

111TH CONGRESS  
1ST SESSION

# H. R. 2448

To provide for regulation of futures transactions involving energy commodities, to regulate credit default swaps, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act, Natural Gas Policy Act of 1978, and the Federal Power Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2009

Mr. STUPAK (for himself, Mr. DOYLE, Mr. INSLEE, Mr. VAN HOLLEN, Mr. BISHOP of New York, Mr. CARNEY, Mr. LARSON of Connecticut, Mr. WILSON of Ohio, Ms. SLAUGHTER, Mr. GENE GREEN of Texas, Ms. KILPATRICK of Michigan, and Mr. McHUGH) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Energy and Commerce and 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 provide for regulation of futures transactions involving energy commodities, to regulate credit default swaps, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act, Natural Gas Policy Act of 1978, and the Federal Power Act, 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Prevent Unfair Manip-  
3 ulation of Prices Act of 2009”.

4 **SEC. 2. TABLE OF CONTENTS.**

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

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Regulation of certain transactions in derivatives involving energy com-  
modities.

Sec. 4. No effect on authority of the Federal Energy Regulatory Commission.

Sec. 5. Inspector general of the Commodity Futures Trading Commission.

Sec. 6. Settlement and clearing through registered derivatives clearing organi-  
zations.

Sec. 7. Limitation on eligibility to purchase a credit default swap.

Sec. 8. Transaction fees.

Sec. 9. No effect on authority of the Federal Trade Commission.

Sec. 10. Cease-and-desist authority.

Sec. 11. Natural Gas Act refunds.

Sec. 12. Regulation of carbon derivatives markets.

6 **SEC. 3. REGULATION OF CERTAIN TRANSACTIONS IN DE-**  
7 **RIVATIVES INVOLVING ENERGY COMMOD-**  
8 **ITIES.**

9       (a) ENERGY COMMODITY DEFINED.—Section 1a of  
10 the Commodity Exchange Act (7 U.S.C. 1a) is amended—

11           (1) in paragraph (14), by inserting “, an energy  
12 commodity,” after “excluded commodity”;

13           (2) by redesignating paragraphs (13) through  
14 (21) and paragraphs (22) through (34) as para-  
15 graphs (14) through (22) and paragraphs (24)  
16 through (36), respectively;

17           (3) by inserting after paragraph (12) the fol-  
18 lowing:

1 “(13) ENERGY COMMODITY.—The term ‘energy  
2 commodity’ means—

3 “(A) coal;

4 “(B) crude oil, gasoline, diesel fuel, jet  
5 fuel, heating oil, and propane;

6 “(C) electricity (excluding financial trans-  
7 mission rights which are subject to regulation  
8 and oversight by the Federal Energy Regu-  
9 latory Commission);

10 “(D) natural gas; and

11 “(E) any other substance (other than an  
12 excluded commodity, a metal, or an agricultural  
13 commodity) that is used as a source of energy,  
14 as the Commission, in its discretion, deems ap-  
15 propriate.”; and

16 (4) by inserting after paragraph (22) (as so re-  
17 designated by paragraph (2) of this subsection) the  
18 following:

19 “(23) INCLUDED ENERGY TRANSACTION.—The  
20 term ‘included energy transaction’ means a contract,  
21 agreement, or transaction in an energy commodity  
22 for future delivery that provides for a delivery point  
23 of the energy commodity in the United States or a  
24 territory or possession of the United States, or that

1 is offered or transacted on or through a computer  
 2 terminal located in the United States.”.

3 (b) EXTENSION OF REGULATORY AUTHORITY TO  
 4 SWAPS INVOLVING ENERGY TRANSACTIONS.—Section  
 5 2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting  
 6 “or an energy commodity” after “agricultural com-  
 7 modity”.

8 (c) ELIMINATION OF EXEMPTION FOR OVER-THE-  
 9 COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—  
 10 Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended  
 11 by inserting “(other than an energy commodity)” after  
 12 “exempt commodity”.

