

108TH CONGRESS
1ST SESSION

S. 509

To modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the penalties for violations of the Federal Power Act and the Natural Gas Act, to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2003

Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. LUGAR, Mr. HARKIN, Ms. CANTWELL, Mr. WYDEN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the penalties for violations of the Federal Power Act and the Natural Gas Act, to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Market Over-
5 sight Act”.

1 **SEC. 2. JURISDICTION OF THE FEDERAL ENERGY REGU-**
2 **LATORY COMMISSION OVER ENERGY TRAD-**
3 **ING MARKETS.**

4 Section 402 of the Department of Energy Organiza-
5 tion Act (42 U.S.C. 7172) is amended by adding at the
6 end the following:

7 “(i) JURISDICTION OVER DERIVATIVES TRANS-
8 ACTIONS AND OTHER FINANCIAL TRANSACTIONS .—

9 “(1) REFERRAL.—

10 “(A) IN GENERAL.—To the extent that the
11 Commission determines that any contract for a
12 derivative transaction or other financial trans-
13 action that comes before the Commission is not
14 under the jurisdiction of the Commission, the
15 Commission shall refer the contract to the ap-
16 propriate Federal agency.

17 “(B) NO EFFECT ON AUTHORITY.—The
18 authority of the Commission or any Federal
19 agency shall not be limited or otherwise affected
20 based on whether the Commission has or has
21 not referred a contract described in subpara-
22 graph (A).

23 “(2) MEETINGS.—A designee of the Commis-
24 sion shall meet quarterly with a designee of the
25 Commodity Futures Trading Commission, the Secu-
26 rities Exchange Commission, the Federal Trade

1 Commission, the Department of Justice, the Depart-
2 ment of the Treasury, and the Federal Reserve
3 Board to discuss—

4 “(A) conditions and events in energy trad-
5 ing markets; and

6 “(B) any changes in Federal law (includ-
7 ing regulations) that may be appropriate to reg-
8 ulate energy trading markets.

9 “(3) LIAISON.—The Commission shall, in co-
10 operation with the Commodity Futures Trading
11 Commission, maintain a liaison between the Com-
12 mission and the Commodity Futures Trading Com-
13 mission.”.

14 **SEC. 3. INVESTIGATIONS BY THE FEDERAL ENERGY REGU-**
15 **LATORY COMMISSION UNDER THE NATURAL**
16 **GAS ACT AND FEDERAL POWER ACT.**

17 (a) INVESTIGATIONS UNDER THE NATURAL GAS
18 ACT.—Section 14(c) of the Natural Gas Act (15 U.S.C.
19 717m(c)) is amended—

20 (1) by striking “(c) For the purpose of” and in-
21 serting the following:

22 “(c) TAKING OF EVIDENCE.—

23 “(1) IN GENERAL.—For the purpose of”;

24 (2) by striking “Such attendance” and inserting
25 the following:

1 “(2) NO GEOGRAPHIC LIMITATION.—The at-
2 tendance”;

3 (3) by striking “Witnesses summoned” and in-
4 serting the following:

5 “(3) EXPENSES.—Any witness summoned”;
6 and

7 (4) by adding at the end the following:

8 “(4) AUTHORITIES.—Notwithstanding any
9 other provision of law, the exercise of the authorities
10 of the Commission under this subsection shall not be
11 subject to the consent of the Office of Management
12 and Budget or any other Federal agency.”.

13 (b) INVESTIGATIONS UNDER THE FEDERAL POWER
14 ACT.—Section 307(b) of the Federal Power Act (16
15 U.S.C. 825f(b)) is amended—

16 (1) by striking “(b) For the purpose of” and in-
17 serting the following:

18 “(b) TAKING OF EVIDENCE.—

19 “(1) IN GENERAL.—For the purpose of”;

20 (2) by striking “Such attendance” and inserting
21 the following:

22 “(2) NO GEOGRAPHIC LIMITATION.—The at-
23 tendance”;

24 (3) by striking “Witnesses summoned” and in-
25 serting the following:

1 “(3) EXPENSES.—Any witness summoned”;

2 and

3 (4) by adding at the end the following:

4 “(4) AUTHORITIES.—Notwithstanding any
5 other provision of law, the exercise of the authorities
6 of the Commission under this subsection shall not be
7 subject to the consent of the Office of Management
8 and Budget or any other Federal agency.”.

