

105TH CONGRESS  
1ST SESSION

# H. R. 467

To amend the Commodity Exchange Act to provide a conditional exemption for certain transactions involving professional markets, to clarify the effect of the designation of a board of trade as a contract market, to simplify the process for implementing contract market rules, to regulate audit trail requirements, to establish cost-benefit analysis requirements, to combat fraud in transactions in or involving foreign currency, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 1997

Mr. EWING introduced the following bill; which was referred to the Committee on Agriculture

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## A BILL

To amend the Commodity Exchange Act to provide a conditional exemption for certain transactions involving professional markets, to clarify the effect of the designation of a board of trade as a contract market, to simplify the process for implementing contract market rules, to regulate audit trail requirements, to establish cost-benefit analysis requirements, to combat fraud in transactions in or involving foreign currency, 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 “Commodity Exchange Act Amendments of 1997”.

4 (b) TABLE OF CONTENTS.—The table of contents of  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—ADMINISTRATION OF COMMODITY EXCHANGE  
ACT**

Sec. 101. Findings and purposes.

Sec. 102. Conditional exemption from Commodity Exchange Act for certain  
transactions involving professional markets.

Sec. 103. Designation of contract markets.

Sec. 104. Process for submission and disapproval of contract market rules.

Sec. 105. Regulation of audit trail requirements.

Sec. 106. Use of benefit-cost analysis.

Sec. 107. Commission oversight and deficiency orders.

**TITLE II—TREASURY AMENDMENT CLARIFICATION**

Sec. 201. Regulation of transactions in or involving foreign currency.

6 **TITLE I—ADMINISTRATION OF**  
7 **COMMODITY EXCHANGE ACT**

8 **SEC. 101. FINDINGS AND PURPOSES.**

9 Section 3 of the Commodity Exchange Act (7 U.S.C.  
10 5) is amended to read as follows:

11 **“SEC. 3. FINDINGS AND PURPOSES.**

12 “(a) FINDINGS.—The Congress finds the following:

13 “(1) Commodity futures and commodity options  
14 are traded in interstate commerce, and the regula-  
15 tion of transactions in or involving commodity fu-  
16 tures and commodity options is in the national pub-  
17 lic interest.

1           “(2) Commodity futures and commodity options  
2 transactions are used to hedge and manage price or  
3 other economic risks faced by businesses and finan-  
4 cial enterprises throughout the world.

5           “(3) Such hedging activity allows businesses  
6 and financial enterprises to operate in a more effi-  
7 cient manner, with corresponding benefits to con-  
8 sumers and others served by these businesses and  
9 enterprises.

10           “(4) Liquid trading in commodity futures and  
11 commodity options contracts also provides a mecha-  
12 nism for discovering important pricing information  
13 relating to the various commodities that are the sub-  
14 ject of such trading.

15           “(5) Such pricing information may be widely  
16 quoted and disseminated in order to allow consum-  
17 ers, businesses, and financial enterprises to rely  
18 upon such pricing information in making various  
19 commercial arrangements and decisions relating to  
20 the price of the affected commodities in interstate  
21 commerce.

22           “(6) Unless appropriately and prudently regu-  
23 lated, whether through self-regulation by the market  
24 participants themselves or through Government reg-

1       ulation, transactions subject to this Act may not  
2       serve these public interests.

3       “(b) PURPOSE.—It is the purpose of this Act to pro-  
4       vide for self-regulation that is in the public interest and  
5       Government oversight of transactions subject to this  
6       Act—

7               “(1) to prevent fraud, sales practice abuses,  
8       and price manipulation;

9               “(2) to foster efficient and effective transaction  
10       executions at fair prices;

11              “(3) to ensure conduct consistent with just and  
12       equitable principles of trade and the financial integ-  
13       rity of all futures and options transactions, market  
14       participants, and markets; and

15              “(4) to promote responsible economic or finan-  
16       cial innovation and fair competition among all mar-  
17       kets, market participants, and consumers of the  
18       markets’ services.”.

