

The problem is that this bill, in the haste to deal with trading facilities, has defined trading facilities in such a way that it brings this electronic system and information system that does no negotiating at all, the parties on each end of the system are doing the negotiating but now we have brought into the definition of trading facility an electronic system that should not be included in the Federal regulations. Now, my colleagues quite often are talking about how terrible it is to have Federal regulations regulating things that should not be regulated. I am here this time talking about one of those instances where we are regulating something that really should not be regulated.

The parties on both ends of the transaction, I concede, should be regulated; and that is what this legislation should be about, but the electronic system in between the two negotiating parties should not be regulated. In the process of going through the conference and basically carving out language that the Committee on Banking and Financial Services had carefully considered that would have protected this small venture in my congressional district, they have overzealously, probably unintentionally, included an operation here that really should not be. And I think ultimately what is going to happen is we are running the risk that this small operation could be driven offshore because it can be done, this electronic operation can be done, in England or Tokyo or anywhere else in the world; but we want this business located here in the United States as we want every business located here.

It is a clean, good, upstanding business, and there is no reason that we ought to be regulating it. If this bill were not on suspension, we would have the opportunity to offer an amendment to get back to the language of the Committee on Banking and Financial Services, and therefore I am going to vote against the rule, even though I will probably end up voting for the bill.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EWING).

Mr. EWING. Mr. Speaker, I thank the gentlewoman from North Carolina (Mrs. MYRICK) for yielding me this time.

To the gentlewoman's colleague, the gentleman from North Carolina (Mr. WATT), who just spoke, I would like to respond to him. I think the issue the gentleman brings up is a very important issue and as the sponsor of the bill I want to let the gentleman know where we are with this legislation. Number one, the Blackbird Institution is not regulated by this bill. It is not regulated now. We believe that this bill exempts them from any regulation so long as they are trading in the manner in which they have indicated they are. The issue here is so long as they do not act as an organized exchange and do not do retail trades, they will be exempt under this bill and exempt from

regulation. The idea, of course, is that if they decide to do otherwise then, of course, they will come under regulation like every other exchange, every other trader with retail interests.

Mr. WATT of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. EWING. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Speaker, what I would like to do with the gentleman's permission is perhaps come back during the debate on the main bill and actually have a colloquy so that at least we can create a legislative record that specifically indicates that the gentleman's interpretation is that this bill does not cover this Blackbird system, because their interpretation is entirely different than the gentleman's, and I think it would be helpful at least to have that legislative record developed. I am not sure we can do it as a part of the rule. So if the gentleman would be so kind.

Mr. EWING. Reclaiming my time, I would be more than happy to engage in that colloquy.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I thank the gentlewoman from New York (Ms. SLAUGHTER) for yielding me this time.

Mr. Speaker, I want to comment on one of the bills that everyone else seems to be commenting on, that is H.R. 4541, the Commodities Futures Modernization Act. I support the bill. The legislation reauthorizes the Commodities Futures Trading Commission, streamlines regulation of the futures markets and provides legal certainty to over-the-counter derivatives.

As we know, the President's Working Group on Financial Markets has testified that securing legal certainty for financial derivatives is imperative to reducing risk within America's financial system. This legislation, while a compromise on many points, is not only an important step toward achieving the legal certainty our financial markets need but it will foster continued American innovation in the increasingly important realm of derivative financial products.

Moreover, it will help prevent the flight of our domestic financial derivatives business abroad. This makes H.R. 4541 particularly important to my State, Mr. Speaker, New York, where much of our Nation's financial trading takes place. The legislation has broad-based backing. It is supported by the Department of the Treasury, the SEC, the CFTC, as well as the major financial institutions. I would, however, like to raise one note of concern, Mr. Speaker.

The process through which H.R. 4541 was developed was not completely fair or open. At times Democrats were not sufficiently included in the negotiations, and the ranking member on the Committee on Commerce, on which I serve, the gentleman from Michigan (Mr. DINGELL), has expressed concerns

which I share about the process, the fact that the Committee on Commerce was not sufficiently involved in the process, and that is wrong and things were put into this bill at the last minute just the other day, and there really has been no time to discuss it or deliberate on it; and I think that is wrong as well.

I would hope that some of these issues can be resolved when the bill finally comes back.

While the process was not satisfactory, overall the final bill moves forward and is worthy of passage by the House. Once again, I express my support for the Commodity Futures Modernization Act and I urge my colleagues to support the bill.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate has passed without amendment a joint resolution of the House of the following title:

H.J. Res. 114. Joint resolution making further continuing appropriations for the fiscal year 2001, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4635) "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2001, and for other purposes."

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 8 of rule XX, the Chair announces that he will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Any record vote on H.R. 4541, the Commodity Futures Modernization Act, will be taken after debate has concluded on that motion.

Record votes on remaining motions to suspend the rules will be taken on Tuesday, October 24, 2000.

□ 1800

COMMODITY FUTURES
MODERNIZATION ACT OF 2000

Mr. COMBEST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4541) to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for future and over-the-counter derivatives, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4541

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Commodity Futures Modernization Act of 2000”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.

