

110TH CONGRESS  
2D SESSION

# S. 3248

To amend the Commodity Exchange Act to clarify the treatment of purchases of certain commodity futures contracts and financial instruments with respect to limits established by the Commodity Futures Trading Commission relating to excessive speculation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 10 (legislative day, JULY 9), 2008

Mr. LIEBERMAN (for himself, Ms. COLLINS, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Commodity Exchange Act to clarify the treatment of purchases of certain commodity futures contracts and financial instruments with respect to limits established by the Commodity Futures Trading Commission relating to excessive speculation, 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 “Commodity Specula-  
5       tion Reform Act of 2008”.

1 **SEC. 2. AUTHORITY OF COMMODITY FUTURES TRADING**  
2 **COMMISSION TO ISSUE NO ACTION LETTERS.**

3 Section 2(a)(1) of the Commodity Exchange Act (7  
4 U.S.C. 2(a)(1)) is amended by adding at the end the fol-  
5 lowing:

6 “(G) **AUTHORITY TO ISSUE NO ACTION**  
7 **LETTERS TO FOREIGN BOARDS OF TRADE.—**

8 “(i) **IN GENERAL.—**Except as pro-  
9 vided in clause (ii), the Commission may  
10 not issue a no action letter to any foreign  
11 board of trade that lists a contract the  
12 price of which settles on the price of a con-  
13 tract traded on an exchange regulated by  
14 the Commission.

15 “(ii) **EXCEPTION.—**The Commission  
16 may issue a no action letter to a foreign  
17 board of trade described in clause (i) if the  
18 foreign board of trade provides to the  
19 Commission information and data accessi-  
20 bility the scope of which is comparable to  
21 the information and data accessibility pro-  
22 vided to the Commission by entities under  
23 the jurisdiction of the Commission.”.

1 **SEC. 3. ADDITIONAL EMPLOYEES.**

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

5 “(D) **ADDITIONAL EMPLOYEES.**—As soon  
6 as practicable after the date of enactment of  
7 this subparagraph, the Commission shall ap-  
8 point at least 100 full-time employees (in addi-  
9 tion to the employees employed by the Commis-  
10 sion as of the date of enactment of this sub-  
11 paragraph) to assist in carrying out section  
12 4a(a)(2).”.

13 **SEC. 4. TREATMENT OF PURCHASES OF CERTAIN COM-**  
14 **MODITY FUTURES CONTRACTS AND FINAN-**  
15 **CIAL INSTRUMENTS.**

16 (a) **IN GENERAL.**—Section 4a of the Commodity Ex-  
17 change Act (7 U.S.C. 6a) is amended—

18 (1) by striking “SEC. 4a. (a) Excessive specula-  
19 tion” and inserting the following:

20 **“SEC. 4a. EXCESSIVE SPECULATION.**

21 “(a) **BURDEN ON INTERSTATE COMMERCE; TRADING**  
22 **OR POSITION LIMITS.**—

23 “(1) **IN GENERAL.**—Excessive speculation and”;  
24 and

25 (2) in subsection (a) (as amended by paragraph  
26 (1)), by adding at the end the following:

1           “(2) TREATMENT OF PURCHASES OF CERTAIN  
2           COMMODITY FUTURES CONTRACTS AND FINANCIAL  
3           INSTRUMENTS.—

4                   “(A) DEFINITIONS.—In this paragraph:

5                           “(i) BONA FIDE HEDGING TRANS-  
6                   ACTION.—

7                                   “(I) IN GENERAL.—The term  
8                           ‘bona fide hedging transaction’ means  
9                           a transaction that—

10   “(aa) represents a substitute  
11   for a transaction to be made or a  
12   position to be taken at a later  
13   time in a physical marketing  
14   channel;

15   “(bb) is economically appro-  
16   priate for the reduction of risks  
17   in the conduct and management  
18   of a commercial enterprise; and

19   “(cc) arises from the poten-  
20   tial change in the value of—

21   “(AA) assets that a  
22   person owns, produces, man-  
23   ufactures, possesses, or mer-  
24   chandises (or anticipates  
25   owning, producing, manufac-

1 turing, possessing, or mer-  
2 chandising);

3 “(BB) liabilities that a  
4 person incurs or anticipates  
5 incurring; or

6 “(CC) services that a  
7 person provides or purchases  
8 (or anticipates providing or  
9 purchasing).

