

107TH CONGRESS
2^D SESSION

H. R. 4038

To establish a Securities and Derivatives Oversight Commission in order to combine the functions of the Commodity Futures Trading Commission and the Securities and Exchange Commission in a single independent regulatory commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2002

Mr. DEFAZIO (for himself, Mr. FILNER, Ms. MCKINNEY, Mr. SANDERS, Mr. KUCINICH, and Mr. LIPINSKI) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a Securities and Derivatives Oversight Commission in order to combine the functions of the Commodity Futures Trading Commission and the Securities and Exchange Commission in a single independent regulatory commission, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Market Oversight Consolidation and OTC Derivatives
4 Regulation Act”.

5 (b) **TABLE OF CONTENTS.**—

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Effect on congressional jurisdiction.

TITLE I—ESTABLISHMENT OF COMMISSION

- Sec. 101. Establishment.
- Sec. 102. Members: appointment; terms.
- Sec. 103. Organization of commission.
- Sec. 104. General Counsel.

TITLE II—TRANSFERS OF FUNCTIONS

- Sec. 201. Commodity Futures Trading Commission functions.
- Sec. 202. Securities and Exchange Commission.
- Sec. 203. Jurisdiction of margin authority.

**TITLE III—FEDERAL FINANCIAL MARKETS COORDINATING
COUNCIL**

- Sec. 301. Establishment; membership.
- Sec. 302. Functions of the Council.
- Sec. 303. Staff; administrative support; expenses.

TITLE IV—ADMINISTRATIVE PROVISIONS

PART A—PERSONNEL PROVISIONS

- Sec. 401. Officers and employees.
- Sec. 402. Experts and consultants.

PART B—GENERAL ADMINISTRATIVE PROVISIONS

- Sec. 411. General authority.
- Sec. 412. Delegation.
- Sec. 413. Reorganization.
- Sec. 414. Rules.
- Sec. 415. Contracts.
- Sec. 416. Regional and field offices.
- Sec. 417. Use of facilities.
- Sec. 418. Working capital fund.
- Sec. 419. Funds transfer.
- Sec. 420. Seal of Commission.
- Sec. 421. Annual report.

TITLE V—TRANSITIONAL, SAVINGS, AND CONFORMING
PROVISIONS

- Sec. 501. Transfer and allocation of appropriations and personnel.
- Sec. 502. Effect on personnel.
- Sec. 503. Agency terminations.
- Sec. 504. Incidental transfers.
- Sec. 505. Savings provisions.
- Sec. 506. Separability.
- Sec. 507. Reference.
- Sec. 508. Amendments.
- Sec. 509. Transition.

TITLE VI—REGULATION OF OTC DERIVATIVES

- Sec. 601. Regulation of over-the-counter derivatives.

TITLE VII—EFFECTIVE DATE

- Sec. 701. Effective date.

1 SEC. 2. PURPOSES.

2 The purposes of this Act are—

3 (1) to establish a single Federal regulatory body
4 with jurisdiction over securities and derivatives, in-
5 cluding options, futures, swaps, and related markets
6 and instruments and including over-the-counter de-
7 rivatives;

8 (2) to consolidate and revise the authority for
9 setting margin requirements on all such instru-
10 ments;

11 (3) to coordinate the regulation of all financial
12 markets;

13 (4) to strengthen investor confidence in United
14 States financial markets; and

15 (5) to ensure the competitiveness of those mar-
16 kets.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act—

3 (1) the term “Commission” means the Securi-
4 ties and Derivatives Oversight Commission estab-
5 lished by section 101 of this Act; and

6 (2) the term “function” includes any duty, obli-
7 gation, power, authority, responsibility, right, privi-
8 lege, activity, or program.

9 **SEC. 4. EFFECT ON CONGRESSIONAL JURISDICTION.**

10 It is the sense of Congress that this Act shall not
11 be construed to affect the jurisdiction of any committee
12 or subcommittee of the Congress with respect to any func-
13 tion transferred to the Commission by this Act.

14 **TITLE I—ESTABLISHMENT OF**
15 **COMMISSION**

16 **SEC. 101. ESTABLISHMENT.**

17 There is established an independent regulatory com-
18 mission to be known as the Securities and Derivatives
19 Oversight Commission.

20 **SEC. 102. MEMBERS: APPOINTMENT; TERMS.**

21 (a) COMPOSITION OF COMMISSION.—The Commis-
22 sion shall be composed of five commissioners appointed by
23 the President, by and with the advice and consent of the
24 Senate. One of the commissioners shall be designated by
25 the President as chairman. Not more than three of such
26 members shall be members of the same political party.

1 Each Commissioner shall be selected solely on the basis
2 of integrity and demonstrated knowledge of the operations
3 of the markets subject to the jurisdiction of the Commis-
4 sion.

5 (b) TERMS.—Each commissioner shall be appointed
6 for a term of 5 years, except that—

7 (1) a commissioner may continue to serve after
8 the expiration of such term until a successor is ap-
9 pointed and has qualified, but may not continue to
10 so serve beyond the expiration of the next session of
11 Congress beginning after the expiration of such
12 term;

13 (2) the terms of office of the commissioners
14 first taking office after the enactment of this Act
15 shall expire, as designated by the President at the
16 time of their appointment—

17 (A) 1 at the end of 1 year;

18 (B) 2 at the end of 3 years; and

19 (C) 2 at the end of 5 years; and

20 (3) any member appointed to fill a vacancy oc-
21 ccurring prior to the expiration of the term for which
22 the predecessor was appointed shall be appointed for
23 the remainder of such term.

24 (c) CONFLICTS OF INTEREST.—

1 (1) IN GENERAL.—No commissioner shall en-
2 gage in any other business, vocation, or employment
3 than that of serving as commissioner, nor shall any
4 commissioner participate, directly or indirectly, in
5 any market operations or transactions of a character
6 subject to regulation by the Commission pursuant to
7 this title.

8 (2) REIMBURSEMENT FOR TRAVEL.—Notwith-
9 standing any other provision of law, in accordance
10 with regulations which the Commission shall pre-
11 scribe to prevent conflicts of interest, the Commis-
12 sion may accept payment and reimbursement, in
13 cash or in kind, from non-Federal agencies, organi-
14 zations, and individuals for travel, subsistence, and
15 other necessary expenses incurred by Commission
16 members and employees in attending meetings and
17 conferences concerning the functions or activities of
18 the Commission. Any payment or reimbursement ac-
19 cepted shall be credited to the appropriated funds of
20 the Commission. The amount of travel, subsistence,
21 and other necessary expenses for members and em-
22 ployees paid or reimbursed under this subsection
23 may exceed per diem amounts established in official
24 travel regulations, but the Commission may include

1 in its regulations under this subsection a limitation
2 on such amounts.