13 (d) EXTENSION OF REGULATORY AUTHORITY TO IN-  
 14 CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS  
 15 OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amend-  
 16 ed—

17 (1) in subsection (a), by inserting “, and which  
 18 is not an included energy transaction” after “terri-  
 19 tories or possessions” the 2nd place it appears; and

20 (2) in subsection (b), by adding at the end the  
 21 following: “The preceding sentence shall not apply  
 22 with respect to included energy transactions.”.

23 (e) LIMITATION OF GENERAL EXEMPTIVE AUTHOR-  
 24 ITY OF THE CFTC WITH RESPECT TO INCLUDED EN-  
 25 ERGY TRANSACTIONS.—

1           (1) IN GENERAL.—Section 4(c) of such Act (7  
2       U.S.C. 6(c)) is amended by adding at the end the  
3       following:

4           “(6) The Commission may not exempt any in-  
5       cluded energy transaction from the requirements of  
6       subsection (a), unless the Commission provides 60  
7       days advance notice to the Congress and the Posi-  
8       tion Limit Energy Advisory Group and solicits pub-  
9       lic comment about the exemption request and any  
10      proposed Commission action.”.

11          (2) NULLIFICATION OF NO-ACTION LETTER EX-  
12      EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE  
13      TO INCLUDED ENERGY TRANSACTIONS.—Beginning  
14      180 days after the date of the enactment of this Act,  
15      any exemption provided by the Commodity Futures  
16      Trading Commission that has allowed included en-  
17      ergy transactions (as defined in section 1a(13) of  
18      the Commodity Exchange Act) to be conducted with-  
19      out regard to the requirements of section 4(a) of  
20      such Act shall be null and void.

21          (f) REQUIREMENT TO ESTABLISH UNIFORM SPECU-  
22      LATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—

23           (1) IN GENERAL.—Section 4a(a) of such Act (7  
24      U.S.C. 6a(a)) is amended—

25           (A) by inserting “(1)” after “(a)”;

1 (B) by inserting after the 2nd sentence the  
2 following: “With respect to energy transactions,  
3 the Commission shall fix limits on the aggregate  
4 number of positions which may be held by  
5 any person for each month across all markets  
6 subject to the jurisdiction of the Commission.”;

7 (C) in the 4th sentence by inserting “, consistent  
8 with the 3rd sentence,” after “Commission”; and  
9

10 (D) by adding after and below the end the  
11 following:

12 “(2)(A) Not later than 60 days after the date of the  
13 enactment of this paragraph, the Commission shall convene  
14 a Position Limit Energy Advisory Group consisting  
15 of representatives from—

16 “(i) 7 predominantly commercial short hedgers  
17 of the actual energy commodity for future delivery;

18 “(ii) 7 predominantly commercial long hedgers  
19 of the actual energy commodity for future delivery;

20 “(iii) 4 non-commercial participants in markets  
21 for energy commodities for future delivery; and

22 “(iv) each designated contract market or derivatives  
23 transaction execution facility upon which a  
24 contract in the energy commodity for future delivery  
25 is traded, and each electronic trading facility that

1       has a significant price discovery contract in the en-  
2       ergy commodity.

3       “(B) Not later than 60 days after the date on which  
4 the advisory group is convened under subparagraph (A),  
5 and annually thereafter, the advisory group shall submit  
6 to the Commission advisory recommendations regarding  
7 the position limits to be established in paragraph (1).

8       “(C) The Commission shall have exclusive authority  
9 to grant exemptions for bona fide hedging transactions  
10 and positions from position limits imposed under this Act  
11 on energy transactions.”.

12               (2) CONFORMING AMENDMENTS.—

13               (A) SIGNIFICANT PRICE DISCOVERY CON-  
14 TRACTS.—Section 2(h)(7) of such Act (7 U.S.C.  
15 2(h)(7)) is amended—

16                       (i) in subparagraph (A)—

17                               (I) by inserting “of this para-  
18 graph and section 4a(a)” after “(B)  
19 through (D)”;

20                               (II) by inserting “of this para-  
21 graph” before the period; and

22                       (ii) in subparagraph (C)(ii)(IV)—

23                               (I) in the heading, by striking  
24 “LIMITATIONS OR”; and

1 (II) by striking “position limita-  
 2 tions or”.

