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109TH CONGRESS
2D SESSION

H. R. 4473

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2005

Received

JANUARY 27, 2006

Read twice and placed on the calendar

AN ACT

To reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, 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 “CFTC Reauthorization
5 Act of 2005”.

1 **TITLE I—GENERAL PROVISIONS**

2 **SEC. 101. COMMISSION AUTHORITY OVER AGREEMENTS,**
3 **CONTRACTS OR TRANSACTIONS IN FOREIGN**
4 **CURRENCY.**

5 (a) IN GENERAL.—Section 2(c)(2) of the Commodity
6 Exchange Act (7 U.S.C. 2(c)(2)) is amended by striking
7 subparagraphs (B) and (C) and inserting the following:

8 “(B) AGREEMENTS, CONTRACTS, AND
9 TRANSACTIONS IN RETAIL FOREIGN CUR-
10 RENCY.—

11 “(i) This Act applies to, and the Com-
12 mission shall have jurisdiction over, an
13 agreement, contract, or transaction in for-
14 eign currency that—

15 “(I) is a contract of sale of a
16 commodity for future delivery (or an
17 option on such a contract) or an op-
18 tion (other than an option executed or
19 traded on a national securities ex-
20 change registered pursuant to section
21 6(a) of the Securities Exchange Act of
22 1934 (15 U.S.C. 78f(a))); and

23 “(II) is offered to, or entered
24 into with, a person that is not an eli-
25 gible contract participant, unless the

1 counterparty, or the person offering to
2 be the counterparty, of the person
3 is—

4 “(aa) a financial institution;

5 “(bb)(AA) a broker or deal-
6 er registered under section 15(b)
7 (except paragraph (11) thereof)
8 or 15C of the Securities Ex-
9 change Act of 1934 (15 U.S.C.
10 78o(b), 78o–5); or

11 “(BB) an associated person
12 of a broker or dealer registered
13 under section 15(b) (except para-
14 graph (11) thereof) or 15C of the
15 Securities Exchange Act of 1934
16 (15 U.S.C. 78o(b), 78o–5) con-
17 cerning the financial or securities
18 activities of which the broker or
19 dealer makes and keeps records
20 under section 15C(b) or 17(h) of
21 the Securities Exchange Act of
22 1934 (15 U.S.C. 78o–5(b),
23 78q(h));

24 “(cc) a futures commission
25 merchant registered under this

1 Act (that is not also a person de-
2 scribed in item (bb)), or an affili-
3 ated person of such a futures
4 commission merchant (that is not
5 also a person described in item
6 (bb)) if such futures commission
7 merchant makes and keeps
8 records under section 4f(c)(2)(B)
9 of this Act concerning the futures
10 and other financial activities of
11 such affiliated person;

12 “(dd) an insurance company
13 described in section 1a(12)(A)(ii)
14 of this Act, or a regulated sub-
15 sidiary or affiliate of such an in-
16 surance company;

17 “(ee) a financial holding
18 company (as defined in section 2
19 of the Bank Holding Company
20 Act of 1956); or

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

1 “(ii) Notwithstanding item (cc) of
2 clause (i)(II) of this subparagraph, agree-
3 ments, contracts, or transactions described
4 in clause (i) of this subparagraph shall be
5 subject to subsection (a)(1)(B) of this sec-
6 tion and sections 4(b), 4b, 4c(b), 4o, 6(c)
7 and 6(d) (except to the extent that sections
8 6(c) and 6(d) prohibit manipulation of the
9 market price of any commodity in inter-
10 state commerce, or for future delivery on
11 or subject to the rules of any market), 6c,
12 6d, 8(a), 13(a), and 13(b) if the agree-
13 ments, contracts, or transactions are of-
14 fered, or entered into, by a person that is
15 registered as a futures commission mer-
16 chant or an affiliated person of a futures
17 commission merchant registered under this
18 Act that is not also a person described in
19 any of item (aa), (bb), (dd), (ee), or (ff) of
20 clause (i) of this subparagraph.

21 “(iii)(I) Notwithstanding item (cc) of
22 clause (i)(II), a particular person shall not
23 participate in the solicitation or rec-
24 ommendation of any agreement, contract,
25 or transaction described in clause (i) en-

1 tered into with or to be entered into with
2 a person described in such item, unless the
3 particular person—

4 “(aa) is registered in such capac-
5 ity as the Commission by rule, regula-
6 tion, or order shall determine; and

7 “(bb) is a member of a futures
8 association registered under section
9 17.