3 (3) PROFESSIONAL FELLOWS.—Notwith-
4 standing any other provision of law, former employ-
5 ers of participants in the Commission’s professional
6 fellows programs may pay such participants their ac-
7 tual expenses for relocation to Washington, District
8 of Columbia, to facilitate their participation in such
9 programs, and program participants may accept
10 such payments.

11 (d) FEES.—Notwithstanding any other provision of
12 law, whenever any fee is required to be paid to the Com-
13 mission pursuant to any provision of the securities laws
14 or any other law, the Commission may provide by rule that
15 such fee shall be paid in a manner other than in cash.

16 **SEC. 103. ORGANIZATION OF COMMISSION.**

17 The Commission shall establish the principal divi-
18 sions and subdivisions of the Commission, except that the
19 Commission shall establish a separate division with re-
20 sponsibility for functions relating to markets in physical
21 commodities.

22 **SEC. 104. GENERAL COUNSEL.**

23 There shall be in the Commission an Office of Gen-
24 eral Counsel, headed by a General Counsel appointed by

1 the President, by and with the advice and consent of the
2 Senate.

3 **TITLE II—TRANSFERS OF** 4 **FUNCTIONS**

5 **SEC. 201. COMMODITY FUTURES TRADING COMMISSION** 6 **FUNCTIONS.**

7 There are transferred to the Commission all functions
8 of the Commodity Futures Trading Commission and of
9 any officer or component of the Commodity Futures Trad-
10 ing Commission.

11 **SEC. 202. SECURITIES AND EXCHANGE COMMISSION.**

12 There are transferred to the Commission all functions
13 of the Security and Exchange Commission and of any offi-
14 cer or component of the Securities and Exchange Commis-
15 sion.

16 **SEC. 203. JURISDICTION OF MARGIN AUTHORITY.**

17 (a) MARGIN AUTHORITY WITH RESPECT TO SECURI-
18 TIES.—There is transferred to the Commission the func-
19 tions of the Board of Governors of the Federal Reserve
20 System under section 7 of the Securities Exchange Act
21 of 1934.

22 (b) MARGIN AUTHORITY WITH RESPECT TO FU-
23 TURES.—Notwithstanding section 5a(12) of the Com-
24 modity Exchange Act, the Commission may—

1 (1) by order, direct contract markets to adjust
2 the level of margin required on any contract; or

3 (2) by regulation, prescribe limits on the level
4 of margin that a contract market may require on
5 any class or category of contract;

6 as necessary to ensure the financial integrity of such mar-
7 ket.

8 **TITLE III—FEDERAL FINANCIAL**
9 **MARKETS COORDINATING**
10 **COUNCIL**

11 **SEC. 301. ESTABLISHMENT; MEMBERSHIP.**

12 (a) ESTABLISHMENT.—There is established in the ex-
13 ecutive branch a council to be known as the Federal Fi-
14 nancial Markets Coordinating Council.

15 (b) MEMBERSHIP.—The Council shall be composed of
16 the heads of the following agencies or their designees for
17 this purpose:

18 (1) The Board of Governors of the Federal Re-
19 serve System.

20 (2) The Comptroller of the Currency.

21 (3) The Department of the Treasury.

22 (4) The Securities and Derivatives Oversight
23 Commission.

24 (5) The National Credit Union Administration.

25 (6) The Office of Thrift Supervision.

1 (7) The Federal Deposit Insurance Corporation.

2 (c) CHAIRMAN.—The Council shall elect one of its
3 members to serve as chairman.

4 **SEC. 302. FUNCTIONS OF THE COUNCIL.**

5 The Federal Financial Markets Coordinating Council
6 shall—

7 (1) serve as a facility for the coordination of
8 the regulatory operations of each of the agencies
9 represented on the Council;

10 (2) meet bimonthly and at the call of the chair
11 to discuss issues relating to the safety and effective-
12 ness of the financial services industry and other
13 issues relating to those regulatory operations;

14 (3) establish an advisory committee of not more
15 than 5 members representative of the futures, com-
16 modities, options, and securities exchanges and the
17 banking industry to meet no less than 4 times annu-
18 ally; and

19 (4) report biennially to the Congress on its
20 functions and activities, including in the first such
21 report such recommendations for legislative action
22 as it considers appropriate.

23 **SEC. 303. STAFF; ADMINISTRATIVE SUPPORT; EXPENSES.**

24 (a) STAFF; ADMINISTRATIVE SUPPORT.—The Com-
25 mission and each agency represented on the Council shall

1 provide to the Council such personnel and administrative
 2 support as the Council may require to carry out its func-
 3 tions under this title.

4 (b) EXPENSES.—There are authorized to be appro-
 5 priated such sums as may be necessary for the expenses
 6 of the Commission in carrying out this title. Funds appro-
 7 priated under this subsection may be available to reim-
 8 burse agencies for personnel detailed to the Council and
 9 for administrative support provided under subsection (a).

10 **TITLE IV—ADMINISTRATIVE** 11 **PROVISIONS**

12 **PART A—PERSONNEL PROVISIONS**

13 **SEC. 401. OFFICERS AND EMPLOYEES.**

14 (a) APPOINTMENT AND COMPENSATION.—The Com-
 15 mission is authorized to appoint and fix the compensation
 16 of such officers and employees, including attorneys, as
 17 may be necessary to carry out the functions of the Com-
 18 mission. Except as otherwise provided by law, such officers
 19 and employees shall be appointed in accordance with the
 20 civil service laws and their compensation fixed in accord-
 21 ance with title 5 of the United States Code.

22 (b) SPECIAL PROVISIONS.—

23 (1) CONTINUITY OF SUPERGRADE POSITIONS.—

24 At the request of the Commission, the Director of
 25 the Office of Personnel Management shall, under

1 section 5108 of title 5, United States Code, provide
2 for the establishment in each of the grade levels GS–
3 16, GS–17, and GS–18 of a number of positions in
4 the Commission equal to the number of positions in
5 that grade level which were used primarily for the
6 performance of functions and offices transferred
7 under this Act and which were assigned and filled on
8 the day before the effective date of this Act.

9 (2) CONTINUITY OF PROFESSIONAL AND TECH-
10 NICAL POSITIONS.—At the request of the Commis-
11 sion, the Director of the Office of Personnel Man-
12 agement shall, under section 3104 of title 5, United
13 States Code, provide for the establishment in the
14 Commission of a number of professional and tech-
15 nical positions outside of the General Schedule equal
16 to the number of such positions which were used pri-
17 marily for the performance of functions and offices
18 transferred under this Act and which were assigned
19 and filled on the day before the effective date of this
20 Act.