3 (B) CONTRACTS TRADED ON OR THROUGH  
 4 DESIGNATED CONTRACT MARKETS.—Section  
 5 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is  
 6 amended—

7 (i) in the heading by striking “LIMI-  
 8 TATIONS OR”; and

9 (ii) by striking “position limitations  
 10 or”.

11 (C) CONTRACTS TRADED ON OR THROUGH  
 12 DERIVATIVES TRANSACTION EXECUTION FACILI-  
 13 TIES.—Section 5a(d)(4) of such Act (7 U.S.C.  
 14 7a(d)(4)) is amended—

15 (i) in the heading by striking “LIMI-  
 16 TATIONS OR”; and

17 (ii) by striking “position limits or”.

18 (g) ELIMINATION OF THE SWAPS LOOPHOLE.—Sec-  
 19 tion 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—

20 (1) by inserting “(1)” after “(c)”; and

21 (2) by adding after and below the end the fol-  
 22 lowing:

23 “(2) For the purposes of contracts of sale for future  
 24 delivery and options on such contracts or commodities, the  
 25 Commission shall define what constitutes a bona fide



1 hedging transaction or position as a transaction or posi-  
2 tion that—

3 “(A)(i) represents a substitute for transactions  
4 made or to be made or positions taken or to be  
5 taken at a later time in a physical marketing chan-  
6 nel;

7 “(ii) is economically appropriate to the reduc-  
8 tion of risks in the conduct and management of a  
9 commercial enterprise; and

10 “(iii) arises from the potential change in the  
11 value of—

12 “(I) assets that a person owns, produces,  
13 manufactures, processes, or merchandises or  
14 anticipates owning, producing, manufacturing,  
15 processing, or merchandising;

16 “(II) liabilities that a person owns or an-  
17 ticipates incurring; or

18 “(III) services that a person provides, pur-  
19 chases, or anticipates providing or purchasing;  
20 or

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

23 “(i) was executed pursuant to subsection  
24 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-

1           emption issued by the Commission by rule, reg-  
2           ulation or order; and

3                   “(ii) was executed opposite a counterparty  
4           for which the transaction would qualify as a  
5           bona fide hedging transaction pursuant to para-  
6           graph (2)(A) of this subsection.”.

7           (h) DETAILED REPORTING AND DISAGGREGATION OF  
8   MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is  
9   amended by adding at the end the following:

10          “(e) DETAILED REPORTING AND DISAGGREGATION  
11   OF MARKET DATA.—

12                   “(1) INDEX TRADERS AND SWAP DEALERS RE-  
13   PORTING.—The Commission shall issue a proposed  
14   rule defining and classifying index traders and swap  
15   dealers (as those terms are defined by the Commis-  
16   sion) for purposes of data reporting requirements  
17   and setting routine detailed reporting requirements  
18   for any positions of such entities in contracts traded  
19   on designated contract markets, over-the-counter  
20   markets, derivatives transaction execution facilities,  
21   foreign boards of trade subject to section 4(f), and  
22   electronic trading facilities with respect to signifi-  
23   cant price discovery contracts not later than 120  
24   days after the date of the enactment of this sub-

1 section, and issue a final rule within 180 days after  
2 such date of enactment.

3 “(2) DISAGGREGATION OF INDEX FUNDS AND  
4 OTHER DATA IN MARKETS.—Subject to section 8  
5 and beginning within 60 days of the issuance of the  
6 final rule required by paragraph (1), the Commis-  
7 sion shall disaggregate and make public weekly—

8 “(A) the number of positions and total no-  
9 tional value of index funds and other passive,  
10 long-only and short-only positions (as defined  
11 by the Commission) in all markets to the extent  
12 such information is available; and

13 “(B) data on speculative positions relative  
14 to bona fide physical hedgers in those markets  
15 to the extent such information is available.