19       **SEC. 102. CONDITIONAL EXEMPTION FROM COMMODITY EX-**  
20                               **CHANGE ACT FOR CERTAIN TRANSACTIONS**  
21                               **INVOLVING PROFESSIONAL MARKETS.**

22       Section 4 of the Commodity Exchange Act (7 U.S.C.  
23       6) is amended by adding the following subsections:

24       “(e) EXEMPTION FOR CERTAIN PROFESSIONAL MAR-  
25       KETS.—

1           “(1) EXEMPTION.—Subject to paragraphs (2)  
2           and (3), any agreement, contract, or transaction (or  
3           class thereof) that is or may be subject to this Act  
4           shall be exempt from all of the provisions of this Act  
5           if the only parties eligible to enter into the agree-  
6           ment, contract, or transaction (or class thereof)  
7           qualify as appropriate persons (as defined in sub-  
8           section (c)(3)).

9           “(2) RULES AGAINST FRAUD AND MANIPULA-  
10          TION.—Any agreement, contract, or transaction (or  
11          class thereof) for which an exemption is provided  
12          under this subsection shall still be subject to prohibi-  
13          tions against fraud or manipulation issued by the  
14          Commission, following notice and opportunity for  
15          hearing, that are specifically designed to apply to  
16          such agreements, contracts, and transactions.

17          “(3) USE OF APPROVED CLEARINGHOUSES AND  
18          SYSTEMS.—Any agreement, contract, or transaction  
19          (or class thereof) for which an exemption is provided  
20          under this subsection shall not be submitted to any  
21          clearinghouse or clearing system (or similar entity)  
22          unless that clearinghouse or clearing system (or  
23          similar entity) has been approved by the Commission  
24          to do business as a clearinghouse or clearing sys-  
25          tem.”.

1 **SEC. 103. DESIGNATION OF CONTRACT MARKETS.**

2 (a) DESIGNATION REQUIRED.—Section 4(a)(1) of the  
3 Commodity Exchange Act (7 U.S.C. 6(a)(1)) is amended  
4 by striking “for such commodity”.

5 (b) CONDITIONS AND REQUIREMENTS FOR DESIGNA-  
6 TION.—Section 5 of the Commodity Exchange Act (7  
7 U.S.C. 7) is amended—

8 (1) by striking the matter preceding paragraph  
9 (1) and inserting the following:

10 **“SEC. 5. DESIGNATION OF BOARD OF TRADE AS CONTRACT**  
11 **MARKET.**

12 “(a) IN GENERAL.—The Commission shall designate  
13 a board of trade as a contract market if, and only if, the  
14 board of trade complies with and carries out the following  
15 conditions and requirements:”;

16 (2) by striking paragraphs (1), (7), and (8);

17 (3) by redesignating paragraphs (2) through  
18 (6) as paragraphs (1) through (5), respectively; and

19 (4) by inserting at the end the following new  
20 paragraph:

21 “(6) When the board of trade demonstrates  
22 that it is in compliance with the requirements of sec-  
23 tion 5a(b).”.

24 (c) EFFECT OF DESIGNATION.—Section 5 of the  
25 Commodity Exchange Act (7 U.S.C. 7) is amended by in-

1 setting after paragraph (6), as added by subsection (b)(4),  
2 the following new subsection:

3 “(b) EXISTING AND FUTURE DESIGNATIONS.—

4 “(1) FUTURE DESIGNATIONS.—If a board of  
5 trade is designated as a contract market by the  
6 Commission under subsection (a) and section 6, the  
7 board of trade shall retain the designation for all ex-  
8 isting or future contracts, unless—

9 “(A) the Commission suspends or revokes  
10 the designation; or

11 “(B) the board of trade relinquishes the  
12 designation.