**TITLE I—COMMODITY FUTURES
MODERNIZATION**

Sec. 101. Definitions.
Sec. 102. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
Sec. 103. Legal certainty for excluded derivative transactions.
Sec. 104. Excluded electronic trading facilities.
Sec. 105. Hybrid instruments.
Sec. 106. Transactions in exempt commodities.
Sec. 107. Swap transactions.
Sec. 108. Application of commodity futures laws.
Sec. 109. Protection of the public interest.
Sec. 110. Prohibited transactions.
Sec. 111. Designation of boards of trade as contract markets.
Sec. 112. Derivatives transaction execution facilities.
Sec. 113. Derivatives clearing.
Sec. 114. Common provisions applicable to registered entities.
Sec. 115. Exempt boards of trade.
Sec. 116. Suspension or revocation of designation as contract market.
Sec. 117. Authorization of appropriations.
Sec. 118. Preemption.
Sec. 119. Predispute resolution agreements for institutional customers.
Sec. 120. Consideration of costs and benefits and antitrust laws.
Sec. 121. Contract enforcement between eligible counterparties.
Sec. 122. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.
Sec. 123. Rule of construction.
Sec. 124. Technical and conforming amendments.
Sec. 125. Privacy.
Sec. 126. Report to Congress.
Sec. 127. International activities of the Commodity Futures Trading Commission.
Sec. 128. Rules of construction.

**TITLE II—COORDINATED REGULATION
OF SECURITY FUTURES PRODUCTS**

Subtitle A—Securities Law Amendments

Sec. 201. Definitions under the Securities Exchange Act of 1934.
Sec. 202. Regulatory relief for markets trading security futures products.
Sec. 203. Regulatory relief for intermediaries trading security futures products.

Sec. 204. Special provisions for interagency cooperation.
Sec. 205. Maintenance of market integrity for security futures products.
Sec. 206. Special provisions for the trading of security futures products.
Sec. 207. Clearance and settlement.
Sec. 208. Amendments relating to registration and disclosure issues under the Securities Act of 1933 and the Securities Exchange Act of 1934.
Sec. 209. Amendments to the Investment Company Act of 1940 and the Investment Advisers Act of 1940.
Sec. 210. Preemption of State laws.
Subtitle B—Amendments to the Commodity Exchange Act
Sec. 221. Jurisdiction of Securities and Exchange Commission; other provisions.
Sec. 222. Application of the Commodity Exchange Act to national securities exchanges and national securities associations that trade security futures.
Sec. 223. Notification of investigations and enforcement actions.

SEC. 2. PURPOSES.

The purposes of this Act are—
(1) to reauthorize the appropriation for the Commodity Futures Trading Commission;
(2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act;
(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;
(4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;
(5) to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;
(6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;
(7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and
(8) to enhance the competitive position of United States financial institutions and financial markets.

**TITLE I—COMMODITY FUTURES
MODERNIZATION**

SEC. 101. DEFINITIONS.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (1) through (7), (8) through (12), (13), (14), (15), and (16) as paragraphs (2) through (8), (16) through (20), (22), (23), (24), and (28), respectively;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

“(1) **ALTERNATIVE TRADING SYSTEM.**—The term ‘alternative trading system’ means an organization, association, or group of persons that—

“(A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof);

“(B) performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of the Securities Exchange Act of 1934);

“(C) does not—

“(i) set rules governing the conduct of subscribers other than the conduct of such sub-

scribers’ trading on the alternative trading system; or

“(ii) discipline subscribers other than by exclusion from trading; and

“(D) is exempt from the definition of the term ‘exchange’ under such section 3(a)(1) by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.”;

(3) by striking paragraph (2) (as redesignated by paragraph (1)) and inserting the following:

“(2) **BOARD OF TRADE.**—The term ‘board of trade’ means any organized exchange or other trading facility.”;

(4) by inserting after paragraph (8) the following:

“(9) **DERIVATIVES CLEARING ORGANIZATION.**—

“(A) **IN GENERAL.**—The term ‘derivatives clearing organization’ means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

“(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

“(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

“(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

“(B) **EXCLUSIONS.**—The term ‘derivatives clearing organization’ does not include an entity, facility, system, or organization solely because it arranges or provides for—

“(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

“(ii) settlement or netting of cash payments through an interbank payment system; or

“(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

“(10) **ELECTRONIC TRADING FACILITY.**—The term ‘electronic trading facility’ means a trading facility that—

“(A) operates by means of an electronic or telecommunications network; and

“(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

“(11) **ELIGIBLE COMMERCIAL ENTITY.**—The term ‘eligible commercial entity’ means, with respect to an agreement, contract or transaction in a commodity—

“(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (12)(A) that, in connection with its business—

“(i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;

“(ii) incurs risks, in addition to price risk, related to the commodity; or

“(iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

“(B) an eligible contract participant, other than a natural person or an instrumentality,