21 (3) APPOINTMENTS TO SPECIAL POSITIONS.—
22 Appointments to positions provided for under this
23 subsection may be made without regard to the provi-
24 sions of section 3324 of title 5 of the United States
25 Code, if the individual appointed in such position is

1 an individual who is transferred in connection with
2 the transfer of functions and offices under this Act
3 and, on the day preceding the effective date of this
4 Act, holds a position and has duties comparable to
5 those of the position to which appointed hereunder.

6 (4) TERMINATION OF SPECIAL AUTHORITY.—
7 The authority under this subsection with respect to
8 any position shall terminate when the person first
9 appointed to fill such position ceases to hold such
10 position.

11 (5) TECHNICAL PROVISION.—For purposes of
12 section 414(a)(3)(A) of the Civil Service Reform Act
13 of 1978, an individual appointed under this sub-
14 section shall be deemed to occupy the same position
15 as the individual occupied on the day preceding the
16 effective date of this Act.

17 (c) ADDITIONAL TECHNICAL AND PROFESSIONAL
18 POSITIONS.—The Commission may appoint, without re-
19 gard to the provisions of title 5, United States Code, gov-
20 erning appointment in the competitive service, up to 100
21 technical or professional employees of the Commission and
22 may compensate employees so appointed without regard
23 to the provisions of chapter 51 and subchapter III of chap-
24 ter 53 of such title relating to classification and General
25 Schedule pay rates. The rate of basic compensation for

1 such employees shall not be equal to or in excess of the
2 minimum rate of pay currently paid for GS-16 of the Gen-
3 eral Schedule under section 5332 of such title.

4 (d) LIMITED-TERM APPOINTEES.—Notwithstanding
5 any other provision of law, the Director of the Office of
6 Personnel Management shall establish positions within the
7 Senior Executive Service for 10 limited-term appointees.
8 The Commission shall appoint individuals to such posi-
9 tions as provided by section 3394 of title 5, United States
10 Code. Such positions shall expire on the later of three
11 years after the effective date of this Act or three years
12 after the initial appointment to each position. Positions
13 in effect under this subsection shall be taken into account
14 in applying the limitations on positions prescribed under
15 section 3134(e) and section 5108 of such title.

16 **SEC. 402. EXPERTS AND CONSULTANTS.**

17 The Commission may as provided in appropriation
18 Acts obtain the services of experts and consultants in ac-
19 cordance with the provisions of section 3109 of title 5,
20 United States Code, and may compensate such experts
21 and consultants at rates not to exceed the daily rate pre-
22 scribed for GS-18 of the General Schedule under section
23 5332 of such title.

1 **PART B—GENERAL ADMINISTRATIVE**
2 **PROVISIONS**

3 **SEC. 411. GENERAL AUTHORITY.**

4 In carrying out any function transferred by this Act,
5 the Commission, or any officer or employee of the Com-
6 mission, may exercise any authority available by law (in-
7 cluding appropriation Acts) with respect to such function
8 to the official or agency from which such function is trans-
9 ferred, and the actions of the Commission in exercising
10 such authority shall have the same force and effect as
11 when exercised by such official or agency.

12 **SEC. 412. DELEGATION.**

13 Exception as otherwise provided in this Act, the Com-
14 mission may delegate any function to such officers and
15 employees of the Commission as the Commission may des-
16 ignate, and may authorize such successive redelegations
17 of such functions within the Commission as may be nec-
18 essary or appropriate. No delegation of functions by the
19 Commission under this section or under any other provi-
20 sion of this Act shall relieve the Commission of responsi-
21 bility for the administration of such functions.

22 **SEC. 413. REORGANIZATION.**

23 The Commission is authorized to allocate or reallo-
24 cate functions among the officers of the Commission, and
25 to establish, consolidate, alter, or discontinue such organi-

1 zational entities within the Commission as may be nec-
2 essary or appropriate.

3 **SEC. 414. RULES.**

4 The Commission is authorized to prescribe such rules
5 and regulations as the Commission determines necessary
6 or appropriate to administer and manage the functions of
7 the Commission.

8 **SEC. 415. CONTRACTS.**

9 (a) IN GENERAL.—Subject to the provisions of the
10 Federal Property and Administrative Services Act of
11 1949, the Commission is authorized to make, enter into,
12 and perform such contracts, grants, leases, cooperative
13 agreements, or other similar transactions with Federal or
14 other public agencies (including State and local govern-
15 ments) and private organizations and persons, and to
16 make such payments, by way of advance or reimburse-
17 ment, as the Commission may determine necessary or ap-
18 propriate to carry out functions of the Commission.

19 (b) APPROPRIATIONS REQUIRED.—Notwithstanding
20 any other provision of this Act, no authority to enter into
21 contracts or to make payments under this title shall be
22 effective except to such extent or in such amounts as are
23 provided in advance under appropriation Acts.

1 **SEC. 416. REGIONAL AND FIELD OFFICES.**

2 The Commission is authorized to establish, alter, dis-
3 continue, or maintain such regional or other field offices
4 as the Commission may find necessary or appropriate to
5 perform functions of the Commission.

6 **SEC. 417. USE OF FACILITIES.**

7 (a) **USE BY COMMISSION.**—With their consent, the
8 Commission may, with or without reimbursement, use the
9 research, equipment, services, and facilities of any agency
10 or instrumentality of the United States, of any State or
11 political subdivision thereof, or of any foreign government,
12 in carrying out any function of the Commission.

13 (b) **USE BY OTHERS.**—The Commission is authorized
14 to permit public and private agencies, corporations, asso-
15 ciations, organizations, or individuals to use any real prop-
16 erty, or any facilities, structures, or other improvements
17 thereon, under the custody and control of the Commission
18 for Commission purposes. The Commission shall permit
19 the use of such property, facilities, structures, or improve-
20 ments under such terms and rates and for such period
21 as may be in the public interest, except that the periods
22 of such uses may not exceed five years. The Commission
23 may require permittees under this section to recondition
24 and maintain, at their own expense, the real property, fa-
25 cilities, structures, and improvements used by such per-
26 mittees to a standard satisfactory to the Commission. This

1 subsection shall not apply to excess property as defined
2 in section 3(e) of the Federal Property and Administrative
3 Services Act of 1949.

4 (c) PROCEEDS FROM REIMBURSEMENTS.—Proceeds
5 from reimbursements under this section may be credited
6 to the appropriation of funds that bear or will bear all
7 or part of the cost of such equipment or facilities provided
8 or to refund excess sums when necessary.