10 “(II) Subclause (I) shall not apply
11 to—

12 “(aa) any person described in
13 any of item (aa), (bb), (dd), (ee), or
14 (ff) of subparagraph (B)(i)(II); or

15 “(bb) any such person’s associ-
16 ated persons.

17 “(C)(i)(I) This subparagraph shall apply to
18 any agreement, contract, or transaction in for-
19 eign currency that is—

20 “(aa) offered to, or entered into
21 with, a person that is not an eligible
22 contract participant (except that this
23 subparagraph shall not apply if the
24 counterparty, or the person offering to
25 be the counterparty, of the person

1 that is not an eligible contract partici-
 2 pant is a person described in any of
 3 item (aa), (bb), (dd), (ee), or (ff) of
 4 subparagraph (B)(i)(II)); and

5 “(bb) offered, or entered into, on
 6 a leveraged or margined basis, or fi-
 7 nanced by the offeror, the
 8 counterparty, or a person acting in
 9 concert with the offeror or
 10 counterparty on a similar basis.

11 “(II) Subclause (I) shall not apply to—

12 “(aa) a security that is not a security
 13 futures product; or

14 “(bb) a contract of sale that—

15 “(AA) results in actual delivery
 16 within 2 days; or

17 “(BB) creates an enforceable ob-
 18 ligation to deliver between a seller and
 19 buyer that have the ability to deliver
 20 and accept delivery, respectively, in
 21 connection with their line of business.

22 “(ii)(I) Agreements, contracts, or trans-
 23 actions described in clause (i) of this subpara-
 24 graph shall be subject to subsection (a)(1)(B)
 25 of this section and sections 4(b), 4b, 4c(b), 4o,

1 6(c) and 6(d) (except to the extent that sections
2 6(c) and 6(d) prohibit manipulation of the mar-
3 ket price of any commodity in interstate com-
4 merce, or for future delivery on or subject to
5 the rules of any market), 6c, 6d, 8(a), 13(a),
6 and 13(b).

7 “(II) Subclause (I) of this clause shall not
8 apply to—

9 “(aa) any person described in any of
10 item (aa), (bb), (dd), (ee), or (ff) of sub-
11 paragraph (B)(i)(II); or

12 “(bb) any such person’s associated
13 persons.

14 “(iii)(I) A person shall not participate in
15 the solicitation or recommendation of any
16 agreement, contract, or transaction described in
17 clause (i) of this subparagraph unless the per-
18 son is registered in such capacity as the Com-
19 mission by rule, regulation or order shall deter-
20 mine, and is a member of a futures association
21 registered under section 17.

22 “(II) Subclause (I) shall not apply to any
23 person—

1 “(aa) any person described in any of
2 item (aa), (bb), (dd), (ee), or (ff) of sub-
3 paragraph (B)(i)(II); or

4 “(bb) any such person’s associated
5 persons.

6 “(iv) Sections 4(b) and 4b shall apply to
7 any agreement, contract, or transaction de-
8 scribed in clause (i) of this subparagraph as if
9 the agreement, contract, or transaction were a
10 contract of sale of a commodity for future deliv-
11 ery.

12 “(v) This subparagraph shall not be con-
13 strued to limit any jurisdiction that the Com-
14 mission may otherwise have under any other
15 provision of this Act over an agreement, con-
16 tract, or transaction that is a contract of sale
17 of a commodity for future delivery.

18 “(vi) This subparagraph shall not be con-
19 strued to limit any jurisdiction that the Com-
20 mission or the Securities and Exchange Com-
21 mission may otherwise have under any other
22 provision of this Act with respect to security fu-
23 tures products and persons effecting trans-
24 actions in security futures products.”.

1 (b) EFFECTIVE DATE.—Clause (iii) of section
2 2(c)(2)(B) and clause (iii) of section 2(c)(2)(C) of the
3 Commodity Exchange Act, as amended by subsection (a)
4 of this section, shall be effective 120 days after the date
5 of the enactment of this Act or such other time as the
6 Commodity Futures Trading Commission shall determine.