16 “(3) DISCLOSURE OF IDENTITY OF HOLDERS  
17 OF POSITIONS IN INDEXES IN EXCESS OF POSITION  
18 LIMITS.—The Commission shall include in its weekly  
19 Commitment of Trader reports the identity of each  
20 person who holds a position in an index in excess of  
21 a limit imposed under section 4i.”.

22 (i) AUTHORITY TO SET LIMITS TO PREVENT EXCES-  
23 SIVE SPECULATION IN INDEXES.—

1           (1) IN GENERAL.—Section 4a of such Act (7  
2       U.S.C. 6a) is amended by adding at the end the fol-  
3       lowing:

4       “(f) The provisions of this section shall apply to the  
5       amounts of trading which may be done or positions which  
6       may be held by any person under contracts of sale of an  
7       index for future delivery on or subject to the rules of any  
8       contract market, derivatives transaction execution facility,  
9       or over-the-counter market, or on an electronic trading fa-  
10      cility with respect to a significant price discovery contract,  
11      in the same manner in which this section applies to con-  
12      tracts of sale of a commodity for future delivery.”.

13           (2) REGULATIONS.—The Commodity Futures  
14      Trading Commission shall issue regulations under  
15      section 4a(f) of the Commodity Exchange Act within  
16      180 days after the date of the enactment of this Act.

17   **SEC. 4. NO EFFECT ON AUTHORITY OF THE FEDERAL EN-**  
18                   **ERGY REGULATORY COMMISSION.**

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

21      “(j) NO EFFECT ON FERC AUTHORITY.—This Act  
22      shall not be interpreted to affect the jurisdiction of the  
23      Federal Energy Regulatory Commission with respect to  
24      the authority of the Federal Energy Regulatory Commis-  
25      sion under the Federal Power Act (16 U.S.C. 791a et

1 seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or  
 2 other law to obtain information, carry out enforcement ac-  
 3 tions, or otherwise carry out the responsibilities of the  
 4 Federal Energy Regulatory Commission.”.

5 **SEC. 5. INSPECTOR GENERAL OF THE COMMODITY FU-**  
 6 **TURES TRADING COMMISSION.**

7 (a) ELEVATION OF OFFICE.—

8 (1) INCLUSION OF CFTC IN DEFINITION OF ES-  
 9 TABLISHMENT.—

10 (A) Section 11(1) of the Inspector General  
 11 Act of 1978 (5 U.S.C. App.) is amended by  
 12 striking “or the Federal Cochairpersons of the  
 13 Commissions established under section 15301  
 14 of title 40, United States Code;” and inserting  
 15 “the Federal Cochairpersons of the Commis-  
 16 sions established under section 15301 of title  
 17 40, United States Code; or the Chairman of the  
 18 Commodity Futures Trading Commission;”.

19 (B) Section 11(2) of the Inspector General  
 20 Act of 1978 (5 U.S.C. App.) is amended by  
 21 striking “or the Commissions established under  
 22 section 15301 of title 40, United States Code,”  
 23 and inserting “the Commissions established  
 24 under section 15301 of title 40, United States

1 Code, or the Commodity Futures Trading Com-  
2 mission,”.

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

8 (b) EFFECTIVE DATE; TRANSITION RULE.—

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

12 (2) TRANSITION RULE.—An individual serving  
13 as Inspector General of the Commodity Futures  
14 Trading Commission on the effective date of this  
15 section pursuant to an appointment made under sec-  
16 tion 8G of the Inspector General Act of 1978 (5  
17 U.S.C. App.)—

18 (A) may continue so serving until the  
19 President makes an appointment under section  
20 3(a) of such Act consistent with the amend-  
21 ments made by this section; and

22 (B) shall, while serving under subpara-  
23 graph (A), remain subject to the provisions of  
24 section 8G of such Act which apply with respect

1 to the Commodity Futures Trading Commis-  
2 sion.