9 (d) TITLE TO PROPERTY.—Any interest in real prop-
10 erty acquired pursuant to this Act shall be acquired in
11 the name of the United States Government.

12 **SEC. 418. WORKING CAPITAL FUND.**

13 (a) AUTHORITY AND USE.—The Commission, with
14 the approval of the Director of the Office of Management
15 and Budget, is authorized to establish for the Commission
16 a working capital fund, to be available without fiscal year
17 limitation, for expenses necessary for the maintenance and
18 operation of such common administrative services as the
19 Commission shall find to be desirable in the interests of
20 economy and efficiency, including such services as—

21 (1) a central supply service for stationery and
22 other supplies and equipment for which adequate
23 stocks may be maintained to meet in whole or in
24 part the requirements of the Commission and its
25 components;

1 (2) central messenger, mail, telephone, and
2 other communications services;

3 (3) office space, central services for document
4 reproduction, and for graphics and visual aids; and

5 (4) a central library service.

6 (b) CONTENTS AND MANAGEMENT OF FUND.—The
7 capital of the fund shall consist of any appropriations
8 made for the purpose of providing working capital and the
9 fair and reasonable value of such stocks of supplies, equip-
10 ment, and other assets and inventories on order as the
11 Commission may transfer to the fund, less the related li-
12 abilities and unpaid obligations. Such funds shall be reim-
13 bursed in advance from available funds of agencies and
14 offices in the Commission, or from other sources, for sup-
15 plies and services at rates that will approximate the ex-
16 pense of operation, including the accrual of annual leave
17 and the depreciation of equipment. The fund shall also be
18 credited with receipts from sale or exchange of property
19 and receipts in payment for loss or damage to property
20 owned by the fund. There shall be covered into the Treas-
21 ury as miscellaneous receipts any surplus of the fund (all
22 assets, liabilities, and prior losses considered) above the
23 amounts transferred or appropriated to establish and
24 maintain such fund. There shall be transferred to the fund
25 the stocks of supplies, equipment, other assets, liabilities,

1 and unpaid obligations relating to the services which the
2 Commission determines, with the approval of the Director
3 of the Office of Management and Budget, will be per-
4 formed.

5 **SEC. 419. FUNDS TRANSFER.**

6 The Commission may, when authorized in an appro-
7 priation Act in any fiscal year, transfer funds from one
8 appropriation to another within the Commission, except
9 that no appropriation for any fiscal year shall be either
10 increased or decreased pursuant to this section by more
11 than 5 percent and no such transfer shall result in increas-
12 ing any such appropriation above the amount authorized
13 to be appropriated therefor.

14 **SEC. 420. SEAL OF COMMISSION.**

15 The Commission shall cause a seal of office to be
16 made for the Commission of such design as the Commis-
17 sion shall approve. Judicial notice shall be taken of such
18 seal.

19 **SEC. 421. ANNUAL REPORT.**

20 (a) CONTENTS.—The Commission shall, as soon as
21 practicable after the close of each fiscal year, make a sin-
22 gle, comprehensive report to the President for trans-
23 mission to the Congress on the activities of the Commis-
24 sion during such fiscal year. The report shall include a
25 statement of goals, priorities, and plans for the Commis-

1 sion together with an assessment of the progress made
2 toward—

3 (1) the attainment of such goals, priorities, and
4 plans; and

5 (2) the more effective and efficient management
6 of the Commission and the coordination of its func-
7 tions;

8 accompanied where necessary by recommendations for
9 proposed legislation for the achievement of such objectives.

10 (b) CONTRACTING-OUT ESTIMATE.—The report re-
11 quired by subsection (a) shall also include an estimate of
12 the extent of the non-Federal personnel employed pursu-
13 ant to contracts entered into by the Commission under
14 section 415 or under any other authority (including any
15 subcontract thereunder), the number of such contracts
16 and subcontracts pursuant to which non-Federal per-
17 sonnel are employed, and the total cost of those contracts
18 and subcontracts.

19 **TITLE V—TRANSITIONAL, SAV-**
20 **INGS, AND CONFORMING**
21 **PROVISIONS**

22 **SEC. 501. TRANSFER AND ALLOCATION OF APPROPRIA-**
23 **TIONS AND PERSONNEL.**

24 (a) IN GENERAL.—Except as otherwise provided in
25 this Act, the personnel employed in connection with, and

1 the assets, liabilities, contracts, property, records, and un-
2 expended balance of appropriations, authorizations, alloca-
3 tions, and other funds employed, held, used, arising from,
4 available to, or to be made available in connection with
5 the functions and offices, or portions thereof transferred
6 by this Act, subject to section 202 of the Budget and Ac-
7 counting Procedures Act of 1950, shall be transferred to
8 the Commission for appropriate allocation. Unexpended
9 funds transferred pursuant to this subsection shall be used
10 only for the purposes for which the funds were originally
11 authorized and appropriated.

12 (b) EXCEPTION.—Positions expressly specified by
13 statute or reorganization plan to carry out functions or
14 offices transferred by this Act, personnel occupying those
15 positions on the effective date of this Act, and personnel
16 authorized to receive compensation in such positions at the
17 rate prescribed for offices and positions at level IV or V
18 of the Executive Schedule (5 U.S.C. 5315–5316) on the
19 effective date of this Act, shall be subject to the provisions
20 of section 503.

21 **SEC. 502. EFFECT ON PERSONNEL.**

22 (a) PROTECTION AGAINST REDUCTION IN GRADE OR
23 COMPENSATION.—Except as otherwise provided in this
24 Act, the transfer pursuant to this title of full-time per-
25 sonnel (except special Government employees) and part-

1 time personnel holding permanent positions shall not
2 cause any such employee to be separated or reduced in
3 grade or compensation for one year after the date of trans-
4 fer to the Commission.

5 (b) EXECUTIVE LEVEL APPOINTEES.—Any person
6 who, on the day preceding the effective date of this Act,
7 held a position compensated in accordance with the Execu-
8 tive Schedule prescribed in chapter 53 of title 5, United
9 States Code, and who, without a break in service, is ap-
10 pointed in the Commission to a position having duties
11 comparable to the duties performed immediately preceding
12 such appointment shall continue to be compensated in
13 such new position at not less than the rate provided for
14 such previous position, for the duration of the service of
15 such person in such new position.

16 **SEC. 503. AGENCY TERMINATIONS.**

17 (a) TERMINATED AGENCIES.—On the effective date
18 of this Act, the following entities shall terminate:

19 (A) The Commodity Futures Trading Commis-
20 sion.

21 (B) The Securities and Exchange Commission.