7 **SEC. 102. ANTIFRAUD AUTHORITY.**

8 Section 4b of the Commodity Exchange Act (7 U.S.C.
9 6b) is amended—

10 (1) by redesignating subsections (b) and (c) as
11 subsections (c) and (d), respectively; and

12 (2) by striking “SEC. 4b.” and all that follows
13 through the end of subsection (a) and inserting the
14 following:

15 **“SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MIS-**
16 **LEAD.**

17 “(a) UNLAWFUL ACTIONS.—It shall be unlawful—

18 “(1) for any person, in or in connection with
19 any order to make, or the making of, any contract
20 of sale of any commodity in interstate commerce or
21 for future delivery that is made, or to be made, on
22 or subject to the rules of a designated contract mar-
23 ket, for or on behalf of any other person; or

24 “(2) for any person, in or in connection with
25 any order to make, or the making of, any contract

1 of sale of any commodity for future delivery, or
2 other agreement, contract, or transaction subject to
3 paragraphs (1) and (2) of section 5a(g), that is
4 made, or to be made, for or on behalf of, or with,
5 any other person, other than on or subject to the
6 rules of a designated contract market—

7 “(A) to cheat or defraud or attempt to
8 cheat or defraud the other person;

9 “(B) willfully to make or cause to be made
10 to the other person any false report or state-
11 ment or willfully to enter or cause to be entered
12 for the other person any false record;

13 “(C) willfully to deceive or attempt to de-
14 ceive the other person by any means whatsoever
15 in regard to any order or contract or the dis-
16 position or execution of any order or contract,
17 or in regard to any act of agency performed,
18 with respect to any order or contract for or, in
19 the case of paragraph (2), with the other per-
20 son; or

21 “(D)(i) to bucket an order if the order is
22 represented by the person as an order to be ex-
23 ecuted, or is required to be executed, on or sub-
24 ject to the rules of a designated contract mar-
25 ket; or

1 “(ii) to fill an order by offset against the
2 order or orders of any other person, or willfully
3 and knowingly and without the prior consent of
4 the other person to become the buyer in respect
5 to any selling order of the other person, or be-
6 come the seller in respect to any buying order
7 of the other person, if the order is represented
8 by the person as an order to be executed, or is
9 required to be executed, on or subject to the
10 rules of a designated contract market unless the
11 order is executed in accordance with the rules
12 of the designated contract market.

13 “(b) CLARIFICATION.—Subsection (a)(2) of this sec-
14 tion shall not obligate any person, in or in connection with
15 a transaction in a contract of sale of a commodity for fu-
16 ture delivery, or other agreement, contract or transaction
17 subject to paragraphs (1) and (2) of section 5a(g), with
18 another person, to disclose to the other person nonpublic
19 information that may be material to the market price,
20 rate, or level of the commodity or transaction, except as
21 necessary to make any statement made to the other person
22 in or in connection with the transaction, not misleading
23 in any material respect.”.

1 **SEC. 103. PORTFOLIO MARGINING AND SECURITY INDEX**
2 **ISSUES.**

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

9 (b) The SEC, the CFTC, or both, as appropriate,
10 shall take action under their existing authorities to per-
11 mit—

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

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

18 **SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

19 Section 12(d) of the Commodity Exchange Act (7
20 U.S.C. 16(d)) is amended to read as follows:

21 “(d) There are authorized to be appropriated such
22 sums as are necessary to carry out this Act for each of
23 the fiscal years 2006 through 2010.”

1 **SEC. 105. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) Section 4a(e) of the Commodity Exchange Act (7
3 U.S.C. 6a(e)) is amended in the last proviso by striking
4 “section 9(c)” and inserting “section 9(a)(5)”.

5 (b) Section 4f(c)(4)(B)(i) of such Act (7 U.S.C.
6 6f(c)(4)(B)(i)) is amended by striking “compiled” and in-
7 serting “complied”.

8 (c) Section 4k of such Act (7 U.S.C. 6k) is amended
9 by redesignating the second paragraph (5) as paragraph
10 (6).

11 (d) The Commodity Exchange Act is amended—

12 (1) by redesignating the first section 4p (7
13 U.S.C. 6o–1), as added by section 121 of the Com-
14 modity Futures Modernization Act of 2000, as sec-
15 tion 4q; and

16 (2) by moving such section to after the second
17 section 4p, as added by section 206 of Public Law
18 93–446.

