

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.

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## 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

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## 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-

1 mission, the Commission may require any trad-  
2 er required to report information under para-  
3 graph (3) to take such action as the Commis-  
4 sion considers to be necessary to maintain or  
5 restore orderly trading in any contract listed for  
6 trading on a registered entity, including—

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

9 “(ii) the fixing of any limit that may  
10 apply to a market position involving any  
11 over-the-country transaction acquired in  
12 good faith before the date of the deter-  
13 mination of the Commission.

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

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

22 “(ii) excessive speculation; and

23 “(iii) any action of the United States  
24 or a foreign government that affects a  
25 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-

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

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

9 “(ii) the transaction settles against  
10 any price (including the daily or final set-  
11 tlement price) of 1 or more contracts listed  
12 for trading on a registered entity;

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

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

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

20 “(vi) any other factor that the Com-  
21 mission determines to be appropriate.

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

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

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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