22 (b) TERMINATED POSITIONS.—Each position which
23 was expressly authorized by law, or the incumbent of
24 which was authorized to receive compensation at the rate
25 prescribed for level III, IV, or V of the Executive Schedule

1 (5 U.S.C. 5315–5316), in an office terminated pursuant
2 to this Act shall also terminate.

3 **SEC. 504. INCIDENTAL TRANSFERS.**

4 (a) GENERAL AUTHORITY OF OMB.—The Director
5 of the Office of Management and Budget, at such time
6 or times as the Director shall provide, is authorized and
7 directed to make such determinations as may be necessary
8 with regard to the functions, offices, or portions thereof
9 transferred by this Act, and to make such additional inci-
10 dental dispositions of personnel, assets, liabilities, grants,
11 contracts, property, records, and unexpended balances of
12 appropriations, authorizations, allocations, and other
13 funds held, used, arising from, available to, or to be made
14 available in connection with such functions, offices, or por-
15 tions thereof, as may be necessary to carry out the provi-
16 sions of this Act. The Director shall provide for the termi-
17 nation of the affairs of all entities terminated by this Act
18 and for such further measures and dispositions as may
19 be necessary to effectuate the purposes of this Act.

20 (b) SES POSITIONS.—After consultation with the Di-
21 rector of the Office of Personnel Management, the Direc-
22 tor of the Office of Management and Budget is authorized,
23 at such time as the Director of the Office of Management
24 and Budget provides, to make such determinations as may
25 be necessary with regard to the transfer of positions with-

1 in the Senior Executive Service in connection with func-
2 tions and offices transferred by this Act.

3 **SEC. 505. SAVINGS PROVISIONS.**

4 (a) CONTINUITY OF LEGAL INSTRUMENTS.—All or-
5 ders, determinations, rules, regulations, permits, grants,
6 contracts, certificates, licenses, and privileges—

7 (1) which have been issued, made, granted, or
8 allowed to become effective by the President, any
9 Federal department or agency or official thereof, or
10 by a court of competent jurisdiction, in the perform-
11 ance of functions which are transferred under this
12 Act to the Commission, and

13 (2) which are in effect at the time this Act
14 takes effect,

15 shall continue in effect according to their terms until
16 modified, terminated, superseded, set aside, or revoked in
17 accordance with the law by the President, the Commission,
18 or other authorized official, a court of competent jurisdic-
19 tion, or by operation of law.

20 (b) CONTINUITY OF PROCEEDINGS.—

21 (1) IN GENERAL.—The provisions of this Act
22 shall not affect any proceedings, including notices of
23 proposed rulemaking, or any application for any li-
24 cense, permit, certificate, or financial assistance
25 pending on the effective date of this Act before any

1 department, agency, commission, or component
2 thereof, functions of which are transferred by this
3 Act; but such proceedings and applications, to the
4 extent that they relate to functions so transferred,
5 shall be continued. Orders shall be issued in such
6 proceedings, appeals shall be taken therefrom, and
7 payments shall be made pursuant to such orders, as
8 if this Act had not been enacted; and orders issued
9 in any such proceedings shall continue in effect until
10 modified, terminated, superseded, or revoked by the
11 Commission, by a court of competent jurisdiction, or
12 by operation of law. Nothing in this subsection shall
13 be deemed to prohibit the discontinuance or modi-
14 fication of any such proceeding under the same
15 terms and conditions and to the same extent that
16 such proceeding could have been discontinued or
17 modified if this Act had not been enacted.

18 (2) REGULATIONS CONCERNING TRANSFERS.—

19 The Commission is authorized to promulgate regula-
20 tions providing for the orderly transfer of pro-
21 ceedings continued under paragraph (1) to the Com-
22 mission.

23 (c) PENDING LITIGATION.—Except as provided in
24 subsection (e)—

1 (1) the provisions of this Act shall not affect
2 suits commenced prior to the effective date of this
3 Act, and

4 (2) in all such suits, proceedings shall be had,
5 appeals taken, and judgments rendered in the same
6 manner and effect as if this Act had not been en-
7 acted.

8 (d) NONABATEMENT.—No suit, action, or other pro-
9 ceeding commenced by or against any officer in the official
10 capacity of such individual as an officer of any department
11 or agency, functions of which are transferred by this Act,
12 shall abate by reason of the enactment of this Act. No
13 cause of action by or against any department or agency,
14 functions of which are transferred by this Act, or by or
15 against any officer thereof in the official capacity of such
16 officer shall abate by reason of the enactment of this Act.

17 (e) SUBSTITUTION OF PARTIES.—If, before the date
18 on which this Act takes effect, any department or agency,
19 or officer thereof in the official capacity of such officer,
20 is a party to a suit, and under this Act any function of
21 such department, agency, or officer is transferred to the
22 Commission or any other official of the Commission, then
23 such suit shall be continued with the Commission or other
24 appropriate official of the Commission substituted or
25 added as a party.

1 (f) JUDICIAL REVIEW AS REQUIRED BY EXISTING
2 LAW.—Orders and actions of the Commission in the exer-
3 cise of functions transferred under this Act shall be sub-
4 ject to judicial review to the same extent and in the same
5 manner as if such orders and actions had been by the
6 agency or office, or part thereof, exercising such functions
7 immediately preceding their transfer. Any statutory re-
8 quirements relating to notice, hearings, action upon the
9 record, or administrative review that apply to any function
10 transferred by this Act shall apply to the exercise of such
11 function by the Commission.

12 **SEC. 506. SEPARABILITY.**

13 If any provision of this Act or the application thereof
14 to any person or circumstance is held invalid, neither the
15 remainder of this Act nor the application of such provision
16 to other persons or circumstances shall be affected there-
17 by.

18 **SEC. 507. REFERENCE.**

19 With respect to any function transferred by this Act
20 and exercised on or after the effective date of this Act,
21 reference in any other Federal law to any department,
22 commission, or agency or any officer or office the func-
23 tions of which are so transferred shall be deemed to refer
24 to the Commission, other official, or component of the
25 Commission to which this Act transfers such functions.

1 **SEC. 508. AMENDMENTS.**

2 (a) EXECUTIVE SCHEDULE SALARIES.—

3 (1) CHAIRMAN.—Section 5314 of title 5, United
4 States Code, is amended—

5 (A) by striking “Chairman, Securities and
6 Exchange Commission.” and inserting “Chair-
7 man, Markets and Trading Commission.”; and

8 (B) by striking “Chairman, Commodity
9 Futures Trading Commission.”.

10 (2) MEMBERS.—Section 5315 of title 5, United
11 States Code, is amended—

12 (A) by striking “Members, Securities and
13 Exchange Commission” and inserting “Mem-
14 bers, Markets and Trading Commission”; and

15 (B) by striking “Members, Commodity Fu-
16 tures Trading Commission.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) SECURITIES EXCHANGE ACT.—Sections 4
19 and 35 of the Securities Exchange Act of 1934 are
20 repealed.

