

111TH CONGRESS  
1ST SESSION

# H. R. 977

To amend the Commodity Exchange Act to bring greater transparency and accountability to commodity markets, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2009

Mr. PETERSON introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Commodity Exchange Act to bring greater transparency and accountability to commodity markets, 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 “Derivatives Markets  
5 Transparency and Accountability Act of 2009”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

- Sec. 3. Speculative limits and transparency of off-shore trading.
- Sec. 4. Detailed reporting and disaggregation of market data.
- Sec. 5. Transparency and recordkeeping authorities.
- Sec. 6. Trading limits to prevent excessive speculation.
- Sec. 7. CFTC Administration.
- Sec. 8. Review of prior actions.
- Sec. 9. Review of over-the-counter markets.
- Sec. 10. Study relating to international regulation of energy commodity markets.
- Sec. 11. Over-the-counter authority.
- Sec. 12. Expedited process.
- Sec. 13. Certain exclusions and exemptions available only for certain transactions settled and cleared through registered derivatives clearing organizations.
- Sec. 14. Treatment of emission allowances and offset credits.
- Sec. 15. Inspector General of the Commodity Futures Trading Commission.
- Sec. 16. Authority of Commodity Futures Trading Commission to suspend trading in credit default swaps.
- Sec. 17. Authority of Commodity Futures Trading Commission to prosecute criminal violations of the Commodity Exchange Act.

1 **SEC. 3. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF-**  
 2 **SHORE TRADING.**

3 (a) IN GENERAL.—Section 4 of the Commodity Ex-  
 4 change Act (7 U.S.C. 6) is amended by adding at the end  
 5 the following:

6 “(e) FOREIGN BOARDS OF TRADE.—

7 “(1) IN GENERAL.—The Commission may not  
 8 permit a foreign board of trade to provide to the  
 9 members of the foreign board of trade or other par-  
 10 ticipants located in the United States direct access  
 11 to the electronic trading and order matching system  
 12 of the foreign board of trade with respect to an  
 13 agreement, contract, or transaction that settles  
 14 against any price (including the daily or final settle-  
 15 ment price) of 1 or more contracts listed for trading  
 16 on a registered entity, unless—

1           “(A) the foreign board of trade makes pub-  
2           lic daily trading information regarding the  
3           agreement, contract, or transaction that is com-  
4           parable to the daily trading information pub-  
5           lished by the registered entity for the 1 or more  
6           contracts against which the agreement, con-  
7           tract, or transaction traded on the foreign  
8           board of trade settles; and

9           “(B) the foreign board of trade (or the for-  
10          eign futures authority that oversees the foreign  
11          board of trade)—

12                 “(i) adopts position limits (including  
13                 related hedge exemption provisions) for the  
14                 agreement, contract, or transaction that  
15                 are comparable, taking into consideration  
16                 the relative sizes of the respective markets,  
17                 to the position limits (including related  
18                 hedge exemption provisions) adopted by  
19                 the registered entity for the 1 or more con-  
20                 tracts against which the agreement, con-  
21                 tract, or transaction traded on the foreign  
22                 board of trade settles;

23                 “(ii) has the authority to require or  
24                 direct market participants to limit, reduce,  
25                 or liquidate any position the foreign board

1 of trade (or the foreign futures authority  
2 that oversees the foreign board of trade)  
3 determines to be necessary to prevent or  
4 reduce the threat of price manipulation,  
5 excessive speculation as described in sec-  
6 tion 4a, price distortion, or disruption of  
7 delivery or the cash settlement process;

8 “(iii) agrees to promptly notify the  
9 Commission, with regard to the agreement,  
10 contract, or transaction,” of any change  
11 regarding—

12 “(I) the information that the for-  
13 eign board of trade will make publicly  
14 available;

15 “(II) the position limits that the  
16 foreign board of trade or foreign fu-  
17 tures authority will adopt and enforce;

18 “(III) the position reductions re-  
19 quired to prevent manipulation, exces-  
20 sive speculation as described in sec-  
21 tion 4a, price distortion, or disruption  
22 of delivery or the cash settlement  
23 process; and

24 “(IV) any other area of interest  
25 expressed by the Commission to the

1 foreign board of trade or foreign fu-  
2 tures authority;

3 “(iv) provides information to the  
4 Commission regarding large trader posi-  
5 tions in the agreement, contract, or trans-  
6 action that is comparable to the large trad-  
7 er position information collected by the  
8 Commission for the 1 or more contracts  
9 against which the agreement, contract, or  
10 transaction traded on the foreign board of  
11 trade settles; and

12 “(v) provides the Commission with in-  
13 formation necessary to publish reports on  
14 aggregate trader positions for the agree-  
15 ment, contract, or transaction traded on  
16 the foreign board of trade that are com-  
17 parable to such reports for 1 or more con-  
18 tracts against which the agreement, con-  
19 tract, or transaction traded on the foreign  
20 board of trade settles.

21 “(2) EXISTING FOREIGN BOARDS OF TRADE.—  
22 Paragraph (1) shall not be effective with respect to  
23 any agreement, contract, or transaction executed on  
24 a foreign board of trade to which the Commission  
25 had granted direct access permission before the date

1 of the enactment of this subsection until the date  
2 that is 180 days after such date of enactment.”.

3 (b) LIABILITY OF REGISTERED PERSONS TRADING  
4 ON A FOREIGN BOARD OF TRADE.—

5 (1) Section 4(a) of such Act (7 U.S.C. 6(a)) is  
6 amended by inserting “or by subsection (f)” after  
7 “Unless exempted by the Commission pursuant to  
8 subsection (c)”.