19 (e) Subsections (a)(1) and (d)(1) of section 5c of such
20 Act (7 U.S.C. 7a–2(a)(1), (d)(1)) are each amended by
21 striking “5b(d)(2)” and inserting “5b(c)(2)”.

22 (f) Sections 5c(f) and 17(r) of such Act (7 U.S.C.
23 7a–2(f), 21(r)) are each amended by striking “4d(3)” and
24 inserting “4d(c)”.

25 (g) Section 8(a)(1) of such Act (7 U.S.C. 12(a)(1))
26 is amended in the matter following subparagraph (B)—

1 (1) by striking “commenced” the 2nd place it
 2 appears; and

3 (2) by inserting “commenced” after “in a judi-
 4 cial proceeding”.

5 (h) Section 22(a)(2) of such Act (7 U.S.C. 25(a)(2))
 6 is amended by striking “5b(b)(1)(E)” and inserting
 7 “5b(c)(2)(H)”.

8 **TITLE II—NATURAL GAS PRICE** 9 **TRANSPARENCY**

10 **SEC. 201. MARKET SURVEILLANCE.**

11 (a) IN GENERAL.—The Commodity Futures Trading
 12 Commission (in this section referred to as the “Commis-
 13 sion”) shall detect and deter manipulation and attempted
 14 manipulation and increase the transparency of the pricing
 15 of natural gas by conducting surveillance of trading in
 16 contracts for natural gas.

17 (b) CERTAIN EVENTS REQUIRED TO BE RE-
 18 VIEWED.—

19 (1) REQUIREMENT.—In the event of a signifi-
 20 cant and highly unusual change in the settlement
 21 price of any physically delivered natural gas futures
 22 contract traded on a contract market (within the
 23 meaning of section 5 of the Commodity Exchange
 24 Act) or derivatives transaction execution facility
 25 (within the meaning of section 5a of such Act), the

Commission shall conduct a review of the factors that caused the price movement in order to determine if manipulation or attempted manipulation in violation of such Act has occurred.

(2) CERTAIN FACTORS REQUIRED TO BE CONSIDERED.—The Commission shall consider in its review, among other things and as appropriate to the circumstances, the following:

(A) Prices and price relationships in the futures and cash markets.

(B) Market information, and cash market supply and demand factors which may be relevant to the price event.

(C) Large futures and options market positions and large futures and options market transactions on the contract market or derivatives transaction execution facility.

(D) Any related contract, agreement or transaction in natural gas.

**SEC. 202. REPORTING OF LARGE POSITIONS INVOLVING
NATURAL GAS.**

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

(1) in subsection (e), by striking the last sentence; and

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

2 “(f) REPORTING OF LARGE POSITIONS INVOLVING
3 NATURAL GAS.—

4 “(1) IN GENERAL.—The Commission, by rule,
5 shall require any person holding, maintaining, or
6 controlling any position in a contract of sale of nat-
7 ural gas for future delivery, or option thereon, on or
8 subject to the rules of any contract market or de-
9 rivatives transaction execution facility, at or in ex-
10 cess of such limits as the Commission may specify
11 as reportable, to maintain for a period of 5 years
12 and provide on request to the Commission, records
13 of the person regarding the position and any related
14 contract, agreement, or transaction in natural gas to
15 which the person is a party.

16 “(2) NO DUPLICATE REPORTS.—Except as oth-
17 erwise provided in this paragraph, the rules pre-
18 scribed under paragraph (1) shall not apply to any
19 position that otherwise is required to be reported to
20 any agency of the United States if the report would
21 otherwise satisfy the requirements under this sub-
22 section and the report of the position is available to
23 the Commission at the request of the Commission.
24 Notwithstanding the preceding sentence, any report
25 of any such position to any agency of the United

1 States shall constitute a statement, report, or docu-
2 ment required for the purposes of section 9.

3 “(3) CRITERIA FOR RULES.—

4 “(A) IN GENERAL.—In prescribing rules
5 required by paragraph (1), the Commission
6 shall consider—

7 “(i) the purposes for monitoring large
8 positions in any contract for future deliv-
9 ery of natural gas;

10 “(ii) the effect of the reporting re-
11 quirements on the efficiency and liquidity
12 of the market for any agreement, contract,
13 or transaction made in connection with any
14 contract for the future delivery of natural
15 gas; and

16 “(iii) the costs and burden on the per-
17 sons that would be required to file the re-
18 ports.