21 (2) COMMODITY EXCHANGE ACT.—Section 2(a)
22 of the Commodity Exchange Act is amended by
23 striking paragraphs (2), (3), and (4).

24 **SEC. 509. TRANSITION.**

25 With the consent of the appropriate department or
26 agency head concerned, the Commission is authorized to

1 utilize the services of such officers, employees, and other
2 personnel of the departments and agencies from which
3 functions or offices have been transferred to the Commis-
4 sion, and funds appropriated to such functions or offices
5 for such period of time as may reasonably be needed to
6 facilitate the orderly implementation of this Act.

7 **TITLE VI—REGULATION OF OTC**
8 **DERIVATIVES**

9 **SEC. 601. REGULATION OF OVER-THE-COUNTER DERIVA-**
10 **TIVES.**

11 (a) IN GENERAL.—The Commission shall prescribe
12 such rules and regulations governing over-the-counter de-
13 rivatives dealers and over-the-counter derivatives trans-
14 actions as may be necessary and appropriate in the public
15 interest and for the protection of investors to ensure the
16 safety and soundness of financial markets and the Na-
17 tion’s economy as a whole, including rules and regulations
18 with respect to—

19 (1) the eligibility of persons to trade over-the-
20 counter derivatives;

21 (2) registration requirements for over-the-
22 counter derivatives dealers, institutions employing
23 over-the-counter derivatives dealers, and facilities on
24 which over-the-counter derivatives transactions are
25 executed, which shall be similar to the registration

1 requirements prescribed under the Securities Ex-
2 change Act of 1934 for securities dealers, for insti-
3 tutions employing securities dealers, and for securi-
4 ties exchanges;

5 (3) adequate capital requirements for over-the-
6 counter derivatives dealers, that are similar to the
7 net capital requirements applicable to securities
8 dealers under section 15(c)(3) of the Securities Ex-
9 change Act of 1934;

10 (4) adequate collateral or margin for over-the-
11 counter derivatives transactions, which rules and
12 regulations shall be prescribed in consultation with
13 the Board of Governors of the Federal Reserve Sys-
14 tem;

15 (5) registration and approval of facilities for the
16 execution of over-the-counter derivatives trans-
17 actions;

18 (6) sales practices, including sales licensing and
19 training;

20 (7) self-regulation;

21 (8) internal risk control;

22 (9) disciplinary procedures;

23 (10) violations and enforcement; and

24 (11) standardized reporting and recordkeeping
25 requirements.

1 (b) REPORTING REQUIREMENTS.—

2 (1) IN GENERAL.—An over-the-counter deriva-
3 tives dealer shall submit to the Commission, in such
4 form and manner as the Commission may
5 prescribe—

6 (A) a daily report on price, volume of
7 transactions, open interest, implied volatility of
8 options contracts, and the positions of large
9 traders in the over-the-counter derivatives mar-
10 ket; and

11 (B) a quarterly report on the over-the-
12 counter derivatives in the dealer's own account,
13 and for each type of over-the-counter derivative,
14 the currency, maturity, and the underlying
15 basis for pricing.

16 (2) DATA ELEMENTS.—The Commission shall
17 prescribe how each feature of an over-the-counter
18 derivatives transaction is to be reported to the Com-
19 mission pursuant to paragraph (1).

20 (3) RETROACTIVE APPLICABILITY.—On reg-
21 istration of an over-the-counter derivatives dealer
22 under this section, the dealer shall file with the
23 Commission a report of the type described in para-
24 graph (1)(B) covering the calendar quarter most re-
25 cently ending before the registration date.

1 (c) DEFINITIONS.—In this section:

2 (1) OVER-THE-COUNTER DERIVATIVES DEAL-
3 ER.—The term “over-the-counter derivatives dealer”
4 means—

5 (A) any person engaged in the business of
6 buying, selling, trading, and clearing over-the-
7 counter derivatives for the person’s own ac-
8 count, as an intermediary for others, through
9 an intermediary, or otherwise; and

10 (B) any counter party to the transaction
11 whose exposure to over-the-counter derivatives
12 exceeds such threshold as the Commission shall
13 prescribe by regulation.

14 (2) OVER-THE-COUNTER DERIVATIVE.—The
15 term “over-the-counter derivative” means—

16 (A)(i) any agreement, contract, or trans-
17 action that is not subject to regulation—

18 (I) under the Securities Exchange Act
19 of 1934 as a security (as defined in section
20 3(a)(10) of the such Act) or a security fu-
21 ture product (as defined in section
22 3(a)(56) of such Act); or

23 (II) as a financial instrument traded
24 on a board of trade which, before Decem-

1 ber 21, 2000, was designated by the Com-
2 mission as a contract market; or

3 (ii) any condition incorporated by reference
4 in any such agreement, contract, or transaction;
5 and

6 (B) the value of which agreement, con-
7 tract, transaction, or condition depends on—

8 (i) an interest rate, exchange rate,
9 currency, security, security index, credit
10 risk or measure, debt or equity instrument,
11 index or measure of inflation or other mac-
12 roeconomic index;

13 (ii) any other rate, differential, index
14 or measure of economic or commercial
15 risk, return, or value;

16 (iii) any economic or commercial index
17 based on prices, rates, value or levels that
18 are beyond the control of any party to the
19 relevant contract, agreement or trans-
20 action; or

21 (iv) an occurrence, extent of an occur-
22 rence, or contingency that is beyond the
23 control of the parties to the relevant con-
24 tract, agreement, or transaction.

25 (d) CRIMINAL PROVISIONS.—

1 (1) It shall be a felony punishable by a fine of
2 not more than \$1,000,000 (or \$500,000, in the case
3 of a person who is an individual), imprisonment for
4 not more than 5 years, or both, together with the
5 costs of prosecution, for:

6 (A) Any person registered or required to
7 be registered under this section, or any em-
8 ployee or agent thereof, to embezzle, steal, pur-
9 loin, or with criminal intent convert to the per-
10 son's use or to the use of another, any money,
11 securities, or property having a value in excess
12 of \$100, which was received by the person or
13 any employee or agent thereof to margin, guar-
14 antee, or secure the trades or contracts of any
15 customer or accruing to the customer as a re-
16 sult of the trades or contracts or which other-
17 wise was received from any customer, client, or
18 pool participant in connection with the business
19 of the person. In this subparagraph, the term
20 "value" means face, par, or market value, or
21 cost price, either wholesale or retail, whichever
22 is greater.