9 **SEC. 4. INCREASE IN CRIMINAL PENALTIES UNDER THE**
10 **NATURAL GAS ACT AND FEDERAL POWER**
11 **ACT.**

12 (a) CRIMINAL PENALTIES UNDER THE NATURAL
13 GAS ACT.—Section 21 of the Natural Gas Act (15 U.S.C.
14 717t) is amended—

15 (1) in subsection (a), by striking “punished by
16 a fine of not more than \$5,000 or by imprisonment
17 for not more than two years, or both” and inserting
18 “imprisoned not more than 5 years, fined not more
19 than \$1,000,000, or both”; and

20 (2) in subsection (b), by striking “\$500 for
21 each and every day during which such offense oc-
22 curs” and inserting “\$50,000 for each day of each
23 violation”.

24 (b) CRIMINAL PENALTIES UNDER THE FEDERAL
25 POWER ACT.—

1 (1) GENERAL PENALTIES.—Section 316 of the
2 Federal Power Act (16 U.S.C. 825o) is amended—

3 (A) in subsection (a), by striking “pun-
4 ished by a fine of not more than \$5,000 or by
5 imprisonment for not more than two years or
6 both” and inserting “imprisoned not more than
7 5 years, fined not more than \$1,000,000, or
8 both”; and

9 (B) in subsection (b), by striking “\$500
10 for each and every day during which such of-
11 fense occurs” and inserting “\$50,000 for each
12 day of each violation”.

13 (2) ENFORCEMENT OF CERTAIN PROVISIONS.—
14 Section 316A of the Federal Power Act (16 U.S.C.
15 825o–1) is amended—

16 (A) by striking subsection (a) and insert-
17 ing the following:

18 “(a) VIOLATIONS.—It shall be unlawful for any per-
19 son—

20 “(1) to violate any provision of part II (includ-
21 ing any rule or order issued under a provision of
22 that part); or

23 “(2) to fail to comply, within a time period
24 specified by the Commission, with—

1 “(A) any written request by the Commis-
2 sion or a member of the staff of the Commis-
3 sion for information; or

4 “(B) a formal investigation or proceeding
5 under this part.”; and

6 (B) in subsection (b)—

7 (i) by striking “section 211, 212, 213
8 or 214 or any provision of any rule or
9 order thereunder” and inserting the fol-
10 lowing: “part II (including any rule or
11 order issued under a provision of that
12 part) or fails to comply in a timely manner
13 with any written request for information
14 by the Commission or a member of the
15 staff of the Commission or in a formal in-
16 vestigation or proceeding under this part”;
17 and

18 (ii) by striking “\$10,000 for each day
19 that such violation continues” and insert-
20 ing “\$50,000 for each day of each viola-
21 tion”.

22 **SEC. 5. REFUND EFFECTIVE DATE.**

23 Section 206(b) of the Federal Power Act (16 U.S.C.
24 824e(b)) is amended—

1 (1) in the second sentence, by striking “the
2 date 60 days” and all that follows and inserting “the
3 date of filing of the complaint nor later than the
4 date that is 150 days after the date of filing of the
5 complaint, unless the Commission determines that
6 the complaint could not have been brought earlier
7 because of fraud, intentional misrepresentation, or
8 any similar act by the public utility named in the
9 complaint, in which case the refund effective date
10 shall be the date on which the rate, charge, classi-
11 fication, rule, regulation, practice, or contract that is
12 found to be unjust, unreasonable, unduly discrimina-
13 tory, or preferential came into effect.”; and

14 (2) in the third sentence—

15 (A) by striking “date 60 days after the
16 publication” and inserting “date of publica-
17 tion”; and

18 (B) by striking “expiration of such 60-day
19 period” and inserting “the publication date, un-
20 less the Commission determines that the motion
21 could not have been made earlier because of
22 fraud, intentional misrepresentation, or any
23 similar act by the public utility named in the
24 motion, in which case the refund effective date
25 shall be the date on which the rate, charge,

1 classification, rule, regulation, practice, or con-
2 tract that is found to be unjust, unreasonable,
3 unduly discriminatory, or preferential came into
4 effect”.

5 **SEC. 6. CONSULTING SERVICES.**

6 Title IV of the Department of Energy Organization
7 Act (42 U.S.C. 7171 et seq.) is amended by adding at
8 the end the following:

9 **“SEC. 408. CONSULTING SERVICES.**

10 “(a) IN GENERAL.—The Chairman may contract for
11 the services of consultants to assist the Commission in car-
12 rying out any responsibilities of the Commission under
13 this Act, the Federal Power Act (16 U.S.C. 791a et seq.),
14 or the Natural Gas Act (15 U.S.C. 717 et seq.).