9 (2) Section 4 of such Act (7 U.S.C. 6) is fur-  
10 ther amended by adding at the end the following:

11 “(f) A person registered with the Commission, or ex-  
12 empt from registration by the Commission, under this Act  
13 may not be found to have violated subsection (a) with re-  
14 spect to a transaction in, or in connection with, a contract  
15 of sale of a commodity for future delivery if the person—

16 “(1) has reason to believe the transaction and  
17 the contract is made on or subject to the rules of a  
18 board of trade that is—

19 “(A) legally organized under the laws of a  
20 foreign country;

21 “(B) authorized to act as a board of trade  
22 by a foreign futures authority; and

23 “(C) subject to regulation by the foreign  
24 futures authority; and

1           “(2) has not been determined by the Commis-  
2           sion to be operating in violation of subsection (a).”.

3           (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-  
4 FUTURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.  
5 25(a)) is amended by adding at the end the following:

6           “(5) A contract of sale of a commodity for fu-  
7           ture delivery traded or executed on or through the  
8           facilities of a board of trade, exchange, or market lo-  
9           cated outside the United States for purposes of sec-  
10          tion 4(a) shall not be void, voidable, or unenforce-  
11          able, and a party to such a contract shall not be en-  
12          titled to rescind or recover any payment made with  
13          respect to the contract, based on the failure of the  
14          foreign board of trade to comply with any provision  
15          of this Act.”.

16 **SEC. 4. DETAILED REPORTING AND DISAGGREGATION OF**  
17 **MARKET DATA.**

18          Section 4 of the Commodity Exchange Act (7 U.S.C.  
19 6), as amended by section 3 of this Act, is amended by  
20 adding at the end the following:

21          “(g) DETAILED REPORTING AND DISAGGREGATION  
22 OF MARKET DATA.—

23                 “(1) INDEX TRADERS AND SWAP DEALERS RE-  
24                 PORTING.—The Commission shall issue a proposed  
25                 rule defining and classifying index traders and swap

1 dealers (as those terms are defined by the Commis-  
2 sion) for purposes of data reporting requirements  
3 and setting routine detailed reporting requirements  
4 for any positions of such entities in contracts traded  
5 on designated contract markets, derivatives trans-  
6 action execution facilities, foreign boards of trade  
7 subject to section 4(e), and electronic trading facili-  
8 ties with respect to significant price discovery con-  
9 tracts not later than 120 days after the date of the  
10 enactment of this subsection, and issue a final rule  
11 within 180 days after such date of enactment.

12 “(2) DISAGGREGATION OF INDEX FUNDS AND  
13 OTHER DATA IN MARKETS.—Subject to section 8  
14 and beginning within 60 days of the issuance of the  
15 final rule required by paragraph (1), the Commis-  
16 sion shall disaggregate and make public monthly—

17 “(A) the number of positions and total no-  
18 tional value of index funds and other passive,  
19 long-only and short-only positions (as defined  
20 by the Commission) in all markets to the extent  
21 such information is available; and

22 “(B) data on speculative positions relative  
23 to bona fide physical hedgers in those markets  
24 to the extent such information is available.”.



1 **SEC. 5. TRANSPARENCY AND RECORDKEEPING AUTHORI-**  
2 **TIES.**

3 (a) IN GENERAL.—Section 4g(a) of the Commodity  
4 Exchange Act (7 U.S.C. 6g(a)) is amended—

5 (1) by inserting “a” before “futures commission  
6 merchant”; and

7 (2) by inserting “and transactions and positions  
8 traded pursuant to subsection (d), (g), (h)(1), or  
9 (h)(3) of section 2, or any exemption issued by the  
10 Commission by rule, regulation or order,” after  
11 “United States or elsewhere,”.

12 (b) REPORTS OF DEALS EQUAL TO OR IN EXCESS  
13 OF TRADING LIMITS.—

14 (1) IN GENERAL.—Section 4i of such Act (7  
15 U.S.C. 6i) is amended—

16 (A) in the first sentence—

17 (i) by inserting “(a)” before “It  
18 shall”; and

19 (ii) by inserting “in the United States  
20 or elsewhere, and of transactions and posi-  
21 tions in any such commodity entered into  
22 pursuant to subsection (d), (g), (h)(1), or  
23 (h)(3) of section 2, or any exemption  
24 issued by the Commission by rule, regula-  
25 tion or order” before “, and of cash or  
26 spot”; and

1 (B) by striking all that follows the 1st sen-  
2 tence and inserting the following:

3 “(b) Upon special call by the Commission, any person  
4 shall provide to the Commission, in a form and manner  
5 and within the period specified in the special call, books  
6 and records of all transactions and positions traded on or  
7 subject to the rules of any board of trade or electronic  
8 trading facility in the United States or elsewhere, or pur-  
9 suant to subsection (d), (g), (h)(1), or (h)(3) of section  
10 2, or any exemption issued by the Commission by rule,  
11 regulation, or order, as the Commission may determine  
12 appropriate to deter and prevent price manipulation or  
13 any other disruption to market integrity or to diminish,  
14 eliminate, or prevent excessive speculation as described in  
15 section 4a(a).

16 “(c) Such books and records described in subsections  
17 (a) and (b) shall show complete details concerning all such  
18 transactions, positions, inventories, and commitments, in-  
19 cluding the names and addresses of all persons having any  
20 interest therein, shall be kept for a period of 5 years, and  
21 shall be open at all times to inspection by any representa-  
22 tive of the Commission or the Department of Justice. For  
23 the purposes of this section, the futures and cash or spot  
24 transactions and positions of any person shall include such

1 transactions and positions of any persons directly or indi-  
2 rectly controlled by the person.”.