23 (B) Any person to manipulate or attempt
24 to manipulate the price of any over-the-counter
25 derivative in interstate commerce, or for future

1 delivery on or subject to the rules of any entity
2 registered under this section, or to corner or at-
3 tempt to corner any such derivative or know-
4 ingly to deliver or cause to be delivered for
5 transmission through the mails or interstate
6 commerce by telegraph, telephone, wireless, or
7 other means of communication false or mis-
8 leading or knowingly inaccurate reports con-
9 cerning market information or conditions that
10 affect or tend to affect the price of any deriva-
11 tive in interstate commerce.

12 (C) Any person knowingly to make, or
13 cause to be made, any statement in any applica-
14 tion, report, or document required to be filed
15 under this section or any rule or regulation
16 under this section or any undertaking contained
17 in a registration statement required under this
18 section, which statement was false or mis-
19 leading with respect to any material fact, or
20 knowingly to omit any material fact required to
21 be stated in the statement or necessary to make
22 the statements in the statement not misleading.

23 (D) Any person willfully to falsify, conceal,
24 or cover up by any trick, scheme, or artifice a
25 material fact, make any false, fictitious, or

1 fraudulent statements or representations, or
2 make or use any false writing or document
3 knowing the same to contain any false, ficti-
4 tious, or fraudulent statement or entry to an
5 entity registered under this section acting in
6 furtherance of its official duties under this sec-
7 tion.

8 (E) Any person willfully to violate any
9 other provision of this section, or any rule or
10 regulation under this section, the violation of
11 which is made unlawful or the observance of
12 which is required under this section, but a per-
13 son shall not be subject to imprisonment under
14 this subparagraph for the violation of any rule
15 or regulation if the person proves that the per-
16 son had no knowledge of the rule or regulation.

17 (2) Any person convicted of a felony under this
18 subsection shall be suspended from registration
19 under this section and shall be denied registration or
20 reregistration for 5 years or such longer period as
21 the Commission may determine, and barred from
22 using, or participating in any manner in, any market
23 regulated by the Commission for 5 years or such
24 longer period as the Commission shall determine, on
25 such terms and conditions as the Commission may

1 prescribe, unless the Commission determines that
2 the imposition of the suspension, denial of registra-
3 tion or reregistration, or market bar is not required
4 to protect the public interest. The Commission may
5 upon petition later review the disqualification and
6 market bar and for good cause shown reduce the pe-
7 riod of the disqualification.

8 (3) It shall be a felony punishable by a fine of
9 not more than \$500,000, imprisonment for not more
10 than 5 years, or both, together with the costs of
11 prosecution, for any Commissioner of the Commis-
12 sion or any employee or agent of the Commission, to
13 participate, directly or indirectly, in any over-the-
14 counter derivatives transaction, or any transaction
15 for the delivery of any over-the-counter derivative
16 under a standardized contract commonly known to
17 the trade as a margin account, margin contract, le-
18 verage account, or leverage contract, or under any
19 contract, account, arrangement, scheme, or device
20 that the Commission determines serves the same
21 function or functions as such a standardized con-
22 tract, or is marketed or managed in substantially
23 the same manner as such a standardized contract,
24 or for any such person to participate, directly or in-
25 directly, in any investment transaction in an over-

1 the-counter derivative if nonpublic information is
2 used in the investment transaction, if the investment
3 transaction is prohibited by rule or regulation of the
4 Commission, or if the investment transaction is ef-
5 fected by means of any instrument regulated by the
6 Commission. The foregoing prohibitions shall not
7 apply to any transaction or class of transactions that
8 the Commission, by rule or regulation, has deter-
9 mined would not be contrary to the public interest
10 or otherwise inconsistent with the purposes of this
11 paragraph.

12 (4) It shall be a felony punishable by a fine of
13 not more than \$500,000, imprisonment for not more
14 than 5 years, or both, together with the costs of
15 prosecution for:

16 (A) Any Commissioner of the Commission
17 or any employee or agent of the Commission
18 who, by virtue of his employment or position,
19 acquires information which may affect or tend
20 to affect the price of any over-the-counter de-
21 rivatives transaction and which information has
22 not been made public to impart such informa-
23 tion with intent to assist another person, di-
24 rectly or indirectly, to participate in any over-
25 the-counter derivatives transaction or in any

1 transaction for the delivery of any over-the-
2 counter derivative under a standardized con-
3 tract commonly known to the trade as a margin
4 account, margin contract, leverage account, or
5 leverage contract, or under any contract, ac-
6 count, arrangement, scheme, or device that the
7 Commission determines serves the same func-
8 tion or functions as such a standardized con-
9 tract, or is marketed or managed in substan-
10 tially the same manner as such a standardized
11 contract.

12 (B) Any person to acquire such informa-
13 tion from any Commissioner of the Commission
14 or any employee or agent of the Commission
15 and to use such information in any over-the-
16 counter derivatives transaction or in any trans-
17 action for the delivery of any over-the-counter
18 derivative under a standardized contract com-
19 monly known to the trade as a margin account,
20 margin contract, leverage account, or leverage
21 contract, or under any contract, account, ar-
22 rangement, scheme, or device that the Commis-
23 sion determines serves the same function or
24 functions as such a standardized contract, or is

1 marketed or managed in substantially the same
2 manner as such a standardized contract.

3 (5)(A) It shall be a felony for any person—

4 (i) who is an employee, member of the gov-
5 erning board, or member of any entity reg-
6 istered under this section, in violation of a regu-
7 lation issued by the Commission, willfully and
8 knowingly to trade for the person's own ac-
9 count, or for or on behalf of any other account,
10 in over-the-counter derivatives transactions on
11 the basis of, or willfully and knowingly to dis-
12 close for any purpose inconsistent with the per-
13 formance of such person's official duties as an
14 employee or member, any material nonpublic in-
15 formation obtained through special access re-
16 lated to the performance of such duties; or

17 (ii) willfully and knowingly to trade for the
18 person's own account, or for or on behalf of any
19 other account, in over-the-counter derivatives
20 transactions on the basis of any material non-
21 public information that the person knows was
22 obtained in violation of clause (i) from an em-
23 ployee, member of the governing board, or
24 member of any committee of an entity reg-
25 istered under this section.

1 (B) The felony shall be punishable by a fine of
2 not more than \$500,000, plus the amount of any
3 profits realized from the trading or disclosure made
4 in violation of this paragraph, or imprisonment for
5 not more than 5 years, or both, together with the
6 costs of prosecution.