15 “(b) APPLICABLE LAW.—In contracting for consult-
16 ant services under subsection (a), if the Chairman deter-
17 mines that the contract is in the public interest, the Chair-
18 man, in entering into a contract, shall not be subject to—

19 “(1) section 5, 253, 253a, or 253b of title 41,
20 United States Code; or

21 “(2) any law (including a regulation) relating to
22 conflicts of interest.”.

1 **SEC. 7. LEGAL CERTAINTY FOR TRANSACTIONS IN EXEMPT**
2 **COMMODITIES.**

3 Section 2 of the Commodity Exchange Act (7 U.S.C.
4 2) is amended by striking subsections (g) and (h) and in-
5 serting the following:

6 “(g) OFF-EXCHANGE TRANSACTIONS IN EXEMPT
7 COMMODITIES.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) COVERED ENTITY.—The term ‘cov-
10 ered entity’ means—

11 “(i) an electronic trading facility; and

12 “(ii) a dealer market.

13 “(B) DEALER MARKET.—

14 “(i) IN GENERAL.—The term ‘dealer
15 market’ has the meaning given the term by
16 the Commission.

17 “(ii) INCLUSIONS.—The term ‘dealer
18 market’ includes each bilateral or multilat-
19 eral agreement, contract, or transaction
20 determined by the Commission, regardless
21 of the means of execution of the agree-
22 ment, contract, or transaction.

23 “(2) EXEMPTION FOR TRANSACTIONS NOT ON
24 TRADING FACILITIES.—Except as provided in para-
25 graph (4), nothing in this Act shall apply to an

1 agreement, contract, or transaction in an exempt
2 commodity that—

3 “(A) is entered into solely between persons
4 that are eligible contract participants at the
5 time the persons enter into the agreement, con-
6 tract, or transaction; and

7 “(B) is not entered into on a trading facil-
8 ity.

9 “(3) EXEMPTION FOR TRANSACTIONS ON COV-
10 ERED ENTITIES.—Except as provided in paragraphs
11 (4), (5), and (7), nothing in this Act shall apply to
12 an agreement, contract, or transaction in an exempt
13 commodity that is—

14 “(A) entered into on a principal-to-prin-
15 cipal basis solely between persons that are eligi-
16 ble contract participants at the time at which
17 the persons enter into the agreement, contract,
18 or transaction; and

19 “(B) executed or traded on a covered enti-
20 ty.

21 “(4) REGULATORY AND OVERSIGHT REQUIRE-
22 MENTS.—

23 “(A) IN GENERAL.—An agreement, con-
24 tract, or transaction described in paragraph (2)
25 or (3) (and the covered entity on which the

1 agreement, contract, or transaction is executed)
2 shall be subject to—

3 “(i) sections 5b, 12(e)(2)(B), and
4 22(a)(4);

5 “(ii) the provisions relating to manip-
6 ulation and misleading transactions under
7 sections 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6c,
8 6d, 8a, and 9(a)(2); and

9 “(iii) the provisions relating to fraud
10 and misleading transactions under sections
11 4b, 4c(a), 4c(b), 4o, and 8a.

12 “(B) TRANSACTIONS EXEMPTED BY COM-
13 MISSION ACTION.—Notwithstanding any exemp-
14 tion by the Commission under section 4(c), an
15 agreement, contract, or transaction described in
16 paragraph (2) or (3) shall be subject to the au-
17 thorities in clauses (i), (ii), and (iii) of subpara-
18 graph (A).