3 **SEC. 6. SETTLEMENT AND CLEARING THROUGH REG-**  
4 **ISTERED DERIVATIVES CLEARING ORGANIZA-**  
5 **TIONS.**

6 (a) IN GENERAL.—

7 (1) APPLICATION TO EXCLUDED DERIVATIVE  
8 TRANSACTIONS.—

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

11 (i) by striking “and” at the end of  
12 subparagraph (A);

13 (ii) by striking the period at the end  
14 of subparagraph (B) and inserting “and”;  
15 and

16 (iii) by adding at the end the fol-  
17 lowing:

18 “(C) except as provided in section 4(f), the  
19 agreement, contract, or transaction is settled  
20 and cleared through a derivatives clearing orga-  
21 nization registered with the Commission.”.

22 (B) Section 2(d)(2) of such Act (7 U.S.C.  
23 2(d)(2)) is amended—

24 (i) by striking “and” at the end of  
25 subparagraph (B);

1 (ii) by striking the period at the end  
2 of subparagraph (C) and inserting “; and”;  
3 and

4 (iii) by adding at the end the fol-  
5 lowing:

6 “(D) except as provided in section 4(f), the  
7 agreement, contract, or transaction is settled  
8 and cleared through a derivatives clearing orga-  
9 nization registered with the Commission.”.

10 (2) APPLICATION TO CERTAIN SWAP TRANS-  
11 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))  
12 is amended—

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

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

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

18 “(4) except as provided in section 4(f), settled  
19 and cleared through a derivatives clearing organiza-  
20 tion registered with the Commission.”.

21 (3) APPLICATION TO CERTAIN TRANSACTIONS  
22 IN EXEMPT COMMODITIES.—

23 (A) Section 2(h)(1) of such Act (7 U.S.C.  
24 2(h)(1)) is amended—



1 (i) by striking “and” at the end of  
2 subparagraph (A);

3 (ii) by striking the period at the end  
4 of subparagraph (B) and inserting “;  
5 and”; and

6 (iii) by adding at the end the fol-  
7 lowing:

8 “(C) except as provided in section 4(f), is  
9 settled and cleared through a derivatives clear-  
10 ing organization registered with the Commis-  
11 sion.”.

12 (B) Section 2(h)(3) of such Act (7 U.S.C.  
13 2(h)(3)) is amended—

14 (i) by striking “and” at the end of  
15 subparagraph (A);

16 (ii) by striking the period at the end  
17 of subparagraph (B) and inserting “;  
18 and”; and

19 (iii) by adding at the end the fol-  
20 lowing:

21 “(C) except as provided in section 4(f), set-  
22 tled and cleared through a derivatives clearing  
23 organization registered with the Commission.”.

24 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-  
25 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is

1       amended by inserting “the agreement, contract, or  
 2       transaction, except as provided in section 4(h), will  
 3       be settled and cleared through a derivatives clearing  
 4       organization registered with the Commission and”  
 5       before “the Commission determines”.

6               (5) CONFORMING AMENDMENT RELATING TO  
 7       SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Sec-  
 8       tion 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is  
 9       amended by striking the heading for the subpara-  
 10      graph and all that follows through “As part of” and  
 11      inserting the following:

12                   “(D) REVIEW OF IMPLEMENTATION.—As  
 13                   part of”.

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

18                   “(f) ALTERNATIVES TO CLEARING THROUGH DES-  
 19      IGNATED 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 subsections (a) or (b) of section 409 of the  
4       Federal Deposit Insurance Corporation Improvement  
5       Act of 1991.

6           “(2) WAIVER OF CLEARING REQUIREMENT.—

7           “(A) The Commission, in its discretion,  
8           may exempt an agreement, contract, or trans-  
9           action, or class thereof, that would otherwise be  
10          required by section 2(d)(1)(C), 2(d)(2)(D),  
11          2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,  
12          or subsection (c)(1) of this section to be settled  
13          and cleared through a derivatives clearing orga-  
14          nization registered with the Commission from  
15          such requirement.