7 (e) PRIVATE RIGHTS OF ACTION.—

8 (1)(A) Any person (other than an entity reg-
9 istered under this section) who violates this section
10 or a regulation prescribed under this section or who
11 willfully aids, abets, counsels, induces, or procures
12 the commission of a violation of this section or of
13 such a regulation shall be liable for actual damages
14 caused by the violation to any other person—

15 (i) who received trading advice from such
16 person for a fee;

17 (ii) who purchased or sold an over-the-
18 counter derivative if the violation constitutes a
19 manipulation of the price of any such derivative
20 or of a rate, currency, index, measure, value, or
21 level on which such a derivative is based;

22 (iii) who made through the person any con-
23 tract of sale of any over-the-counter derivative
24 for future delivery (or option on such a contract
25 or derivative), or who deposited with or paid to

1 the person money, securities, or property (or in-
2 curred debt in lieu thereof) in connection with
3 any order to make such a contract; or

4 (iv) who purchased or sold a contract re-
5 ferred to in clause (iii) if the violation con-
6 stitutes a manipulation of the price of any such
7 contract or the price of any derivative under-
8 lying the contract.

9 (B) Except as provided in paragraph (2), the
10 rights of action authorized by this paragraph shall
11 be the exclusive remedies under this section available
12 to any person who sustains loss as a result of any
13 alleged violation of this section. This paragraph shall
14 not be construed to limit or abridge the rights of the
15 parties to agree in advance of a dispute on any
16 forum for resolving claims under this subsection, in-
17 cluding arbitration.

18 (C) In an action arising from a violation in the
19 execution of an order on the floor of an entity reg-
20 istered under this section, the person referred to in
21 subparagraph (A) shall be liable for—

22 (i) actual damages proximately caused by
23 the violation; and

24 (ii) if the violation is willful and inten-
25 tional, punitive or exemplary damages equal to

1 no more than twice the amount of the actual
2 damages.

3 (2)(A)(i) A entity registered under this section
4 that fails to enforce any bylaw, rule, regulation, or
5 resolution that the entity is required under this sec-
6 tion to enforce, or that in enforcing any such bylaw,
7 rule, regulation, or resolution violates this section or
8 any Commission rule, regulation, or order issued
9 under this section, shall be liable for actual damages
10 sustained by a person who engaged in any trans-
11 action on or subject to the rules of the entity to the
12 extent of the person's actual losses that resulted
13 from the transaction and were caused by the failure
14 to enforce or by enforcement of the bylaws, rules,
15 regulations, or resolutions.

16 (B) An individual who, in the capacity as an of-
17 ficer, director, governor, committee member, or em-
18 ployee of an entity registered under this section will-
19 fully aids, abets, counsels, induces, or procures any
20 failure by any such entity to enforce (or any viola-
21 tion of this section in enforcing) any bylaw, rule,
22 regulation, or resolution referred to in subparagraph
23 (A) of this paragraph, shall be liable for actual dam-
24 ages sustained by a person who engaged in any
25 transaction specified in paragraph (1) of this sub-

1 section on, or subject to the rules of, the entity, to
2 the extent of the person's actual losses that resulted
3 from the transaction and were caused by the failure
4 or violation.

5 (C) A person seeking to enforce liability under
6 this subsection must establish that the entity, offi-
7 cer, director, governor, committee member, or em-
8 ployee acted in bad faith in failing to take action or
9 in taking the action as was taken, and that the fail-
10 ure or action caused the loss.

11 (D) The rights of action authorized by this
12 paragraph shall be the exclusive remedy under this
13 section available to any person who sustains a loss
14 as a result of—

15 (i) the alleged failure by an entity reg-
16 istered under this section or by any officer, di-
17 rector, governor, committee member, or em-
18 ployee to enforce any bylaw, rule, regulation, or
19 resolution referred to in subparagraph (A) of
20 this paragraph, or

21 (ii) the taking of action in enforcing any
22 bylaw, rule, regulation, or resolution referred to
23 in this paragraph that is alleged to have vio-
24 lated this section, or any Commission rule, reg-
25 ulation, or order issued under this section.

1 (3) The United States district courts shall have
2 exclusive jurisdiction of actions brought under this
3 subsection. Any such action shall be brought not
4 later than 2 years after the date the cause of action
5 arises. Any action brought under paragraph (1) may
6 be brought in any judicial district in which the de-
7 fendant is found, resides, or transacts business, or
8 in the judicial district in which any act or trans-
9 action constituting the violation occurs. Process in
10 such action may be served in any judicial district of
11 which the defendant is an inhabitant or wherever the
12 defendant may be found.

13 (f) SUPERIORITY TO COMMODITY EXCHANGE ACT
14 AND THE COMMODITY FUTURES MODERNIZATION ACT OF
15 2000.—In the event of any conflict between any provision
16 of, or regulation prescribed under, this section and any
17 provision of, or regulation prescribed under, the Com-
18 modity Exchange Act or the Commodity Futures Mod-
19 ernization Act of 2000, the provision of, or regulation pre-
20 scribed under, this section shall control.

21 (g) CONFORMING AMENDMENTS.—The Commodity
22 Exchange Act is amended—

23 (1) in section 1a (7 U.S.C. 1a)—

24 (A) by striking paragraph (13); and

1 (B) in paragraph (14), by striking “an ex-
2 cluded commodity or”; and
3 (2) in section 2 (7 U.S.C. 2)—
4 (A) in subsection (c)(1)—
5 (i) by adding “or” at the end of sub-
6 paragraph (E); and
7 (ii) by striking subparagraph (F) and
8 redesignating subparagraph (G) as sub-
9 paragraph (F); and
10 (B) in subsection (i)(1)(A), by striking
11 “2(d),”.

12 **TITLE VII—EFFECTIVE DATE**

13 **SEC. 701. EFFECTIVE DATE.**

14 (a) IN GENERAL.—The provisions of this Act shall
15 take effect 180 days after the first Commissioner takes
16 office, or on any later date on or before October 1, 2003,
17 as the President may prescribe and publish in the Federal
18 Register, except that at any time on or after the date of
19 enactment of this Act—

20 (1) any of the officers provided for in title II
21 of this Act may be nominated and appointed, as pro-
22 vided in such title; and

23 (2) the Commission may promulgate regulations
24 pursuant to section 505(b)(2) of this Act.

1 (b) TRANSITION EXPENSES.—Funds available to any
2 department or agency (or any official department or agen-
3 cy or any official or component thereof), the functions or
4 offices of which are transferred to the Commission by this
5 Act, may, with the approval of the Director of the Office
6 of Management and Budget, be used to pay the compensa-
7 tion and expenses of any officer appointed pursuant to this
8 title and other transitional and planning expenses associ-
9 ated with the establishment of the Commission or transfer
10 of functions or offices thereto until such time as funds
11 for such purposes are otherwise available.

○