19 “(5) COVERED ENTITIES.—An agreement, con-
20 tract, or transaction described in paragraph (3) and
21 the covered entity on which the agreement, contract,
22 or transaction is executed, shall be subject to (to the
23 extent the Commission determines appropriate)—

24 “(A) section 5a, to the extent provided in
25 section 5a(g) and 5d;

1 “(B) consistent with section 4i, a require-
2 ment that books and records relating to the
3 business of the covered entity on which the
4 agreement, contract, or transaction is executed
5 be made available to representatives of the
6 Commission and the Department of Justice for
7 inspection for a period of at least 5 years after
8 the date of each transaction, including—

9 “(i) information relating to data entry
10 and transaction details sufficient to enable
11 the Commission to reconstruct trading ac-
12 tivity on the covered entity; and

13 “(ii) the name and address of each
14 participant on the covered entity author-
15 ized to enter into transactions; and

16 “(C) in the case of a transaction or cov-
17 ered entity performing a significant price dis-
18 covery function for transactions in the cash
19 market for the underlying commodity, subject
20 to paragraph (6), the requirements (to the ex-
21 tent the Commission determines appropriate by
22 regulation) that—

23 “(i) information on trading volume,
24 settlement price, open interest, and open-

1 ing and closing ranges be made available
2 to the public on a daily basis;

3 “(ii) notice be provided to the Com-
4 mission in such form as the Commission
5 may require;

6 “(iii) reports be filed with the Com-
7 mission (such as large trader position re-
8 ports); and

9 “(iv) consistent with section 4i, books
10 and records be maintained relating to each
11 transaction in such form as the Commis-
12 sion may require for a period of at least 5
13 years after the date of the transaction.

14 “(6) PROPRIETARY INFORMATION.—In carrying
15 out paragraph (5)(C), the Commission shall not—

16 “(A) require the real-time publication of
17 proprietary information;

18 “(B) prohibit the commercial sale or li-
19 censing of real-time proprietary information;
20 and

21 “(C) publicly disclose information regard-
22 ing market positions, business transactions,
23 trade secrets, or names of customers, except as
24 provided in section 8.

1 “(7) NOTIFICATION, DISCLOSURES, AND OTHER
2 REQUIREMENTS FOR COVERED ENTITIES.—A cov-
3 ered entity subject to the exemption under para-
4 graph (3) shall (to the extent the Commission deter-
5 mines appropriate)—

6 “(A) notify the Commission of the inten-
7 tion of the covered entity to operate as a cov-
8 ered entity subject to the exemption under
9 paragraph (3), which notice shall include—

10 “(i) the name and address of the cov-
11 ered entity and a person designated to re-
12 ceive communications from the Commis-
13 sion;

14 “(ii) the commodity categories that
15 the covered entity intends to list or other-
16 wise make available for trading on the cov-
17 ered entity in reliance on the exemption
18 under paragraph (3);

19 “(iii) certifications that—

20 “(I) no executive officer or mem-
21 ber of the governing board of, or any
22 holder of a 10 percent or greater eq-
23 uity interest in, the covered entity is
24 a person described in any of subpara-

1 graphs (A) through (H) of section
2 8a(2);

3 “(II) the covered entity will com-
4 ply with the conditions for exemption
5 under this subsection; and

6 “(III) the covered entity will no-
7 tify the Commission of any material
8 change in the information previously
9 provided by the covered entity to the
10 Commission under this paragraph;
11 and

12 “(iv) the identity of any derivatives
13 clearing organization to which the covered
14 entity transmits or intends to transmit
15 transaction data for the purpose of facili-
16 tating the clearance and settlement of
17 transactions conducted on the covered enti-
18 ty subject to the exemption under para-
19 graph (3);

20 “(B)(i) provide the Commission with ac-
21 cess to the trading protocols of the covered enti-
22 ty and electronic access to the covered entity
23 with respect to transactions conducted in reli-
24 ance on the exemption under paragraph (3);
25 and

1 “(ii) on special call by the Commission,
2 provide to the Commission, in a form and man-
3 ner and within the period specified in the spe-
4 cial call, such information relating to the busi-
5 ness of the covered entity as a covered entity
6 exempt under paragraph (3), including informa-
7 tion relating to data entry and transaction de-
8 tails with respect to transactions entered into in
9 reliance on the exemption under paragraph (3),
10 as the Commission may determine appro-
11 priate—

12 “(I) to enforce the provisions specified
13 in paragraph (4);

14 “(II) to evaluate a systemic market
15 event; or

16 “(III) to obtain information requested
17 by a Federal financial regulatory authority
18 to enable the authority to fulfill the regu-
19 latory or supervisory responsibilities of the
20 authority;

21 “(C)(i) on receipt of any subpoena issued
22 by or on behalf of the Commission to any for-
23 eign person that the Commission believes is
24 conducting or has conducted transactions in re-
25 liance on the exemption under paragraph (3) on

1 or through the covered entity relating to the
2 transactions, promptly notify the foreign person
3 of, and transmit to the foreign person, the sub-
4 poena in a manner that is reasonable under the
5 circumstances, or as specified by the Commis-
6 sion; and