3 (2) NOTICE AND COMMENT.—Within 60 days  
4 after the date of the enactment of this subsection,  
5 the Commodity Futures Trading Commission shall  
6 provide an opportunity for notice and comment on  
7 implementing the amendments made by paragraph  
8 (1).

9 (c) CONFORMING AMENDMENTS.—

10 (1) Section 2(d)(2) of such Act (7 U.S.C.  
11 2(d)(2)) is amended—

12 (A) by inserting “4g(a), 4i,” before “5a  
13 (to”;

14 (B) by inserting “, and the regulations of  
15 the Commission pursuant to section 4i(b) re-  
16 quiring reporting in connection with commodity  
17 option transactions,” before “governs”.

18 (2) Section 2(g) of such Act (7 U.S.C. 2(g)) is  
19 amended—

20 (A) by inserting “4g(a), 4i,” before “5a  
21 (to”;

22 (B) by inserting “, and the regulations of  
23 the Commission pursuant to section 4i(b) re-  
24 quiring reporting in connection with commodity  
25 option transactions,” before “shall apply”.

1           (3) Section 2(h)(2)(A) of such Act (7 U.S.C.  
2 2(h)(2)(A)) is amended to read as follows:

3           “(A) sections 4g(a), 4i, 5b and  
4 12(e)(2)(B), and the regulations of the Com-  
5 mission pursuant to section 4i(b) requiring re-  
6 porting in connection with commodity option  
7 transactions;”.

8           (4) Section 2(h)(4)(A) of such Act (7 U.S.C.  
9 2(h)(4)(A)) is amended to read as follows:

10           “(A) sections 4g(a), 4i, 5a (to the extent  
11 provided in section 5a(g)), 5b, 5d, and  
12 12(e)(2)(B), and the regulations of the Com-  
13 mission pursuant to section 4i(b) requiring re-  
14 porting in connection with commodity option  
15 transactions;”.

16 **SEC. 6. TRADING LIMITS TO PREVENT EXCESSIVE SPECU-**  
17 **LATION.**

18           Section 4a of the Commodity Exchange Act (7 U.S.C.  
19 6a) is amended—

20           (1) in subsection (a)—

21           (A) by inserting “(1)” after “(a)”; and

22           (B) by adding after and below the end the  
23 following:

24           “(2)(A) In accordance with the standards set forth  
25 in paragraph (1) of this subsection and consistent with

1 the good faith exception cited in subsection (b)(2),with re-  
2 spect to physically deliverable commodities as defined by  
3 the Commission, the Commission shall by rule, regulation,  
4 or order establish limits on the amount of positions, as  
5 appropriate, other than bona fide hedge positions, that  
6 may be held by any person with respect to contracts of  
7 sale for future delivery or with respect to options on such  
8 contracts or commodities traded on or subject to the rules  
9 of a contract market or derivatives transaction execution  
10 facility, or on an electronic trading facility as a significant  
11 price discovery contract.

12 “(B)(i) For exempt commodities, the limits shall be  
13 established within 90 days after the date of the enactment  
14 of this paragraph.

15 “(ii) For agricultural commodities, the limits shall be  
16 established within 180 days after the date of the enact-  
17 ment of this paragraph.

18 “(3) In establishing the limits required in paragraph  
19 (2), the Commission, as appropriate, shall set limits—

20 “(A) on the number of positions that may be  
21 held by any person for the spot month, each other  
22 month, and the aggregate number of positions that  
23 may be held by any person for all months;

24 “(B) to the maximum extent practicable, in its  
25 discretion—

1           “(i) to diminish, eliminate, or prevent ex-  
2           cessive speculation as described under this sec-  
3           tion;

4           “(ii) to deter and prevent market manipu-  
5           lation, squeezes, and corners;

6           “(iii) to ensure sufficient market liquidity  
7           for bona fide hedgers; and

8           “(iv) to ensure that the price discovery  
9           function of the underlying market is not dis-  
10          rupted; and

11          “(C) to the maximum extent practicable, in its  
12          discretion, take into account the total number of po-  
13          sitions in fungible agreements, contracts, or trans-  
14          actions that a person can hold in other markets.

15          “(4)(A) Not later than 150 days after the date of  
16          the enactment of this paragraph, and annually thereafter,  
17          the Commission shall hold 2 public hearings, 1 for agri-  
18          culture commodities and 1 for energy commodities as such  
19          terms are defined by the Commission, in order to receive  
20          recommendations regarding the position limits to be estab-  
21          lished in paragraph (2).

22          “(B) Each public hearing held pursuant to subpara-  
23          graph (A) shall, at a minimum providing there is sufficient  
24          interest, receive recommendations from—

1 “(i) 7 predominantly commercial short hedgers of the  
2 actual physical commodity for future delivery;

3 “(ii) 7 predominantly commercial long hedgers of the  
4 actual physical commodity for future delivery;

5 “(iii) 4 non-commercial participants in markets for  
6 commodities for future delivery; and

7 “(iv) each designated contract market or derivatives  
8 transaction execution facility upon which a contract in the  
9 commodity for future delivery is traded, and each elec-  
10 tronic trading facility that has a significant price discovery  
11 contract in the commodity.”; and

12 (2) in subsection (c)—

13 (A) by inserting “(1)” after “(c)”; and

14 (B) by adding after and below the end the  
15 following:

16 “(2) For the purposes of contracts of sale for future  
17 delivery and options on such contracts or commodities, the  
18 Commission shall define what constitutes a bona fide  
19 hedging transaction or position as a transaction or posi-  
20 tion that—