16          “(B) In granting exemptions pursuant to  
17          subparagraph (A), the Commission shall consult  
18          with the Securities and Exchange Commission  
19          and the Board of Governors of the Federal Re-  
20          serve System regarding exemptions that relate  
21          to excluded commodities or entities for which  
22          the Securities Exchange Commission or the  
23          Board of Governors of the Federal Reserve Sys-  
24          tem serve as the primary regulator.

1           “(C) Before granting an exemption pursu-  
2 ant to subparagraph (A), the Commission shall  
3 find that the agreement, contract, or trans-  
4 action, or class thereof—

5                   “(i) is highly customized as to its ma-  
6 terial terms and conditions;

7                   “(ii) is transacted infrequently;

8                   “(iii) does not serve a significant  
9 price-discovery function in the market-  
10 place; and

11                   “(iv) is being entered into by parties  
12 who can demonstrate the financial integ-  
13 rity of the agreement, contract, or trans-  
14 action and their own financial integrity, as  
15 such terms and standards are determined  
16 by the Commission. The standards may in-  
17 clude, with respect to any federally regu-  
18 lated financial entity for which net capital  
19 requirements are imposed, a net capital re-  
20 quirement associated with any agreement,  
21 contract, or transaction subject to an ex-  
22 emption from the clearing requirement  
23 that is higher than the net capital require-  
24 ment that would be associated with such a  
25 transaction were it cleared.

1           “(D) Any agreement, contract, or trans-  
2           action, or class thereof, which is exempted pur-  
3           suant to subparagraph (A) shall be reported to  
4           the Commission in a manner designated by the  
5           Commission, or to such other entity the Com-  
6           mission deems appropriate.

7           “(E) The Commission, the Securities and  
8           Exchange Commission, and the Board of Gov-  
9           ernors of the Federal Reserve System shall  
10          enter into a memorandum of understanding by  
11          which the information reported to the Commis-  
12          sion pursuant to subparagraph (D) with regard  
13          to excluded commodities or entities for which  
14          the Securities Exchange Commission or the  
15          Board of Governors of the Federal Reserve Sys-  
16          tem serve as the primary regulator may be pro-  
17          vided to the other agencies.

18          “(g) SPOT AND FORWARD EXCLUSION.—The settle-  
19          ment and clearing requirements of section 2(d)(1)(C),  
20          2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(e)(1)  
21          shall not apply to an agreement, contract, or transaction  
22          of any cash commodity for immediate or deferred ship-  
23          ment or delivery, as defined by the Commission.”.

24          (c) ADDITIONAL REQUIREMENTS APPLICABLE TO  
25          APPLICANTS FOR REGISTRATION AS A DERIVATIVE

1 CLEARING ORGANIZATION.—Section 5b(c)(2) of such Act  
2 (7 U.S.C. 7a–1(c)(2)) is amended by adding at the end  
3 the following:

4 “(O) DISCLOSURE OF GENERAL INFORMA-  
5 TION.—The applicant shall disclose publicly and  
6 to the Commission information concerning—

7 “(i) the terms and conditions of con-  
8 tracts, agreements, and transactions  
9 cleared and settled by the applicant;

10 “(ii) the conventions, mechanisms,  
11 and practices applicable to the contracts,  
12 agreements, and transactions;

13 “(iii) the margin-setting methodology  
14 and the size and composition of the finan-  
15 cial resource package of the applicant; and

16 “(iv) other information relevant to  
17 participation in the settlement and clearing  
18 activities of the applicant.

19 “(P) DAILY PUBLICATION OF TRADING IN-  
20 FORMATION.—The applicant shall make public  
21 daily information on settlement prices, volume,  
22 and open interest for contracts settled or  
23 cleared pursuant to the requirements of  
24 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),  
25 2(h)(3)(C) or 4(c)(1) of this Act by the appli-

cant if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

“(Q) FITNESS STANDARDS.—The applicant shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, and members of the applicant, and any other persons with direct access to the settlement or clearing activities of the applicant, including any parties affiliated with any of the persons described in this subparagraph.”.

(d) AMENDMENTS.—

(1) Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4422) is amended by adding at the end the following:

“(c) CLEARING REQUIREMENT.—A multilateral clearing organization described in subsections (a) or (b) of this section shall comply with requirements similar to the requirements of sections 5b and 5c or the Commodity Exchange Act.”.

