

110TH CONGRESS
2D SESSION

S. 3255

To amend the Commodity Exchange Act to provide for the oversight of large trades of over-the-counter energy and agricultural contracts to prevent price manipulation and excessive speculation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11, 2008

Mr. LEVIN (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to provide for the oversight of large trades of over-the-counter energy and agricultural contracts to prevent price manipulation and 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 “Over-the-Counter
5 Speculation Act”.

1 **SEC. 2. LARGE OVER-THE-COUNTER TRANSACTIONS.**

2 Section 2 of the Commodity Exchange Act (7 U.S.C.
3 2) is amended by adding at the end the following:

4 “(j) COMMISSION OVERSIGHT OF OVER-THE-
5 COUNTER TRANSACTIONS.—

6 “(1) OVER-THE-COUNTER TRANSACTIONS.—

7 “(A) DEFINITION.—The term ‘over-the-
8 counter transaction’ means a contract, agree-
9 ment, or transaction in an exempt or agricul-
10 tural commodity that is—

11 “(i) entered into only between persons
12 that are eligible contract participants at
13 the time the persons enter into the agree-
14 ment, contract, or transaction;

15 “(ii) not entered into on a trading fa-
16 cility; and

17 “(iii) not a sale of any cash com-
18 modity for deferred shipment or delivery.

19 “(B) ALL OTC TRANSACTIONS IN-
20 CLUDED.—Notwithstanding subsections (g) and
21 (h) and any exemption issued by the Commis-
22 sion under section 4(c), each over-the-counter
23 transaction shall be subject to this subsection.

24 “(2) COMMISSION OVERSIGHT AUTHORITY.—

25 “(A) IN GENERAL.—In the case of a major
26 market disturbance, as determined by the Com-

mission, the Commission may require any trader required to report information under paragraph (3) to take such action as the Commission considers to be necessary to maintain or restore orderly trading in any contract listed for trading on a registered entity, including—

“(i) the liquidation of any over-the-counter transaction; and

“(ii) the fixing of any limit that may apply to a market position involving any over-the-country transaction acquired in good faith before the date of the determination of the Commission.

“(B) MAJOR MARKET DISTURBANCE.—The term ‘major market disturbance’ means any market disturbance in a commodity market that prevents the commodity market from accurately reflecting the forces of supply and demand for a commodity, including—

“(i) a threatened or actual market manipulation or corner;

“(ii) excessive speculation; and

“(iii) any action of the United States or a foreign government that affects a commodity.

1 “(C) MARKET DISTURBANCE.—The term
2 ‘market disturbance’ shall be interpreted in a
3 manner consistent with section 8a(9).

4 “(D) JUDICIAL REVIEW.—Any action
5 taken by the Commission under subparagraph
6 (A) shall be subject to judicial review carried
7 out in accordance with section 8a(9).

8 “(3) REPORTING; RECORDKEEPING.—

9 “(A) IN GENERAL.—The Commission shall
10 require each covered person to submit to the
11 Commission a report at such times and in such
12 manner as the Commission determines appro-
13 priate, and containing the information required
14 under subparagraph (C) to assist the Commis-
15 sion in detecting and preventing potential price
16 manipulation of, or excessive speculation in, any
17 contract listed for trading on a registered enti-
18 ty.

19 “(B) COVERED PERSON.—In this sub-
20 section, the term ‘covered person’ means a per-
21 son that enters into an over-the-counter trans-
22 action the reporting of which is required as the
23 result of a determination made under para-
24 graph (D).

1 “(C) CONTENTS OF REPORT.—A report re-
2 quired under subparagraph (A) shall contain—

3 “(i) information describing large trad-
4 ing positions of the covered person ob-
5 tained through 1 or more over-the-counter
6 transactions that involve—

7 “(I) substantial quantities of a
8 commodity in the cash market; or

9 “(II) substantial positions, in-
10 vestments, or trades in agreements or
11 contracts relating to the commodity;
12 and

13 “(ii) any other information relating to
14 each covered over-the-counter transaction
15 carried out by the covered person that the
16 Commission determines to be necessary to
17 accomplish the purposes described in sub-
18 paragraph (A).

19 “(D) LARGE TRANSACTIONS.—The Com-
20 mission shall identify the large over-the-counter
21 transactions or class of large over-the-counter
22 transactions the reporting of which the Com-
23 mission determines to be appropriate to assist
24 the Commission in detecting and preventing po-
25 tential price manipulation of, or excessive spec-

ulation in, any contract listed for trading on a registered entity. In making the determinations as to which over-the-counter transactions shall be reported, the Commission shall consider the extent to which one or more of the following criteria applies—

“(i) a standardized agreement is used to execute the transaction;

“(ii) the transaction settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity;

“(iii) the price of the transaction is reported to a third party, published, or otherwise disseminated;

“(iv) the price of the transaction is referenced in any other transaction;

“(v) there is a significant volume of transactions; and

“(vi) any other factor that the Commission determines to be appropriate.

“(E) RECORDKEEPING.—The Commission, by rule, shall require each covered person—

“(i) in accordance with section 4i, to maintain such records as directed by the

1 Commission for a period of 5 years, or
 2 longer, if directed by the Commission; and
 3 “(ii) to provide such records upon re-
 4 quest to the Commission or the Depart-
 5 ment of Justice.

6 “(4) PROTECTION OF PROPRIETARY INFORMA-
 7 TION.—In carrying out this subsection, the Commis-
 8 sion may not—

9 “(A) require the real-time publication of
 10 any proprietary information;

11 “(B) prohibit the commercial sale or li-
 12 censing of any real-time proprietary informa-
 13 tion; and

14 “(C) except as provided in section 8, pub-
 15 licly disclose any information relating to any
 16 market position, business transaction, trade se-
 17 cret, or name of any customer of a covered per-
 18 son.

19 “(5) RULEMAKING.—

20 “(A) PROPOSED RULEMAKING.—Not later
 21 than 180 days after the date of enactment of
 22 this subsection, the Commission shall issue a
 23 notice of proposed rulemaking to specify the in-
 24 formation required to be provided and main-

1 tained by a covered person under this sub-
2 section.

3 “(B) FINAL RULE.—Not later than 1 year
4 after the date of enactment of this subsection,
5 the Commission shall promulgate a final rule to
6 accomplish the purpose described in subpara-
7 graph (A).”.

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