21 “(A)(i) represents a substitute for transactions  
22 made or to be made or positions taken or to be  
23 taken at a later time in a physical marketing chan-  
24 nel;

1           “(ii) is economically appropriate to the reduc-  
2           tion of risks in the conduct and management of a  
3           commercial enterprise; and

4           “(iii) arises from the potential change in the  
5           value of—

6                   “(I) assets that a person owns, produces,  
7                   manufactures, processes, or merchandises or  
8                   anticipates owning, producing, manufacturing,  
9                   processing, or merchandising;

10                   “(II) liabilities that a person owns or an-  
11                   ticipates incurring; or

12                   “(III) services that a person provides, pur-  
13                   chases, or anticipates providing or purchasing;  
14                   or

15           “(B) reduces risks attendant to a position re-  
16           sulting from a transaction that—

17                   “(i) was executed pursuant to subsection  
18                   (d), (g), (h)(1), or (h)(2) of section 2, or an ex-  
19                   emption issued by the Commission by rule, reg-  
20                   ulation or order; and

21                   “(ii)(I) was executed opposite a  
22                   counterparty for which the transaction would  
23                   qualify as a bona fide hedging transaction pur-  
24                   suant to subparagraph (A); or



1           “(II) meets the requirements of subpara-  
2           graph (A).”.

3 **SEC. 7. CFTC ADMINISTRATION.**

4           Section 2(a)(7) of the Commodity Exchange Act (7  
5 U.S.C. 2(a)(7)) is amended by adding at the end the fol-  
6           lowing:

7           “(D) **ADDITIONAL EMPLOYEES.**—As soon  
8           as practicable after the date of the enactment  
9           of this subparagraph, subject to appropriations,  
10          the Commission shall appoint a sufficient num-  
11          ber of full-time employees (in addition to the  
12          employees employed by the Commission as of  
13          the date of the enactment of this subpara-  
14          graph)—

15                 “(i) to increase the public trans-  
16                 parency of operations in markets;

17                 “(ii) to improve the enforcement of  
18                 this Act in those markets;

19                 “(iii) to enhance oversight of the  
20                 clearing of contracts, agreements, and  
21                 transactions; and

22                 “(iv) to carry out the provisions of the  
23                 Derivatives Markets Transparency and Ac-  
24                 countability Act of 2009 and such other

1                   duties as are prescribed by the Commis-  
2                   sion.”.

3 **SEC. 8. REVIEW OF PRIOR ACTIONS.**

4           Notwithstanding any other provision of the Com-  
5 modity Exchange Act, the Commodity Futures Trading  
6 Commission shall review, as appropriate, all regulations,  
7 rules, exemptions, exclusions, guidance, no action letters,  
8 orders, other actions taken by or on behalf of the Commis-  
9 sion, and any action taken pursuant to the Commodity  
10 Exchange Act by an exchange, self-regulatory organiza-  
11 tion, or any other registered entity, that are currently in  
12 effect, to ensure that such prior actions are in compliance  
13 with the provisions of this Act.

14 **SEC. 9. REVIEW OF OVER-THE-COUNTER MARKETS.**

15           (a) STUDY.—The Commodity Futures Trading Com-  
16 mission shall conduct a study—

17                   (1) to determine the efficacy, practicality, and  
18                   consequences of establishing limits on the size of a  
19                   position, other than bona fide hedge positions, that  
20                   may be held by any person with respect to agree-  
21                   ments, contracts, or transactions involving an agri-  
22                   cultural or energy commodity, conducted in reliance  
23                   on sections 2(g) and 2(h) of the Commodity Ex-  
24                   change Act and of any exemption issued by the  
25                   Commission by rule, regulation or order, that are

1 fungible (as defined by the Commission) with agree-  
2 ments, contracts, or transactions traded on or sub-  
3 ject to the rules of any board of trade or of any elec-  
4 tronic trading facility with respect to a significant  
5 price discovery contract, as a means to deter and  
6 prevent price manipulation or any other disruption  
7 to market integrity or to diminish, eliminate, or pre-  
8 vent excessive speculation as described in section 4a  
9 of such Act for physical-based agricultural or energy  
10 commodities; and

11 (2) to determine the efficacy, practicality, and  
12 consequences of establishing aggregate position lim-  
13 its for similar agreements, contracts, or transactions  
14 for physical-based agricultural or energy commod-  
15 ities traded—

16 (A) on designated contract markets;

17 (B) on derivatives transaction execution fa-  
18 cilities; and

19 (C) in reliance on such sections 2(g) and  
20 2(h) and of any exemption issued by the Com-  
21 mission by rule, regulation or order.

22 (b) PUBLIC HEARINGS.—The Commission shall pro-  
23 vide for not less than 2 public hearings to take testimony,  
24 on the record, as part of the fact- gathering process in  
25 preparation of the report.

1 (c) REPORT AND RECOMMENDATIONS.—Not less  
2 than 12 months after the date of the enactment of this  
3 section, the Commission shall provide to the Committee  
4 on Agriculture of the House of Representatives and the  
5 Committee on Agriculture, Nutrition, and Forestry of the  
6 Senate a report that—

7 (1) describes the results of the study; and

8 (2) provides recommendations on any actions  
9 necessary to deter and prevent price manipulation or  
10 any other disruption to market integrity or to dimin-  
11 ish, eliminate, or prevent excessive speculation as de-  
12 scribed in section 4a of the Commodity Exchange  
13 Act for physical-based commodities, including—

14 (A) any additional statutory authority that  
15 the Commission determines to be necessary to  
16 implement the recommendations; and

17 (B) a description of the resources that the  
18 Commission considers to be necessary to imple-  
19 ment the recommendations.