(2) Section 407 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27e) is

1       amended by inserting “and the settlement and clear-  
2       ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),  
3       2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such  
4       Act” after “the clearing of covered swap agree-  
5       ments”.

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

9       (f) TRANSITION RULE.—Any agreement, contract, or  
10      transaction entered into before the date of the enactment  
11      of this Act or within 150 days after such date of enact-  
12      ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)  
13      of section 2 of the Commodity Exchange Act or any other  
14      exemption issued by the Commission Futures Trading  
15      Commission by rule, regulation, or order shall, within 90  
16      days after such date of enactment, unless settled and  
17      cleared through an entity registered with the Commission  
18      as a derivatives clearing organization or another clearing  
19      entity pursuant to section 4(f) of such Act, be reported  
20      to the Commission in a manner designated by the Com-  
21      mission, or to such other entity as the Commission deems  
22      appropriate.



1 **SEC. 7. LIMITATION ON ELIGIBILITY TO PURCHASE A**  
 2 **CREDIT DEFAULT SWAP.**

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

6 “(h) LIMITATION ON ELIGIBILITY TO PURCHASE A  
 7 CREDIT DEFAULT SWAP.—It shall be unlawful for any  
 8 person to enter into a credit default swap unless the per-  
 9 son—

10 “(1) owns a credit instrument which is insured  
 11 by the credit default swap;

12 “(2) would experience financial loss if an event  
 13 that is the subject of the credit default swap occurs  
 14 with respect to the credit instrument; and

15 “(3) meets such minimum capital adequacy  
 16 standards as may be established by the Commission,  
 17 in consultation with the Board of Governors of the  
 18 Federal Reserve System, or such more stringent  
 19 minimum capital adequacy standards as may be es-  
 20 tablished by or under the law of any State in which  
 21 the swap is originated or entered into, or in which  
 22 possession of the contract involved takes place.”.

23 (b) ELIMINATION OF PREEMPTION OF STATE  
 24 BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT  
 25 SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C.  
 26 16(e)(2)(B)) is amended by inserting “(other than a credit

1 default swap in which the purchaser of the swap would  
2 not experience financial loss if an event that is the subject  
3 of the swap occurred)” before “that is excluded”.

4 (c) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-  
5 tion 1a of such Act (7 U.S.C. 1a), as amended by section  
6 3(a) of this Act, is amended by adding at the end the fol-  
7 lowing:

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

22 (d) EFFECTIVE DATE.—The amendments made by  
23 this section shall be effective for credit default swaps (as  
24 defined in section 1a(37) of the Commodity Exchange Act)

1 entered into after 60 days after the date of the enactment  
2 of this section.

3 **SEC. 8. TRANSACTION FEES.**

4 (a) IN GENERAL.—Section 12 of the Commodity Ex-  
5 change Act (7 U.S.C. 16) is amended by redesignating  
6 subsections (e), (f), and (g) as subsections (f), (g), and  
7 (h), respectively, and inserting after subsection (d) the fol-  
8 lowing:

9 “(e) CLEARING FEES.—

10 “(1) IN GENERAL.—The Commission shall, in  
11 accordance with this subsection, charge and collect  
12 from each registered clearing organization, and each  
13 such organization shall pay to the Commission,  
14 transaction fees at a rate calculated to recover the  
15 costs to the Federal Government of the supervision  
16 and regulation of futures markets, except those di-  
17 rectly related to enforcement.

18 “(2) FEES ASSESSED PER SIDE OF CLEARED  
19 CONTRACTS.—

20 “(A) IN GENERAL.—The Commission shall  
21 determine the fee rate referred to in paragraph  
22 (1), and shall apply the fee rate per side of any  
23 transaction cleared.

24 “(B) AUTHORITY TO DELEGATE.—The  
25 Commission may determine the procedures by

1           which the fee rate is to be applied on the trans-  
2           actions subject to the fee, or delegate the au-  
3           thority to make the determination to any appro-  
4           priate derivatives clearing organization.