13 “(2) EXISTING DESIGNATIONS.—A board of  
14 trade that has been designated as a contract market  
15 as of the date of the enactment of this subsection  
16 shall retain the designation unless—

17 “(A) the Commission finds that a violation  
18 of this Act or a rule, regulation, or order of the  
19 Commission by the contract market justifies  
20 suspension or revocation of the designation  
21 under section 6(b); or

22 “(B) the board of trade relinquishes the  
23 designation.”.

24 (d) APPLICATION FOR DESIGNATION.—The first sen-  
25 tence of section 6(a) of the Commodity Exchange Act (7

1 U.S.C. 8(a)) is amended by striking “Any board of trade  
2 desiring to be designated a ‘contract market’ ” and insert-  
3 ing “A board of trade that has not obtained designation  
4 as a contract market for a contract of sale for a commod-  
5 ity under section 5, but that desires to be designated as  
6 a contract market,”.

7 **SEC. 104. PROCESS FOR SUBMISSION AND DISAPPROVAL**  
8 **OF CONTRACT MARKET RULES.**

9 Section 5a of the Commodity Exchange Act (7 U.S.C.  
10 7a) is amended—

11 (1) in subsection (a), by striking paragraph  
12 (12); and

13 (2) by adding at the end the following new sub-  
14 section:

15 “(c) **CONTRACT MARKET BYLAWS, RULES, REGULA-**  
16 **TIONS, AND RESOLUTIONS.—**

17 “(1) **SUBMISSION TO COMMISSION.—**Except as  
18 otherwise provided in this subsection, each contract  
19 market shall submit to the Commission all bylaws,  
20 rules, regulations, and resolutions (in this subsection  
21 referred to as ‘rules’) made or issued by the contract  
22 market, or by the governing board or any committee  
23 thereof, other than rules that relate to the setting of  
24 levels of margin and such other rules as the Com-  
25 mission may specify by regulation.

1 “(2) EFFECTIVE DATE.—

2 “(A) IN GENERAL.—Except in the case of  
3 a rule described in subparagraph (B) or (C), a  
4 contract market may make a rule of that con-  
5 tract market effective 10 days after the date on  
6 which the Commission receives the rule under  
7 paragraph (1), unless, within such period, the  
8 contract market requests review of the rule by  
9 the Commission or the Commission institutes  
10 proceedings to determine whether the rule  
11 should be disapproved. The disapproval pro-  
12 ceedings shall be conducted in accordance with  
13 paragraph (3).

14 “(B) SPECIAL EFFECTIVE DATE FOR CER-  
15 TAIN RULES.—In the case of a rule that would  
16 establish the terms and conditions of a contract  
17 for the purchase or sale of a commodity for fu-  
18 ture delivery, which is to be executed subject to  
19 the rules of a contract market and has not pre-  
20 viously been traded subject to the rules of the  
21 contract market, the contract market may make  
22 the rule effective 15 days after the date on  
23 which the Commission receives the rule under  
24 paragraph (1), unless, within such period, the  
25 Commission institutes proceedings to determine

1           whether the rule should be disapproved. The  
2           disapproval proceedings shall be conducted in  
3           accordance with paragraph (3).

4           “(C) EXCEPTION.—A board of trade may  
5           not make effective any rule to establish the  
6           terms and conditions of a new contract (or op-  
7           tion on such a contract) that is subject to the  
8           requirements and procedures of clauses (ii)  
9           through (v) of section 2(a)(1)(B) unless and  
10          until the requirements and procedures of such  
11          clauses are satisfied and carried out.

12          “(3) DISAPPROVAL PROCESS.—

13                 “(A) NOTICE OF PROPOSED DIS-  
14                 APPROVAL.—If the Commission institutes a  
15                 proceeding to determine whether a rule submit-  
16                 ted under paragraph (1) should be disapproved,  
17                 the Commission shall provide the contract mar-  
18                 ket with written notice of the proposed grounds  
19                 for disapproval, including—

20                         “(i) the specific sections of this Act or  
21                         the regulations of the Commission that  
22                         would be violated; and

23                         “(ii) in the case of a rule described in  
24                         paragraph (2)(B), the specific reason or

1 reasons why the rule might be contrary to  
2 the public interest.