20 **SEC. 10. STUDY RELATING TO INTERNATIONAL REGULA-**  
21 **TION OF ENERGY COMMODITY MARKETS.**

22 (a) IN GENERAL.—The Comptroller General of the  
23 United States shall conduct a study of the international  
24 regime for regulating the trading of energy commodity fu-  
25 tures and derivatives.

1 (b) ANALYSIS.—The study shall include an analysis  
2 of, at a minimum—

3 (1) key common features and differences among  
4 countries in the regulation of energy commodity  
5 trading, including with respect to market oversight  
6 and enforcement standards and activities;

7 (2) variations among countries with respect to  
8 the use of position limits, position accountability lev-  
9 els, or other thresholds to detect and prevent price  
10 manipulation, excessive speculation as described in  
11 section 4a of the Commodity Exchange Act, or other  
12 unfair trading practices;

13 (3) variations in practices regarding the dif-  
14 ferentiation of commercial and noncommercial trad-  
15 ing;

16 (4) agreements and practices for sharing mar-  
17 ket and trading data among futures authorities and  
18 between futures authorities and the entities that the  
19 futures authorities oversee; and

20 (5) agreements and practices for facilitating  
21 international cooperation on market oversight, com-  
22 pliance, and enforcement.

23 (c) REPORT.—Not later than 1 year after the date  
24 of the enactment of this Act, the Comptroller General shall  
25 submit to the Committee on Agriculture of the House of

1 Representatives and the Committee on Agriculture, Nutri-  
2 tion, and Forestry of the Senate a report that—

3 (1) describes the results of the study;

4 (2) addresses whether there is excessive specu-  
5 lation, and if so, the effects of any such speculation  
6 and energy price volatility on energy futures; and

7 (3) provides recommendations to improve open-  
8 ness, transparency, and other necessary elements of  
9 a properly functioning market in a manner that pro-  
10 tects consumers in the United States.

11 **SEC. 11. OVER-THE-COUNTER AUTHORITY.**

12 (a) IN GENERAL.—Section 2 of the Commodity Ex-  
13 change Act (7 U.S.C. 2) is amended by adding at the end  
14 the following:

15 “(j) OVER-THE-COUNTER AUTHORITY.—

16 “(1) Notwithstanding subsections (d), (g),  
17 (h)(1), and (h)(3) of section 2, and any exemption  
18 issued by the Commission by rule, regulation, or  
19 order, the Commission shall assess and issue a find-  
20 ing on whether agreements, contracts, or trans-  
21 actions entered into in reliance on subsection (d),  
22 (g), (h)(1), or (h)(3) of section 2 or any other ex-  
23 emption issued by the Commission by rule, regula-  
24 tion, or order, that are fungible (as defined by the  
25 Commission) with agreements, contracts, or trans-

1 actions traded on or subject to the rules of any  
2 board of trade or electronic trading facility with re-  
3 spect to a significant price discovery contract, alone  
4 or in conjunction with other similar agreements, con-  
5 tracts, or transactions, have the potential to—

6 “(A) disrupt the liquidity or price dis-  
7 covery function on a registered entity;

8 “(B) cause a severe market disturbance in  
9 the underlying cash or futures market; or

10 “(C) prevent or otherwise impair the price  
11 of a contract listed for trading on a registered  
12 entity from reflecting the forces of supply and  
13 demand in any market.

14 “(2) If the Commission makes a finding pursu-  
15 ant to paragraph (1) of this subsection, the Commis-  
16 sion may, in its discretion, utilize its authority under  
17 section 8a(9) to impose position limits (including, as  
18 appropriate and in its discretion, related hedge ex-  
19 emption provisions for bona fide hedging comparable  
20 to bona fide hedge provisions of section 4a(e)(2)) on  
21 agreements, contracts, or transactions involved, and  
22 take corrective actions to enforce the limits.”.

23 (b) CONFORMING AMENDMENTS.—

1           (1) Section 2(d)(1) of such Act (7 U.S.C.  
2           2(d)(1)) is amended by inserting “subsection (j) of  
3           this section, and” after “(other than”.

4           (2) Section 2(d)(2) of such Act (7 U.S.C.  
5           2(d)(2)) is amended by inserting “subsection (j) of  
6           this section, and” after “(other than”.

7           (3) Section 2(g) of such Act (7 U.S.C. 2(g)) is  
8           amended by inserting “subsection (j) of this section,  
9           and” after “(other than”.

10          (4) Section 2(h)(2)(A) of such Act (7 U.S.C.  
11          2(h)(2)(A)), as amended by section 5(c)(3) of this  
12          Act, is amended by inserting “subsection (j) of this  
13          section and” before “sections”.

14          (5) Section 2(h)(4)(A) of such Act (7 U.S.C.  
15          2(h)(4)(A)), as amended by section 5(c)(4) of this  
16          Act, is amended by inserting “subsection (j) of this  
17          section and” before “sections”.

18          (6) Section 8a(9) of such Act (7 U.S.C.  
19          12a(a)(9)) is amended by inserting after “of the  
20          Commission’s action” the following: “, and to fix  
21          and enforce position limits to agreements, contracts,  
22          or transactions subject to section 2(j)(1) pursuant to  
23          a finding made under section 2(j)(2)”.



1 **SEC. 12. EXPEDITED PROCESS.**

2       The Commodity Futures Trading Commission may  
3 use emergency and expedited procedures (including any  
4 administrative or other procedure as appropriate) to carry  
5 out this Act if, in its discretion, it deems it necessary to  
6 do so.