7 “(ii) if the Commission has reason to be-
8 lieve that a person has not timely complied with
9 a subpoena issued by or on behalf of the Com-
10 mission under clause (i), and the Commission in
11 writing directs that a covered entity relying on
12 the exemption under paragraph (3) deny or
13 limit further transactions by the person, deny
14 that person further trading access to the cov-
15 ered entity or, as applicable, limit that access of
16 the person to the covered entity for liquidation
17 trading only;

18 “(D) comply with the requirements of this
19 subsection applicable to the covered entity and
20 require that each participant, as a condition of
21 trading on the covered entity in reliance on the
22 exemption under paragraph (3), agree to com-
23 ply with all applicable law;

24 “(E) certify to the Commission that the
25 covered entity has a reasonable basis for believ-

1 ing that participants authorized to conduct
2 transactions on the covered entity in reliance on
3 the exemption under paragraph (3) are eligible
4 contract participants;

5 “(F) maintain sufficient capital, commensurate with the risk associated with transactions conducted on the covered entity; and

6 “(G) not represent to any person that the
7 covered entity is registered with, or designated,
8 recognized, licensed, or approved by the Commission.
9 mission.

10 “(8) HEARING.—A person named in a subpoena
11 referred to in paragraph (7)(C) that believes the
12 person is or may be adversely affected or aggrieved
13 by action taken by the Commission under this subsection, shall have the opportunity for a prompt
14 hearing after the Commission acts under procedures
15 that the Commission shall establish by rule, regulation, or order.

16 “(9) PRIVATE REGULATORY ORGANIZATIONS.—

17 “(A) DELEGATION OF FUNCTIONS UNDER
18 CORE PRINCIPLES.—A covered entity may comply with any core principle under subparagraph
19 (B) that is applicable to the covered entity
20
21
22
23
24

1 through delegation of any relevant function
2 to—

3 “(i) a registered futures association
4 under section 17; or

5 “(ii) another registered entity.

6 “(B) CORE PRINCIPLES.—The Commission
7 may establish core principles requiring a cov-
8 ered entity to monitor trading to—

9 “(i) prevent fraud and manipulation;

10 “(ii) prevent price distortion and dis-
11 ruptions of the delivery or cash settlement
12 process;

13 “(iii) ensure that the covered entity
14 has adequate financial, operational, and
15 managerial resources to discharge the re-
16 sponsibilities of the covered entity; and

17 “(iv) ensure that all reporting, record-
18 keeping, notice, and registration require-
19 ments under this subsection are discharged
20 in a timely manner.

21 “(C) RESPONSIBILITY.—A covered entity
22 that delegates a function under subparagraph
23 (A) shall remain responsible for carrying out
24 the function.

1 “(D) NONCOMPLIANCE.—If a covered enti-
2 ty that delegates a function under subpara-
3 graph (A) becomes aware that a delegated func-
4 tion is not being performed as required under
5 this Act, the covered entity shall promptly take
6 action to address the noncompliance.

7 “(E) VIOLATION OF CORE PRINCIPLES.—

8 “(i) IN GENERAL.—If the Commission
9 determines, on the basis of substantial evi-
10 dence, that a covered entity is violating
11 any applicable core principle specified in
12 subparagraph (B), the Commission shall—

13 “(I) notify the covered entity in
14 writing of the determination; and

15 “(II) afford the covered entity an
16 opportunity to make appropriate
17 changes to bring the covered entity
18 into compliance with the core prin-
19 ciples.

20 “(ii) FAILURE TO MAKE CHANGES.—
21 If, not later than 30 days after receiving a
22 notification under clause (i)(I), a covered
23 entity fails to make changes that, as deter-
24 mined by the Commission, are necessary to
25 comply with the core principles, the Com-

1 mission may take further action in accord-
2 ance with this Act.

3 “(F) RESERVATION OF EMERGENCY AU-
4 THORITY.—Nothing in this paragraph limits or
5 affects the emergency powers of the Commis-
6 sion provided under section 8a(9).

7 “(10) NO EFFECT ON OTHER AUTHORITY.—
8 This subsection shall not affect the authority of the
9 Federal Energy Regulatory Commission under the
10 Federal Power Act (16 U.S.C. 791a et seq.) or the
11 Natural Gas Act (15 U.S.C 717 et seq.).”.