3 “(B) DISAPPROVAL PROCEEDING.—In a  
4 disapproval proceeding under this paragraph,  
5 the Commission shall afford the contract mar-  
6 ket a reasonable opportunity to respond in writ-  
7 ing and an opportunity for a hearing, including  
8 the right to an oral hearing before a quorum of  
9 the Commission. In a disapproval proceeding in-  
10 volving a rule described in paragraph (2)(B),  
11 the Commission shall have the burden of prov-  
12 ing that the rule is contrary to the public inter-  
13 est.

14 “(C) DISAPPROVAL.—At the conclusion of  
15 a disapproval proceeding under this paragraph,  
16 the Commission shall determine whether to dis-  
17 approve the rule and shall disapprove the rule  
18 if the Commission determines in the proceeding  
19 that the rule would be—

20 “(i) in violation of the provisions of  
21 this Act or the regulations of the Commis-  
22 sion; or

23 “(ii) in the case of a rule described in  
24 paragraph (2)(B), contrary to the public  
25 interest.

1           “(D) NOTICE OF DISAPPROVAL.—The  
2 Commission shall provide the contract market  
3 with written notice of the disapproval of a rule  
4 of the contract market. The notice shall—

5                   “(i) specify the sections of this Act or  
6 the Commission’s regulations that the  
7 Commission determines the rule violates  
8 or, if effective, would violate; and

9                   “(ii) in the case of a rule described in  
10 paragraph (2)(B), contain an explanation  
11 and analysis of the substantive basis why  
12 the rule violates or, if effective, would vio-  
13 late the public interest.

14           “(4) TIME FOR DISAPPROVAL ACTIONS.—

15                   “(A) 60-DAY PERIOD.—Before the end of  
16 the 60-day period beginning on the date on  
17 which the Commission receives a rule under  
18 paragraph (1), the Commission shall complete  
19 any disapproval proceeding instituted under this  
20 subsection regarding the rule.

21                   “(B) EFFECT OF FAILURE TO COMPLETE  
22 ACTION.—Unless the Commission has notified  
23 the contract market by the end of such 60-day  
24 period that the Commission has disapproved the  
25 rule, the contract market may make the rule ef-

1           fective. Except as provided in subparagraph  
2           (C), the Commission shall not thereafter dis-  
3           approve the rule.

4           “(C) EXCEPTION.—Subparagraph (B)  
5           shall not be construed to modify or affect the  
6           ability of the Commission to alter or supple-  
7           ment any rules of a contract market pursuant  
8           to section 8a(7).

9           “(5) RULE OF CONSTRUCTION REGARDING PUB-  
10          LIC INTEREST STANDARD.—The authority of the  
11          Commission to disapprove a rule described in para-  
12          graph (2)(B) on the basis that the rule is contrary  
13          to the public interest shall not be construed to au-  
14          thorize the Commission to apply such a standard to  
15          any other provision of this Act or any other action  
16          of the Commission.

17          “(6) TEMPORARY EFFECTIVENESS FOR EMER-  
18          GENCY RULES.—

19                 “(A) EMERGENCY RULES AUTHORIZED.—  
20                 The Commission shall issue regulations to  
21                 specify the terms and conditions under which,  
22                 in an emergency as defined by the Commission,  
23                 a contract market may, by a two-thirds vote of  
24                 its governing board, make a rule (in this para-  
25                 graph referred to as an ‘emergency rule’) imme-

1 diately effective on a temporary basis without  
2 compliance with the applicable notice require-  
3 ments under paragraph (2), or during any pe-  
4 riod of review by the Commission, if the con-  
5 tract market makes every effort practicable to  
6 notify the Commission of the emergency rule  
7 before making the emergency rule effective. The  
8 notification shall include a complete explanation  
9 of the emergency involved. If the contract mar-  
10 ket does not provide the Commission with such  
11 notification and explanation before making the  
12 emergency rule effective, the contract market  
13 shall provide the Commission with such notifi-  
14 cation and explanation at the earliest possible  
15 date. The Commission may delegate the power  
16 to receive such notification and explanation to  
17 such individuals as the Commission determines  
18 necessary and appropriate.

