

Document 0788

[20788001]

The Senate Agriculture Committee is responding to trading abuses in the futures markets with a far-reaching bill that would become the Futures Trading Practices Act of 1989 .

[20788002]

The proposed legislation has a laudable goal : to assure the integrity of the U.S. futures markets .

[20788003]

However , as is common with sweeping legislation , the proposal contains many provisions that could destroy important parts of the system it sets out to preserve .

[20788006]

The bill also elevates even minor rule infractions to felonies and provides for recovery of punitive damages in civil lawsuits and arbitration cases without any showing of wilful misconduct .

[20788007]

Many aspects of the bill are salutary , providing appropriate public safeguards that can and should be instituted throughout the industry .

[20788009]

Other aspects of the bill , however , are either structured in ways that create unnecessary burdens for the industry or actually are harmful to the exchanges , the industry and ultimately the general public .

[20788010]

One of the most prominent features is the requirement that in three years all exchanges have in place a system that records all trades by a source independent of the executing broker .

[20788011]

The New York futures exchanges have been working together to develop a trade recording system much like the one called for in the bill .

[20788012]

We would be delighted to have such a system in place today .

[20788013]

But is it realistic for Congress to mandate by a rigid deadline a system that has not yet been subjected to feasibility studies ?

[20788014]

What if the system does n't work ?

[20788016]

Cost is a key consideration because of the global sweep of the financial markets .

[20788017]

The U.S. futures exchanges compete world-wide as never before .

[20788018]

Today , trading in almost any commodity can be diverted from U.S. markets with just a few strokes of a keyboard .

[20788019]

All foreign markets are aggressively courting U.S. business .
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ev-w732f1

[20788020]

In fact , several London markets already offer lower costs for trading in the same or very similar contracts .
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ev-w2105f1 ev-w3417f2

[20788021]

The U.S. exchanges need both market integrity and cost-efficiency ; long-term growth depends on it .
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ev-w2063f1 ev-w878f1

[20788022]

The Senate bill contains many provisions that will increase the costs of trading .
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ev-w678f1 ev-w1678f1

[20788023]

The most arbitrary of these is the imposition of " service fees , " which will directly widen the cost spread between U.S. and foreign markets .
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ev-w218f2 ev-w3634f1

[20788024]

Other provisions have a more subtle , but nonetheless real and detrimental effect on the international position of U.S. exchanges .
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ev-w1566f6_u_nobody

[20788025]

These include the extension of liability into areas beyond those established by judicial precedent and the expansion of liability to include punitive damages .
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ev-w1676f2 ev-w1198f1 ev-w1676f2

[20788026]

In addition to increasing costs as a result of greater financial exposure for members , these measures could have other , far-reaching repercussions .
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ev-w1678f2 ev-w1566f3

[20788027]

One section of the bill would make all commodity brokerage firms and floor brokers liable for damages without willful misconduct .
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ev-w1923f2

[20788029]

It is only logical to assume that the enactment of this provision will lead to increased litigation .
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ev-w218f2 ev-w153f2 ev-w1835f3 ev-w1678f2

[20788031]

Another measure makes commodity brokerage firms liable for violations committed by independent floor brokers who execute trades for them .
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ev-w1923f2 ev-w609f4 ev-w1224f1

[20788032]

This untried concept would expose these firms to potentially astronomical punitive damages .
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ev-w1251f1

[20788033]

Faced with the virtually impossible task of supervising the execution of each trade , many commodity brokerage firms are likely to stop doing business with independents and instead hire their own salaried floor brokers .
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ev-w1266f3_u_nobody ev-w3259f1 ev-w218f2 ev-w3189f5 ev-w1029f11_u_nobody ev-w1593f1

[20788034]

This would force out of business many of the individuals and small firms that function as floor brokers .
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ev-w1387f6 ev-w1431f1

[20788035]

A consequence of their departure could be a serious diminution of market liquidity .

Finally , under the bill , a number of legitimate , longstanding business practices would be arbitrarily banned , unless the CFTC were to take specific and timely action to permit them to continue .

In other words , regulation will occur through inaction and happenstance , rather than through a normal deliberative procedure .

The affected practices include the placing of oral orders , which is the way most public customer orders are placed , and trading between affiliated brokers , even though in some cases trading with affiliates may be the only way to obtain the best execution for a client .

All U.S. futures exchanges agree that these and other trading practices require proper regulation and supervision .

The markets are complex , as is the environment in which they function .

That temptation must be put aside to permit careful consideration of all the implications , positive and negative , of the proposed resolutions to those problems , and to avoid creating a marketplace where no one trades .

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