7 **SEC. 13. CERTAIN EXCLUSIONS AND EXEMPTIONS AVAIL-**  
8 **ABLE ONLY FOR CERTAIN TRANSACTIONS**  
9 **SETTLED AND CLEARED THROUGH REG-**  
10 **ISTERED DERIVATIVES CLEARING ORGANIZA-**  
11 **TIONS.**

12       (a) IN GENERAL.—

13           (1) EXCLUSION OF CERTAIN DERIVATIVE  
14 TRANSACTIONS.—

15           (A) Section 2(d)(1) of the Commodity Ex-  
16 change Act (7 U.S.C. 2(d)(1)) is amended—

17                   (i) by striking “and” at the end of  
18 subparagraph (A);

19                   (ii) by striking the period at the end  
20 of subparagraph (B) and inserting “and”;  
21 and

22                   (iii) by adding at the end the fol-  
23 lowing:

24                   “(C) except as provided in section 4(h), the  
25 agreement, contract, or transaction is settled

1 and cleared through a derivatives clearing orga-  
2 nization registered with the Commission.”.

3 (B) Section 2(d)(2) of such Act (7 U.S.C.  
4 2(d)(2)) is amended—

5 (i) by striking “and” at the end of  
6 subparagraph (B);

7 (ii) by striking the period at the end  
8 of subparagraph (C) and inserting “; and”;  
9 and

10 (iii) by adding at the end the fol-  
11 lowing:

12 “(D) except as provided in section 4(h),  
13 the agreement, contract, or transaction is set-  
14 tled and cleared through a derivatives clearing  
15 organization registered with the Commission.”.

16 (2) EXCLUSION FOR CERTAIN SWAP TRANS-  
17 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))  
18 is amended—

19 (A) by striking “and” at the end of para-  
20 graph (2);

21 (B) by striking the period at the end of  
22 paragraph (3) and inserting “; and”; and

23 (C) by adding at the end the following:

1           “(4) except as provided in section 4(h), settled  
2           and cleared through a derivatives clearing organiza-  
3           tion registered with the Commission.”.

4           (3) EXEMPTION FOR CERTAIN TRANSACTIONS  
5           IN EXEMPT COMMODITIES.—

6           (A) Section 2(h)(1) of such Act ( 7 U.S.C.  
7           2(h)(1)) is amended—

8           (i) by striking “and” at the end of  
9           subparagraph (A);

10          (ii) by striking the period at the end  
11          of subparagraph (B) and inserting “;  
12          and”; and

13          (iii) by adding at the end the fol-  
14          lowing:

15          “(C) except as provided in section 4(h), is  
16          settled and cleared through a derivatives clear-  
17          ing organization registered with the Commis-  
18          sion.”.

19          (B) Section 2(h)(3) of such Act (7 U.S.C.  
20          2(h)(3)) is amended—

21          (i) by striking “and” at the end of  
22          subparagraph (A);

23          (ii) by striking the period at the end  
24          of subparagraph (B) and inserting “;  
25          and”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(C) except as provided in section 4(h),  
4 settled and cleared through a derivatives clear-  
5 ing organization registered with the Commis-  
6 sion.”.

7 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-  
8 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is  
9 amended by inserting “the agreement, contract, or  
10 transaction, except as provided in section 4(h), will  
11 be settled and cleared through a derivatives clearing  
12 organization registered with the Commission and”  
13 before “the Commission determines”.

14 (b) ALTERNATIVES TO CLEARING THROUGH DERIVA-  
15 TIVES CLEARING ORGANIZATIONS.—Section 4 of such Act  
16 (7 U.S.C. 6), as amended by sections 3 and 4 of this Act,  
17 is amended by adding at the end the following:

18 “(h) ALTERNATIVES TO CLEARING THROUGH DE-  
19 RIVATIVES CLEARING ORGANIZATIONS.—

20 “(1) SETTLEMENT AND CLEARING THROUGH  
21 CERTAIN OTHER REGULATED ENTITIES.—An agree-  
22 ment, contract, or transaction, or class thereof, re-  
23 lating to an excluded commodity, that would other-  
24 wise be required to be settled and cleared by section  
25 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or

1 2(h)(3)(C) of this Act, or subsection (c)(1) of this  
2 section may be settled and cleared through an entity  
3 listed in section 409(b) of the Federal Deposit In-  
4 surance Corporation Improvement Act of 1991.

5 “(2) REPORTING ALTERNATIVE.—

6 “(A) An agreement, contract, or trans-  
7 action, or class thereof, that would otherwise be  
8 required to be settled and cleared by section  
9 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or  
10 2(h)(3)(C) of this Act, or subsection (c)(1) of  
11 this section shall be exempt from the require-  
12 ment if reported to the Commission in a man-  
13 ner designated by the Commission, or to such  
14 other entity as the Commission deems appro-  
15 priate.

16 “(B) Parties entering into an agreement,  
17 contract, or transaction, or class thereof re-  
18 ported pursuant to subparagraph (A) shall  
19 demonstrate the financial integrity of the agree-  
20 ment, contract, or transaction and their own fi-  
21 nancial integrity, as such terms and standards  
22 are determined by the Commission.

23 “(C) The standards established pursuant  
24 to subparagraph (B) shall include a net capital  
25 requirement that is comparable to the net cap-

1           ital requirement that would be associated with  
2           such a transaction were it cleared.

3           “(i) SPOT AND FORWARD EXCLUSION.—The settle-  
4           ment and clearing requirements of section 2(d)(1)(C),  
5           2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(e)(1)  
6           shall not apply to an agreement, contract, or transaction  
7           of any cash commodity for immediate or deferred ship-  
8           ment or delivery, as defined by the Commission.”.

