

COMMODITY EXCHANGE ACT – FOREIGN CURRENCY AMENDMENTS

Section 2(c)(2) of the Commodity Exchange Act is amended by striking all of existing subparagraphs (B) and (C) and inserting instead the following:

“(B) Agreements, contracts, and transactions in retail foreign currency.--

“(i) 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—

“(aa) a financial institution;

“(bb)

“(AA) a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5); or

“(BB) an associated person of a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) concerning the financial or securities activities of which the broker or dealer 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));

“(cc) a futures commission merchant registered under this Act (that is not also a person described in item (bb)), or an affiliated person of such a futures commission merchant (that is not also a person described in item (bb)) if such futures commission merchant makes and keeps records under Section 4f(c)(2)(B) of this Act concerning the futures and other financial activities of such affiliated person;

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

“(ee) a financial holding company (as defined in section 1841 of title 12); or

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

“(ii) Notwithstanding item (cc) of subparagraph (B)(i)(II), agreements, contracts, or transactions described in subparagraph (B)(i) shall be subject to subsection (a)(1)(B) and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b) if such agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant or an affiliated person of a futures commission merchant registered under this Act that is not also a person described in any of items (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II).

“(iii) Notwithstanding item (cc) of subparagraph (B)(i)(II), any person who participates in the solicitation or recommendation of any agreement, contract, or transaction described in subparagraph (B)(i) entered into with or to be entered into with a person described in item (cc) of subparagraph (B)(i)(II) must be registered in such capacity as the Commission by rule, regulation or order shall determine and must be a member of a futures association registered under section 17 of the Act. This clause shall not apply to any person (i) described in any of items (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II) or (ii) its associated persons. This paragraph shall be effective 120 days from the date of enactment or such other time as the Commission shall determine.

“(C)(i) This subparagraph (C) shall apply to any agreement, contract or transaction in foreign currency that is—

“(I) offered to, or entered into with, a person that is not an eligible contract participant (except that subparagraph (C) shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is a person described in any of items (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II)); and

“(II) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis; *Provided, however*, that subparagraph (C) shall not apply to—

“(aa) a security (as defined in section 1a(30)) that is not a security futures product (as defined in section 1a(32)); or

“(bb) a contract of sale that--

“(AA) results in actual delivery within two days; or

“(BB) creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

“(ii) Agreements, contracts, or transactions described in subparagraph (C)(i) shall be subject to subsection (a)(1)(B) and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b). *Provided, however*, that this clause shall not apply to any person described in any of items (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II) or to such person’s associated persons.

“(iii) Any person who participates in the solicitation or recommendation of any agreement, contract, or transaction described in subparagraph (C)(i) must be registered in such capacity as the Commission by rule, regulation or order shall determine and must be a member of a futures association registered under section 17 of the Act. This clause shall not apply to any person (i) described in any of items (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II) or (ii) its associated persons. This clause shall be effective 120 days from the date of enactment or such other time as the Commission shall determine.

“(iv) Sections 4(b) and 4b shall apply to any agreement, contract, or transaction described in subparagraph (C)(i) as though the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(v) Subparagraph (C) does not limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

“(vi) Subparagraph (C) does not limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provision of this Act with respect to security futures products and persons effecting transactions in security futures products”.

**REPORT LANGUAGE TO ACCOMPANY PRESIDENT'S WORKING GROUP
RETAIL FOREIGN EXCHANGE LEGISLATIVE LANGUAGE**

The Committee notes that the term "line of business" in new subparagraph (C)(i)(II)(bb)(BB) refers to any legitimate line of business, not just a foreign exchange business.

SEC. XXX. PORTFOLIO MARGINING AND SECURITY INDEX ISSUES.

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

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

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

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