19 “(B) FREQUENCY.—The Commission shall
20 require the provision of records under para-
21 graph (1) only in circumstances where manipu-
22 lation is suspected, except that the Commission
23 may prescribe rules requiring regular or contin-
24 uous reporting if the Commission finds that
25 such reporting would help to deter or to detect

1 manipulation in any market for any agreement,
2 contract, or transaction made in connection
3 with any contract for the future delivery of nat-
4 ural gas.

5 “(C) FILING REQUIREMENTS.—Records re-
6 quired to be provided under paragraph (1) shall
7 be required to be filed with the Commission in
8 accordance with such requirements regarding
9 the form, timing, and manner of filing such re-
10 ports, as the Commission may prescribe by rule.

11 “(5) OTHER RULES NOT AFFECTED.—This sub-
12 section shall not be interpreted to prohibit or impair
13 the adoption by any board of trade licensed, des-
14 ignated, or registered by the Commission of any
15 bylaw, rule, regulation, or resolution requiring re-
16 ports of positions in any agreement, contract, or
17 transaction made in connection with a contract of
18 sale for future delivery of natural gas (including
19 such a contract of sale), including any bylaw, rule,
20 regulation, or resolution pertaining to filing or rec-
21 ordkeeping, which may be held by any person sub-
22 ject to the rules of the board of trade, except that
23 any bylaw, rule, regulation, or resolution established
24 by the board of trade shall not be inconsistent with

1 any requirement prescribed by the Commission
2 under this subsection.”.

3 **SEC. 203. CRIMINAL AND CIVIL PENALTIES.**

4 (a) ENFORCEMENT POWERS OF THE COMMISSION.—

5 Section 6(c) of the Commodity Exchange Act (7 U.S.C.
6 9, 15) is amended in clause (3) of the 10th sentence—

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

9 (2) by inserting after “each such violation” the
10 following: “or (B) in any case of manipulation of, or
11 attempt to manipulate under section 9(a)(2), a civil
12 penalty of not more than the greater of \$1,000,000
13 or triple the monetary gain to such person for each
14 such violation,”.

15 (b) NONENFORCEMENT OF RULES OF GOVERNMENT
16 OR OTHER VIOLATIONS.—Section 6b of such Act (7
17 U.S.C. 13a) is amended—

18 (1) in the 1st sentence, by inserting “, or, in
19 any case of manipulation of, or an attempt to ma-
20 nipulate, the price of any commodity, a civil penalty
21 of not more than \$1,000,000 for each such viola-
22 tion” before the period; and

23 (2) in the 2nd sentence, by inserting “, except
24 that if the failure or refusal to obey or comply with
25 the order involved any offense under section 9(a)(2),

1 the registered entity, director, officer, agent, or em-
 2 ployee shall be guilty of a felony and, on conviction,
 3 shall be subject to penalties under section 9(f)” be-
 4 fore the period.

5 (c) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—
 6 Section 6c(d) of such Act (7 U.S.C. 13a–1(d)) is amended
 7 by striking “(d)” and all that follows through the end of
 8 the paragraph (1) and inserting the following:

9 “(d) CIVIL PENALTIES.—(1) In any action brought
 10 under this section, the Commission may seek and the
 11 court shall have jurisdiction to impose, on a proper show-
 12 ing, on any person found in the action to have committed
 13 any violation—

14 “(A) a civil penalty in the amount of not
 15 more than the greater of \$100,000 or triple the
 16 monetary gain to the person for each violation;
 17 or

18 “(B) in any case of manipulation of, or an
 19 attempt to manipulate, the price of any com-
 20 modity, a civil penalty in the amount of not
 21 more than the greater of \$1,000,000 or triple
 22 the monetary gain to the person for each viola-
 23 tion.”.

24 (d) VIOLATIONS GENERALLY.—Section 9(a) of such
 25 Act (7 U.S.C. 13(a)) is amended—

- 1 (1) by striking “(or \$500,000 in the case of a
2 person who is an individual)”; and
3 (2) by striking “five years” and inserting “10
4 years”.

Passed the House of Representatives December 14,
2005.

Attest:

KAREN L. HAAS,
Clerk.

Calendar No. 358

109TH CONGRESS
2^D Session

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