12 **SEC. 8. PROHIBITION OF FRAUDULENT TRANSACTIONS.**

13 Section 4b of the Commodity Exchange Act (7 U.S.C.
14 6b) is amended by striking subsection (a) and inserting
15 the following:

16 “(a) PROHIBITION.—It shall be unlawful for any per-
17 son, directly or indirectly, in or in connection with any
18 account, or any offer to enter into, the entry into, or the
19 confirmation of the execution of, any agreement, contract,
20 or transaction subject to this Act—

21 “(1) to cheat or defraud or attempt to cheat or
22 defraud any person (but this paragraph does not im-
23 pose on parties to transactions executed on or sub-
24 ject to the rules of designated contract markets or
25 registered derivative transaction execution facilities a

1 legal duty to provide counterparties or any other
2 market participants with any material market infor-
3 mation);

4 “(2) willfully to make or cause to be made to
5 any person any false report or statement, or willfully
6 to enter or cause to be entered for any person any
7 false record (but this paragraph does not impose on
8 parties to transactions executed on or subject to the
9 rules of designated contract markets or registered
10 derivative transaction execution facilities a legal duty
11 to provide counterparties or any other market par-
12 ticipants with any material market information);

13 “(3) willfully to deceive or attempt to deceive
14 any person by any means whatsoever (but this para-
15 graph does not impose on parties to transactions ex-
16 ecuted on or subject to the rules of designated con-
17 tract markets or registered derivative transaction
18 execution facilities a legal duty to provide
19 counterparties or any other market participants with
20 any material market information); or

21 “(4) except as permitted in written rules of a
22 board of trade designated as a contract market or
23 derivatives transaction execution facility on which
24 the agreement, contract, or transaction is traded
25 and executed—

1 “(A) to bucket an order;

2 “(B) to fill an order by offset against 1 or
3 more orders of another person; or

4 “(C) willfully and knowingly, for or on be-
5 half of any other person and without the prior
6 consent of the person, to become—

7 “(i) the buyer with respect to any sell-
8 ing order of the person; or

9 “(ii) the seller with respect to any
10 buying order of the person.”.

11 **SEC. 9. FERC LIAISON.**

12 Section 2(a)(9) of the Commodity Exchange Act (7
13 U.S.C. 2(a)(9)) is amended by adding at the end the fol-
14 lowing:

15 “(C) LIAISON WITH FEDERAL ENERGY
16 REGULATORY COMMISSION.—The Commission
17 shall, in cooperation with the Federal Energy
18 Regulatory Commission, maintain a liaison be-
19 tween the Commission and the Federal Energy
20 Regulatory Commission.”.

21 **SEC. 10. CRIMINAL AND CIVIL PENALTIES.**

22 (a) ENFORCEMENT POWERS OF COMMISSION.—Sec-
23 tion 6(c) of the Commodity Exchange Act (7 U.S.C. 9,
24 15) is amended in paragraph (3) of the tenth sentence—

1 (1) by inserting “(A)” after “assess such per-
2 son”; and

3 (2) by inserting after “each such violation” the
4 following: “, or (B) in any case of manipulation of,
5 or attempt to manipulate, the price of any com-
6 modity, a civil penalty of not more than the greater
7 of \$1,000,000 or triple the monetary gain to such
8 person for each such violation,”.

9 (b) MANIPULATIONS AND OTHER VIOLATIONS.—Sec-
10 tion 6(d) of the Commodity Exchange Act (7 U.S.C. 13b)
11 is amended in the first sentence—

12 (1) by striking “paragraph (a) or (b) of section
13 9 of this Act” and inserting “subsection (a), (b), or
14 (f) of section 9”; and

15 (2) by striking “said paragraph 9(a) or 9(b)”
16 and inserting “subsection (a), (b), or (f) of section
17 9”.

18 (c) NONENFORCEMENT OF RULES OF GOVERNMENT
19 OR OTHER VIOLATIONS.—Section 6b of the Commodity
20 Exchange Act (7 U.S.C. 13a) is amended—

21 (1) in the first sentence—

22 (A) by inserting “section 2(g)(9),” after
23 “sections 5 through 5c,”; and

24 (B) by inserting before the period at the
25 end the following: “, or, in any case of manipu-

1 lation of, or an attempt to manipulate, the price
2 of any commodity, a civil penalty of not more
3 than \$1,000,000 for each such violation”; and
4 (2) in the second sentence, by inserting before
5 the period at the end the following: “, except that
6 if the failure or refusal to obey or comply with the
7 order involved any offense under section 9(f), the
8 registered entity, director, officer, agent, or employee
9 shall be guilty of a felony and, on conviction, shall
10 be subject to penalties under section 9(f)”.