10 “(II) EXCLUSION.—The term  
11 ‘bona fide hedging transaction’ does  
12 not include a transaction entered into  
13 on a designated contract market for  
14 the purpose of offsetting a financial  
15 risk arising from an over-the-counter  
16 commodity derivative.

17 “(ii) OVER-THE-COUNTER COMMODITY  
18 DERIVATIVE.—The term ‘over-the-counter  
19 commodity derivative’ means any agree-  
20 ment, contract, or transaction that—

21 “(I)(aa) is traded or executed in  
22 the United States; or

23 “(bb) is held by a person located  
24 in the United States;

1 “(II) is not traded on a des-  
2 ignated contract market or derivatives  
3 transaction execution facility; and

4 “(III)(aa) is a put, call, cap,  
5 floor, collar, or similar option of any  
6 kind for the purchase or sale of, or  
7 substantially based on the value of, 1  
8 or more qualifying commodities or an  
9 economic or financial index or meas-  
10 ure of economic or financial risk pri-  
11 marily associated with 1 or more  
12 qualifying commodities;

13 “(bb) provides on an executory  
14 basis for the applicable transaction,  
15 on a fixed or contingent basis, of 1 or  
16 more payments substantially based on  
17 the value of 1 or more qualifying com-  
18 modities or an economic or financial  
19 index or measure of economic or fi-  
20 nancial risk primarily associated with  
21 1 or more qualifying commodities, and  
22 that transfers between the parties to  
23 the transaction, in whole or in part,  
24 the economic or financial risk associ-  
25 ated with a future change in any such

value without also conveying a current or future direct or indirect ownership interest in an asset or liability that incorporates the financial risk that is transferred; or

“(cc) is any combination or permutation of, or option on, any agreement, contract, or transaction described in item (aa) or (bb).

“(iii) OVER-THE-COUNTER COMMODITY DERIVATIVE DEALER.—The term ‘over-the-counter commodity derivative dealer’ means a person that regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in over-the-counter commodity derivatives with customers in the ordinary course of a trade or business of the person.

“(iv) QUALIFYING COMMODITY.—The term ‘qualifying commodity’ means—

“(I) an agricultural commodity;

and

“(II) an energy commodity.

“(B) REGULATIONS.—

1 “(i) IN GENERAL.—Not later than 90  
2 days after the date of enactment of this  
3 paragraph, in accordance with clauses (ii)  
4 and (iii), the Commission shall promulgate  
5 regulations to establish and enforce—

6 “(I) speculative position limits  
7 for qualifying commodities;

8 “(II) a methodology—

9 “(aa) to enable persons to  
10 aggregate the positions held or  
11 controlled by the persons on des-  
12 ignated contract markets, on de-  
13 rivatives transaction execution fa-  
14 cilities, and in over-the-counter  
15 commodity derivatives; and

16 “(bb) to ensure, to the max-  
17 imum extent practicable, that the  
18 determinations made by the  
19 Commission with respect to each  
20 person examined under subpara-  
21 graph (C) accurately reflect the  
22 net long and net short positions  
23 held or controlled by the person  
24 in the underlying qualifying com-  
25 modity; and



1 “(III) information reporting rules  
 2 to facilitate the monitoring and en-  
 3 forcement by the Commission of the  
 4 speculative position limits established  
 5 under subclause (I), including the  
 6 monitoring of positions held in over-  
 7 the-counter commodity derivatives.

8 “(ii) APPLICABILITY.—

9 “(I) POSITION LIMITS.—The  
 10 speculative position limits established  
 11 under clause (i)(I) shall apply to posi-  
 12 tion limits that, with respect to each  
 13 applicable position limit, expire dur-  
 14 ing—

15 “(aa) the spot month;

16 “(bb) each separate futures  
 17 trading month (other than the  
 18 spot month); or

19 “(cc) the sum of each trad-  
 20 ing month (including the spot  
 21 month).