9           (c) ADDITIONAL REQUIREMENTS APPLICABLE TO  
10          APPLICANTS FOR REGISTRATION AS A DERIVATIVES  
11          CLEARING ORGANIZATION.—Section 5b(e)(2) of such Act  
12          (7 U.S.C. 7a–1(c)(2)) is amended by adding at the end  
13          the following:

14                   “(O) DISCLOSURE OF GENERAL INFORMA-  
15                   TION.—The applicant shall disclose publicly and  
16                   to the Commission information concerning—

17                           “(i) the terms and conditions of con-  
18                           tracts, agreements, and transactions  
19                           cleared and settled by the applicant;

20                           “(ii) the conventions, mechanisms,  
21                           and practices applicable to the contracts,  
22                           agreements, and transactions;

23                           “(iii) the margin-setting methodology  
24                           and the size and composition of the finan-  
25                           cial resource package of the applicant; and

1                   “(iv) other information relevant to  
2                   participation in the settlement and clearing  
3                   activities of the applicant.

4                   “(P) DAILY PUBLICATION OF TRADING IN-  
5                   FORMATION.—The applicant shall make public  
6                   daily information on settlement prices, volume,  
7                   and open interest for contracts settled or  
8                   cleared pursuant to the requirements of  
9                   2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),  
10                  2(h)(3)(C) or 4(c)(1) of this Act by the appli-  
11                  cant if the Commission determines that the  
12                  contracts perform a significant price discovery  
13                  function for transactions in the cash market for  
14                  the commodity underlying the contracts.

15                  “(Q) FITNESS STANDARDS.—The applicant  
16                  shall establish and enforce appropriate fitness  
17                  standards for directors, members of any dis-  
18                  ciplinary committee, and members of the appli-  
19                  cant, and any other persons with direct access  
20                  to the settlement or clearing activities of the  
21                  applicant, including any parties affiliated with  
22                  any of the persons described in this subpara-  
23                  graph.”.

24                  (d) AMENDMENTS.—

1           (1) Section 409 of the Federal Deposit Insur-  
2           ance Corporation Improvement Act of 1991 (12  
3           U.S.C. 4422) is amended—

4                   (A) in subsection (a), by inserting after  
5                   “Federal Reserve Act” the following: “, and the  
6                   person is registered as a clearing agency under  
7                   the Securities Exchange Act of 1934 or as a de-  
8                   rivatives clearing organization under the Com-  
9                   modity Exchange Act”; and

10                   (B) in subsection (b)(3), by striking “the  
11                   Comptroller of the Currency, the Board of Gov-  
12                   ernors of the Federal Reserve System, the Fed-  
13                   eral Deposit Insurance Corporation”.

14           (2) Section 407 of the Legal Certainty for  
15           Bank Products Act of 2000 (7 U.S.C. 27e) is  
16           amended by inserting “and the settlement and clear-  
17           ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),  
18           2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such  
19           Act” after “the clearing of covered swap agree-  
20           ments”.

21           (3) Section 10 of the Federal Reserve Act is  
22           amended by adding at the end the following new  
23           provision:

24           “The Board shall have no power to issue any rule, regula-  
25           tion, or order, or otherwise to establish the standards of



1 regulation of any entity in its capacity as a multilateral  
2 clearing organization as defined in section 408 of the Fed-  
3 eral Deposit Insurance Corporation Improvement Act of  
4 1991.”.

5 (4) Section 5b(b) of the Commodity Exchange  
6 Act (7 U.S.C. 7a–1(b)) is amended—

7 (A) by striking “(b) VOLUNTARY REG-  
8 ISTRATION.—A derivatives clearing organiza-  
9 tion” and inserting the following:

10 “(b) VOLUNTARY REGISTRATION.—

11 “(1) A derivatives clearing organization”; and.

12 (B) by adding at the end the following:

13 “(2)(A) A national bank, a State member bank,  
14 an insured State nonmember bank, an affiliate of a  
15 national bank, a State member bank, an insured  
16 State nonmember bank, or a corporation chartered  
17 under section 25A of the Federal Reserve Act may  
18 register with the Commission as a derivatives clear-  
19 ing organization.

20 “(B) The Commission shall expedite the appli-  
21 cation of any institution referred to in subparagraph  
22 (A) to the extent that, as of the date of enactment  
23 of this paragraph, the institution had received the  
24 approval of the Board of Governors of the Federal

1 Reserve System to act as a multilateral clearing or-  
2 ganization.”.

3 (e) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect 150 days after the date of  
5 the enactment of this Act.

6 (f) TRANSITION RULE.—Any agreement, contract, or  
7 transaction entered into before the date of the enactment  
8 of this Act or within 150 days after such date of enact-  
9 ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)  
10 of section 2 of the Commodity Exchange Act or any other  
11 exemption issued by the Commission Futures Trading  
12 Commission by rule, regulation, or order shall, within 150  
13 days after such date of enactment, unless settled and  
14 cleared through an entity registered with the Commission  
15 as a derivatives clearing organization or another clearing  
16 entity pursuant to section 4(h) of such Act, be reported  
17 to the Commission in a manner designated by the Com-  
18 mission, or to such other entity as the Commission deems  
19 appropriate.

20 **SEC. 14. TREATMENT OF EMISSION ALLOWANCES AND OFF-**  
21 **SET CREDITS.**

22 (a) Section 1a(14) of the Commodity Exchange Act  
23 (7 U.S.C. 1a(14)) is amended by striking “or an agricul-  
24 tural commodity” and inserting “, an agricultural com-  
25 modity, any allowance authorized under law to emit a

1 greenhouse gas, and any credit authorized under law to-  
2 ward the reduction in greenhouse gas emissions or an in-  
3 crease in carbon sequestration”.

