.C. § 78a et seq.)

§ 3A. Swap Agreements.

(a) Non-Security-Based Swap Agreements. - The definition of “security” in section 3(a)(10) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

(b) Security-Based Swap Agreements. -

(1) The definition of “security” in section 3(a)(10) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such swap agreement shall be void and of no force or effect.

(3) Except as provided in section 16(a) with respect to reporting requirements, the Commission is prohibited from—

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability; under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(4) References in this title to the “purchase” or “sale” of a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require.

Appendix VI – Relevant SEC Rules

Exchange Act Rule 15a-6 – Exemption of certain foreign brokers or dealers.

(a) A foreign broker or dealer shall be exempt from the registration requirements of sections 15(a)(1) or 15B(a)(1) of the Act to the extent that the foreign broker or dealer:

- (1) Effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer; or
- (2) Furnishes research reports to major U.S. institutional investors, and effects transactions in the securities discussed in the research reports with or for those major U.S. institutional investors, provided that:

- (i) The research reports do not recommend the use of the foreign broker or dealer to effect trades in any security;
- (ii) The foreign broker or dealer does not initiate contact with those major U.S. institutional investors to follow up on the research reports, and does not otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors;
- (iii) If the foreign broker or dealer has a relationship with a registered broker or dealer that satisfies the requirements of paragraph (a)(3) of this section, any transactions with the foreign broker or dealer in securities discussed in the research reports are effected only through that registered broker or dealer, pursuant to the provisions of paragraph (a)(3) of this section; and
- (iv) The foreign broker or dealer does not provide research to U.S. persons pursuant to any express or implied understanding that those U.S. persons will direct commission income to the foreign broker or dealer; or

(3) Induces or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor, provided that:

- (i) The foreign broker or dealer:
 - (A) Effects any resulting transactions with or for the U.S. institutional investor or the major U.S. institutional investor through a registered broker or dealer in the manner described by paragraph (a)(3)(iii) of this section; and
 - (B) Provides the Commission (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3) of this section, except that if, after the foreign broker or dealer has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the information, documents, testimony, or assistance to the Commission, the foreign broker or dealer is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this paragraph (a)(3)(i)(B) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this section;

(ii) The foreign associated person of the foreign broker or dealer effecting transactions with the U.S. institutional investor or the major U.S. institutional investor:

(A) Conducts all securities activities from outside the U.S., except that the foreign associated persons may conduct visits to U.S. institutional investors and major U.S. institutional investors within the United States, provided that:

(1) The foreign associated person is accompanied on these visits by an associated person of a registered broker or dealer that accepts responsibility for the foreign associated person's communications with the U.S. institutional investor or the major U.S. institutional investor; and

(2) Transactions in any securities discussed during the visit by the foreign associated person are effected only through the registered broker or dealer, pursuant to paragraph (a)(3) of this section; and

(B) Is determined by the registered broker or dealer to:

(1) Not be subject to a statutory disqualification specified in section 3(a)(39) of the Act, or any substantially equivalent foreign

(i) Expulsion or suspension from membership,

(ii) Bar or suspension from association,

(iii) Denial of trading privileges,

(iv) Order denying, suspending, or revoking registration or barring or suspending association, or

(v) Finding with respect to causing any such effective foreign suspension, expulsion, or order;

(2) Not to have been convicted of any foreign offense, enjoined from any foreign act, conduct, or practice, or found to have committed any foreign act substantially equivalent to any of those listed in sections 15(b)(4) (B), (C), (D), or (E) of the Act; and

(3) Not to have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 3(a)(39)(E) of the Act; and

(iii) The registered broker or dealer through which the transaction with the U.S. institutional investor or the major U.S. institutional investor is effected:

(A) Is responsible for:

- (1) Effecting the transactions conducted under paragraph (a)(3) of this section, other than negotiating their terms;
- (2) Issuing all required confirmations and statements to the U.S. institutional investor or the major U.S. institutional investor;
- (3) As between the foreign broker or dealer and the registered broker or dealer, extending or arranging for the extension of any credit to the U.S. institutional investor or the major U.S. institutional investor in connection with the transactions;
- (4) Maintaining required books and records relating to the transactions, including those required by Rules 17a-3 and 17a-4 under the Act (17 CFR 240.17a-3 and 17a-4);
- (5) Complying with Rule 15c3-1 under the Act (17 CFR 240.15c3-1) with respect to the transactions; and
- (6) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Rule 15c3-3 under the Act (17 CFR 240.15c3-3);

(B) Participates through an associated person in all oral communications between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor;

(C) Has obtained from the foreign broker or dealer, with respect to each foreign associated person, the types of information specified in Rule 17a-3(a)(12) under the Act (17 CFR 240.17a-3(a)(12)), provided that the information required by paragraph (a)(12)(d) of that Rule shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including without limitation those described in paragraph (a)(3)(ii)(B) of this section;

(D) Has obtained from the foreign broker or dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in section 3(a)(26) of the Act), providing that process may be served on them by service on the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD; and

(E) Maintains a written record of the information and consents required by paragraphs (a)(3)(iii) (C) and (D) of this section, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer conducted under paragraph (a)(3) of this section, in an office of the registered broker or dealer located in the United States (with respect to nonresident registered brokers or dealers, pursuant to Rule 17a-7(a) under the Act (17 CFR 240.17a-7(a))), and makes these records available to the Commission upon request; or

(4) Effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by:

- (i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting in a broker or dealer capacity as permitted by U.S. law;
- (ii) The African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations, and their agencies, affiliates, and pension funds;
- (iii) A foreign person temporarily present in the United States, with whom the foreign broker or dealer had a bona fide, pre-existing relationship before the foreign person entered the United States;
- (iv) Any agency or branch of a U.S. person permanently located outside the United States, provided that the transactions occur outside the United States; or
- (v) U.S. citizens resident outside the United States, provided that the transactions occur outside the United States, and that the foreign broker or dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad.

(b) When used in this rule,

(1) The term *family of investment companies* shall mean:

- (i) Except for insurance company separate accounts, any two or more separately registered investment companies under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and
- (ii) With respect to insurance company separate accounts, any two or more separately registered separate accounts under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and function under operational or accounting or control systems that are substantially similar.

(2) The term *foreign associated person* shall mean any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of this section.

(3) The term *foreign broker or dealer* shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of “broker” or “dealer” in sections 3(a)(4) or 3(a)(5) of the Act.

(4) The term *major U.S. institutional investor* shall mean a person that is:

(i) A U.S. institutional investor that has, or has under management, total assets in excess of \$100 million; provided, however, that for purposes of determining the total assets of an investment company under this rule, the investment company may include the assets of any family of investment companies of which it is a part; or

(ii) An investment adviser registered with the Commission under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of \$100 million.

(5) The term *registered broker or dealer* shall mean a person that is registered with the Commission under sections 15(b), 15B(a)(2), or 15C(a)(2) of the Act.

(6) The term *United States* shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

(7) The term *U.S. institutional investor* shall mean a person that is:

(i) An investment company registered with the Commission under section 8 of the Investment Company Act of 1940; or

(ii) A bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933 (17 CFR 230.501(a)(1)); a private business development company defined in Rule 501(a)(2) (17 CFR 230.501(a)(2)); an organization described in section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3) (17 CFR 230.501(a)(3)); or a trust defined in Rule 501(a)(7) (17 CFR 230.501(a)(7)).

(c) The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this section with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one of a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this section.