19 “(B) COMMISSION CONSIDERATION OF  
20 EMERGENCY RULES.—Within 10 days of the re-  
21 ceipt from a contract market of notification of  
22 an emergency rule and an explanation of the  
23 emergency involved, or as soon as practicable,  
24 the Commission shall determine whether it is  
25 appropriate either—

1           “(i) to permit the emergency rule to  
2           remain in effect during the period of the  
3           emergency; or

4           “(ii) to suspend the effect of the  
5           emergency rule pending review either  
6           under the procedures of this subsection or  
7           otherwise.

8           “(C) REPORT ON CONSIDERATION.—The  
9           Commission shall submit to the affected con-  
10          tract market, to the Committee on Agriculture  
11          of the House of Representatives and the Com-  
12          mittee on Agriculture, Nutrition, and Forestry  
13          of the Senate a report regarding its determina-  
14          tion (and the basis thereof) with respect to an  
15          emergency rule. If the report is submitted more  
16          than 10 days after the Commission’s receipt of  
17          notification of the emergency rule, the report  
18          shall also contain an explanation of why sub-  
19          mission within such period was not practicable.  
20          A determination by the Commission to suspend  
21          the effect of a rule under this paragraph shall  
22          be subject to judicial review on the same basis  
23          as an emergency determination under section  
24          8a(9). Nothing in this paragraph shall be con-

1           strued to limit the authority of the Commission  
2           under section 8a(9).”.

3 **SEC. 105. REGULATION OF AUDIT TRAIL REQUIREMENTS.**

4           Section 5a(b) of the Commodity Exchange Act (7  
5 U.S.C. 7a(b)) is amended—

6           (1) by striking paragraphs (3), (4), and (6);

7           (2) by redesignating paragraph (5) as para-  
8           graph (6);

9           (3) in paragraph (6) (as so redesignated)—

10           (A) by striking “paragraph (3)” both  
11           places it appears and inserting “this sub-  
12           section” and

13           (B) by striking “such paragraph” and in-  
14           serting “this subsection”; and

15           (4) by inserting after paragraph (2) the follow-  
16           ing new paragraphs:

17           “(3) DEVELOPMENT OF STANDARDS FOR TIME  
18           OF EXECUTION.—Not later than nine months after  
19           the date of the enactment of this paragraph, the  
20           Commission shall issue a regulation, after notice and  
21           an opportunity for a hearing, that prescribes an ob-  
22           jective standard or methodology for establishing  
23           whether a contract market meets the requirement  
24           under paragraph (2) that each contract market must  
25           be able to determine, with reasonable accuracy, the

1 time of execution, in increments of no more than one  
2 minute in length. In issuing the regulation, the Com-  
3 mission—

4 “(A) shall take into account any unique  
5 features and trading practices of each contract  
6 market and any surveillance mechanisms be-  
7 yond a manual trade recording system adopted  
8 by each contract market;

9 “(B) shall not prescribe a specific means  
10 or technology for meeting the accuracy or any  
11 other requirement.

12 “(4) USE OF TRADE RECORDING DATA.—Con-  
13 sistent with Commission regulations, the audit trail  
14 system for a contract market shall rely upon trade  
15 recording data that are—

16 “(A) entered by floor traders, floor brokers  
17 or others in nonerasable ink or other form that  
18 cannot be altered without leaving a complete  
19 record of such alteration; and

20 “(B) continually provided to the contract  
21 market during the trading day in intervals of  
22 not more than 30 minutes for processing by the  
23 contract market.

24 “(5) USE OF TIME STAMPS.—The audit trail  
25 system for a contract market shall rely upon accu-

1 rate time stamps or similarly reliable devices for re-  
2 cording when a customer's order reaches the trading  
3 floor and when that order is reported from the floor  
4 as having been executed.”.