4 (b) Within 180 days after the date of the enactment  
5 of this section, the Commodity Futures Trading Commis-  
6 sion shall enter into a memorandum of understanding with  
7 the Secretary of Agriculture which shall include provi-  
8 sions, consistent with section 1245 of the Food Security  
9 Act of 1985, ensuring that the development of any proce-  
10 dures and protocols for a market-based greenhouse gas  
11 program are properly constructed and coordinated to  
12 maximize credits for carbon sequestration.

13 **SEC. 15. INSPECTOR GENERAL OF THE COMMODITY FU-**  
14 **TURES TRADING COMMISSION.**

15 (a) ELEVATION OF OFFICE.—

16 (1) INCLUSION OF CFTC IN DEFINITION OF ES-  
17 TABLISHMENT.—

18 (A) Section 11(1) of the Inspector General  
19 Act of 1978 (5 U.S.C. App.) is amended by  
20 striking “or the Federal Cochairpersons of the  
21 Commissions established under section 15301  
22 of title 40, United States Code;” and inserting  
23 “the Federal Cochairpersons of the Commis-  
24 sions established under section 15301 of title

1           40, United States Code; or the Chairman of the  
2           Commodity Futures Trading Commission;”.

3           (B) Section 11(2) of the Inspector General  
4           Act of 1978 (5 U.S.C. App.) is amended by  
5           striking “or the Commissions established under  
6           section 15301 of title 40, United States Code,”  
7           and inserting “the Commissions established  
8           under section 15301 of title 40, United States  
9           Code, or the Commodity Futures Trading Com-  
10          mission,”.

11          (2) EXCLUSION OF CFTC FROM DEFINITION OF  
12          DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2)  
13          of the Inspector General Act of 1978 (5 U.S.C.  
14          App.) is amended by striking “the Commodity Fu-  
15          tures Trading Commission,”.

16          (b) EFFECTIVE DATE; TRANSITION RULE.—

17           (1) EFFECTIVE DATE.—The amendments made  
18           by this section shall take effect 30 days after the  
19           date of the enactment of this Act.

20           (2) TRANSITION RULE.—An individual serving  
21           as Inspector General of the Commodity Futures  
22           Trading Commission on the effective date of this  
23           section pursuant to an appointment made under sec-  
24           tion 8G of the Inspector General Act of 1978 (5  
25           U.S.C. App.)—

1 (A) may continue so serving until the  
 2 President makes an appointment under section  
 3 3(a) of such Act consistent with the amend-  
 4 ments made by this section; and

5 (B) shall, while serving under subpara-  
 6 graph (A), remain subject to the provisions of  
 7 section 8G of such Act which apply with respect  
 8 to the Commodity Futures Trading Commis-  
 9 sion.

10 **SEC. 16. AUTHORITY OF COMMODITY FUTURES TRADING**  
 11 **COMMISSION TO SUSPEND TRADING IN**  
 12 **CREDIT DEFAULT SWAPS.**

13 (a) IN GENERAL.—Section 4c of the Commodity Ex-  
 14 change Act (7 U.S.C. 6c) is amended by adding at the  
 15 end the following:

16 “(h) AUTHORITY OF COMMISSION TO SUSPEND  
 17 TRADING OF CREDIT DEFAULT SWAPS.—

18 “(1) IN GENERAL.—If, in the opinion of the  
 19 Commission, the public interest and the protection  
 20 of investors so require, the Commission may, by  
 21 order—

22 “(A) summarily suspend trading in any  
 23 credit default swap; and

24 “(B) summarily suspend all trading on any  
 25 contract market, derivatives transaction execu-

1           tion facility, or otherwise, in credit default  
2           swaps.

3           “(2) LIMITATION.—An action described in  
4           paragraph (1) shall not take effect unless the Com-  
5           mission notifies the President of its decision, and the  
6           President notifies the Commission that the President  
7           does not disapprove of the decision.”.

8           (b) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-  
9           tion 1a of such Act (7 U.S.C. 1a) is amended by adding  
10          at the end the following:

11           “(34) CREDIT DEFAULT SWAP.—The term  
12          ‘credit default swap’ means a contract which insures  
13          a party to the contract against the risk that an enti-  
14          ty may experience a loss of value as a result of an  
15          event specified in the contract, such as a default or  
16          credit downgrade. A credit default swap that is trad-  
17          ed on or cleared by a registered entity shall be ex-  
18          cluded from the definition of a security as defined in  
19          this Act and in section 2(a)(1) of the Securities Act  
20          of 1933 or section 3(a)(10) of the Securities Ex-  
21          change Act of 1934, except as necessary solely for  
22          purposes of enforcing prohibitions against insider  
23          trading in sections 10 and 16 of the Securities Ex-  
24          change Act of 1934.”.

1           (c) **EFFECTIVE DATE.**—The amendment made by  
2 subsection (b) shall be effective for credit default swaps  
3 entered into after 90 days after the date of the enactment  
4 of this section.

5 **SEC. 17. AUTHORITY OF COMMODITY FUTURES TRADING**  
6                           **COMMISSION TO PROSECUTE CRIMINAL VIO-**  
7                           **LATIONS OF THE COMMODITY EXCHANGE**  
8                           **ACT.**

9           Section 9 of the Commodity Exchange Act (7 U.S.C.  
10 13) is amended by adding at the end the following:

11           “(f) Notwithstanding section 516 of title 28, United  
12 States Code, the Commission may initiate and conduct  
13 criminal litigation relating to a violation of this Act, and  
14 secure evidence therefor, if the Attorney General has de-  
15 clined to do so.”.

○