22 “(II) SUM OF POSITIONS.—The  
 23 speculative position limits established  
 24 under clause (i)(I) shall apply to the

1                   sum of the positions held by a per-  
2                   son—

3                   “(aa) on designated contract  
4                   markets;

5                   “(bb) on derivatives trans-  
6                   action execution facilities; and

7                   “(cc) in over-the-counter  
8                   commodity derivatives.

9                   “(iii) MAXIMUM LEVEL OF POSITION  
10                  LIMITS.—In establishing the speculative  
11                  position limits under clause (i)(I), the  
12                  Commission shall set the speculative posi-  
13                  tion limits at the minimum level prac-  
14                  ticable to ensure sufficient market liquidity  
15                  for the conduct of bona fide hedging activi-  
16                  ties.

17                  “(C) PROHIBITION RELATING TO CERTAIN  
18                  POSITIONS.—

19                  “(i) IN GENERAL.—Notwithstanding  
20                  any other provision of this Act, no person  
21                  may hold or control a position, separately  
22                  or in combination, net long or net short,  
23                  for the purchase or sale of a commodity for  
24                  future delivery or, on a futures-equivalent  
25                  basis, any option, or an over-the-counter

commodity derivative that exceeds a speculative position limit established by the Commission under subparagraph (B)(i)(I).

“(ii) BONA FIDE HEDGING TRANSACTIONS.—In determining whether the sum of a position held or controlled by a person has exceeded the applicable speculative position limit established by the Commission under subparagraph (B)(i)(I), the Commission shall not consider positions attributable to a bona fide hedging transaction.

“(iii) DETERMINATION OF POSITION LIMITS FOR OVER-THE-COUNTER COMMODITY DERIVATIVE DEALERS.—To determine the position of an over-the-counter commodity derivative dealer, the sum of the positions held or controlled by the over-the-counter commodity derivative dealer shall be—

“(I) calculated on the last day of each month; and

“(II) considered, for the monthly period covered by the determination, to be the average daily net position

1 held or controlled by the over-the-  
2 counter commodity derivative dealer  
3 for the period beginning on the first  
4 day of the month and ending on the  
5 last day of the month.”.

6 (b) REPORTS.—

7 (1) NECESSARY ADDITIONAL FUNDING.—Not  
8 later than 45 days after the date of enactment of  
9 this Act, the Commodity Futures Trading Commis-  
10 sion (referred to in this subsection as the “Commis-  
11 sion”) shall submit to the Committee on Appropria-  
12 tions of the House of Representatives and the Com-  
13 mittee on Appropriations of the Senate a report pro-  
14 viding the recommendations of the Commission for  
15 any additional funding that the Commission con-  
16 siders to be necessary to carry out the amendments  
17 made by subsection (a), including funding for addi-  
18 tional staffing and technological needs.

19 (2) SPECULATIVE ACTIVITY TRENDS.—

20 (A) STUDY.—The Commission shall con-  
21 duct a study—

22 (i) to identify trends in speculative ac-  
23 tivity relating to metals; and

24 (ii) to determine whether the author-  
25 ity of the Commission under section

1           4a(a)(2) of the Commodity Exchange Act  
2           (7 U.S.C. 6a(a)(2)) (as added by sub-  
3           section (a)(2)) should be extended to cover  
4           the trading of metals.

5           (B) REPORT.—Not later than 180 days  
6           after the date of enactment of this Act, the  
7           Commission shall submit a report containing  
8           the results of the study conducted under sub-  
9           paragraph (A) to—

10                 (i) the Committee on Agriculture of  
11                 the House of Representatives;

12                 (ii) the Committee on Agriculture,  
13                 Nutrition, and Forestry of the Senate; and

14                 (iii) the Committee on Homeland Se-  
15                 curity and Governmental Affairs of the  
16                 Senate.

17           (3) AUTHORIZATION OF APPROPRIATIONS.—

18           There are authorized to be appropriated such sums  
19           as are necessary to carry out this subsection.

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