5 **SEC. 106. USE OF BENEFIT-COST ANALYSIS.**

6 Section 12 of the Commodity Exchange Act (7 U.S.C.  
7 16) is amended by adding at the end the following new  
8 subsection:

9 “(h) USE OF BENEFIT-COST ANALYSIS.—

10 “(1) ANALYSIS REQUIRED.—Except as provided  
11 in paragraph (4), the Commission shall not adopt  
12 any rule, regulation, or order, or take any other reg-  
13 ulatory action, if the benefits of such an action do  
14 not exceed the costs. The Commission shall make  
15 this benefit-cost determination based upon the infor-  
16 mation available in the record of such action main-  
17 tained by the Commission.

18 “(2) BENEFITS DEFINED.—For purposes of  
19 this subsection, the term ‘benefits’ means the signifi-  
20 cant, reasonably identifiable, favorable effects (in-  
21 cluding the impact on market liquidity and effi-  
22 ciency, financial and market integrity, customer pro-  
23 tection, and fair competition) that are reasonably ex-  
24 pected to result, directly or indirectly, from the  
25 adoption of a rule or other agency action.

1           “(3) COSTS DEFINED.—For purposes of this  
2 subsection, the term ‘costs’ means the significant,  
3 reasonably identifiable, adverse effects (including the  
4 impact on market liquidity and efficiency, financial  
5 and market integrity, customer protection, and fair  
6 competition) that are reasonably expected to result,  
7 directly or indirectly, from the adoption of a rule or  
8 other agency action.

9           “(4) EXCEPTION FOR CERTAIN RULES AND AC-  
10 TIONS.—This subsection shall not apply to the fol-  
11 lowing:

12                   “(A) Any adjudicatory or formal rule-  
13 making determinations made by the Commis-  
14 sion after a hearing on the record.

15                   “(B) Any emergency determination made  
16 by the Commission under section 8a(a)(9).

17                   “(C) Any review or action taken by the  
18 Commission on appeal from a contract market  
19 disciplinary action in accordance with section  
20 8c.

21                   “(D) Any Commission approvals of rules  
22 or rule changes in accordance with section  
23 5a(e).

1           “(E) Any Commission approvals of con-  
2           tract market designation applications under sec-  
3           tion 6.”.

4 **SEC. 107. COMMISSION OVERSIGHT AND DEFICIENCY OR-**  
5 **DERS.**

6           (a) REPEAL.—Section 8e of the Commodity Ex-  
7 change Act (7 U.S.C. 12e) is repealed.

8           (b) CONFORMING AMENDMENTS.—(1) Section 4j(a)  
9 of the Commodity Exchange Act (7 U.S.C. 6j(a)) is  
10 amended—

11           (1) in paragraph (3)(B)(ii), by striking “, such  
12           as those described in section 8e,”; and

13           (2) in paragraph (5)(A)(ii), by striking “, such  
14           as those described in section 8e,”.

15           **TITLE II—TREASURY**  
16           **AMENDMENT CLARIFICATION**

17 **SEC. 201. TREASURY AMENDMENT CLARIFICATION.**

18           Section 2(a)(1)(A)(ii) of the Commodity Exchange  
19 Act (7 U.S.C. 2(ii)) is amended—

20           (1) by inserting “or transactions involving”  
21           after “transactions in”;

22           (2) by inserting “to the general public” after  
23           “sale thereof”; and

24           (3) by adding at the end the following new sen-  
25           tence: “For purposes of this clause only, the term

1 'board of trade', as it applies to transactions in or  
2 involving foreign currency, means any facility where-  
3 by standardized contracts are systematically mar-  
4 keted to retail investors (other than individuals and  
5 entities described as eligible participants under the  
6 regulations of the Commission published in the Fed-  
7 eral Register on January 22, 1993, as codified in  
8 section 35.1(b)(2) of part 35 of title 17, Code of  
9 Federal Regulations).”.

○