11 (d) ACTION TO ENJOIN OR RESTRAIN VIOLA-
12 TIONS.—Section 6e(d) of the Commodity Exchange Act (7
13 U.S.C. 13a–1(d)) is amended by striking “(d)” and all
14 that follows through the end of paragraph (1) and insert-
15 ing the following:

16 “(d) CIVIL PENALTIES.—In any action brought
17 under this section, the Commission may seek and the
18 court shall have jurisdiction to impose, on a proper show-
19 ing, on any person found in the action to have committed
20 any violation—

21 “(1) a civil penalty in the amount of not more
22 than the greater of \$100,000 or triple the monetary
23 gain to the person for each violation; or

24 “(2) in any case of manipulation of, or an at-
25 tempt to manipulate, the price of any commodity, a

1 civil penalty in the amount of not more than the
2 greater of \$1,000,000 or triple the monetary gain to
3 the person for each violation.”.

4 (e) VIOLATIONS GENERALLY.—Section 9 of the Com-
5 modity Exchange Act (7 U.S.C. 13) is amended—

6 (1) by redesignating subsection (f) as sub-
7 section (e); and

8 (2) by adding at the end the following:

9 “(f) PRICE MANIPULATION.—It shall be a felony
10 punishable by a fine of not more than \$1,000,000 for each
11 violation or imprisonment for not more than 10 years, or
12 both, together with the costs of prosecution, for any per-
13 son—

14 “(1) to manipulate or attempt to manipulate
15 the price of any commodity in interstate commerce,
16 or for future delivery on or subject to the rules of
17 any registered entity;

18 “(2) to corner or attempt to corner any such
19 commodity;

20 “(3) knowingly to deliver or cause to be deliv-
21 ered (for transmission through the mails or inter-
22 state commerce by telegraph, telephone, wireless, or
23 other means of communication) false or misleading
24 or knowingly inaccurate reports concerning market
25 information or conditions that affect or tend to af-

1 fect the price of any commodity in interstate com-
2 merce; or

3 “(4) knowingly to violate section 4 or 4b, any
4 of subsections (a) through (e) of subsection 4e, or
5 section 4h, 4o(1), or 19.”.

6 **SEC. 11. CONFORMING AMENDMENTS.**

7 (a) Section 2 of the Commodity Exchange Act (7
8 U.S.C. 2) is amended—

9 (1) in subsection (d)(1), by striking “section
10 5b” and inserting “section 5a(g), 5b,”;

11 (2) in subsection (e)—

12 (A) in paragraph (1), by striking “, 2(g),
13 or 2(h)(3)”;

14 (B) in paragraph (3), by striking
15 “2(h)(5)” and inserting “2(g)(7)”;

16 (3) by redesignating subsection (i) as subsection
17 (h); and

18 (4) in subsection (h) (as redesignated by sub-
19 paragraph (C))—

20 (A) in paragraph (1)—

21 (i) by striking “No provision” and in-
22 serting “IN GENERAL.—Subject to sub-
23 section (g), no provision”; and

24 (ii) in subparagraph (A)—

1 (I) by striking “section 2(c),
2 2(d), 2(e), 2(f), or 2(g) of this Act”
3 and inserting “subsection (c), (d), (e),
4 or (f)”; and

5 (II) by striking “section 2(h)”
6 and inserting “subsection (g)”; and

7 (B) in paragraph (2), by striking “No pro-
8 vision” and inserting “IN GENERAL.—Subject
9 to subsection (g), no provision”.

10 (b) Section 4i of the Commodity Exchange Act (7
11 U.S.C. 6i) is amended in the first sentence by inserting
12 “, or pursuant to an exemption under section 4(c)” after
13 “transaction execution facility”.

14 (c) Section 8a(9) of the Commodity Exchange Act (7
15 U.S.C. 12a(9)) is amended—

16 (1) by inserting “or covered entity under sec-
17 tion 2(g)” after “direct the contract market”;

18 (2) by striking “on any futures contract”; and

19 (3) by inserting “or covered entity under sec-
20 tion 2(g)” after “given by a contract market”.

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