5           “(3) EXEMPTIONS.—The Commision may not  
6           impose a fee under paragraph (1) on—

7                   “(A) a class of contracts or transactions if  
8           the Commission finds that it is in the public in-  
9           terest to exempt the class from the fee; or

10                   “(B) a contract or transaction cleared by  
11           a registered derivatives clearing organization  
12           that is—

13                   “(i) subject to fees under section 31  
14           of the Securities Exchange Act of 1934; or

15                   “(ii) a security as defined in the Secu-  
16           rities Act of 1933 or the Securities Ex-  
17           change Act of 1934.

18           “(4) DATES FOR PAYMENT OF FEES.—The fees  
19           imposed under paragraph (1) shall be paid on or be-  
20           fore—

21                   “(A) March 15 of each year, with respect  
22           to transactions occurring on or after the pre-  
23           ceding September 1 and on or before the pre-  
24           ceding December 31; and

1 “(B) September 15 of each year, with re-  
2 spect to transactions occurring on or after the  
3 preceding January 1 and on or before the pre-  
4 ceding August 31.

5 “(5) ANNUAL ADJUSTMENT OF FEE RATES.—

6 “(A) IN GENERAL.—Not later than April  
7 30 of each fiscal year, the Commission shall, by  
8 order, adjust each fee rate determined under  
9 paragraph (2) for the fiscal year to a uniform  
10 adjusted rate that, when applied to the esti-  
11 mated aggregate number of cleared sides of  
12 transactions for the fiscal year, is reasonably  
13 likely to produce aggregate fee receipts under  
14 this subsection for the fiscal year equal to the  
15 target offsetting receipt amount for the fiscal  
16 year.

17 “(B) DEFINITIONS.—In subparagraph (A):

18 “(i) ESTIMATED AGGREGATE NUMBER  
19 OF CLEARED SIDES OF TRANSACTIONS.—

20 The term ‘estimated aggregate number of  
21 cleared sides of transactions’ means, with  
22 respect to a fiscal year, the aggregate  
23 number of cleared sides of transactions to  
24 be cleared by registered derivatives clear-  
25 ing organizations during the fiscal year, as

1 estimated by the Commission, after con-  
2 sultation with the Office of Management  
3 and Budget, using the methodology re-  
4 quired for making projections pursuant to  
5 section 257 of the Balanced Budget and  
6 Emergency Deficit Control Act of 1985.

7 “(ii) TARGET OFFSETTING RECEIPT  
8 AMOUNT.—The term ‘target offsetting re-  
9 ceipt amount’ means, with respect to a fis-  
10 cal year, the total level of Commission  
11 budget authority for all non-enforcement  
12 activities of the Commission, as contained  
13 in the regular appropriations Acts for the  
14 fiscal year.

15 “(C) NO JUDICIAL REVIEW.—An adjusted  
16 fee rate prescribed under subparagraph (A)  
17 shall not be subject to judicial review.

18 “(6) PUBLICATION.—Not later than April 30 of  
19 each fiscal year, the Commission shall cause to be  
20 published in the Federal Register notices of the fee  
21 rates applicable under this subsection for the suc-  
22 ceeding fiscal year, and any estimate or projection  
23 on which the fee rates are based.

24 “(7) INAPPLICABILITY OF CERTAIN PROCE-  
25 DURAL RULES.—Section 553 of title 5, United

1 States Code, shall not apply with respect to any ex-  
2 ercise of authority under this subsection.

3 “(8) ESTABLISHMENT OF FUTURES AND OP-  
4 TIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF  
5 FEES.—There is established in the Treasury of the  
6 United States an account which shall be known as  
7 the ‘Futures and Options Transaction Fee Account’.  
8 All fees collected under this subsection for a fiscal  
9 year shall be deposited in the account. Amounts in  
10 the account are authorized to be appropriated to  
11 fund the expenditures of the Commission.”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 subsection (a) shall apply to fiscal years beginning 30 or  
14 more days after the date of the enactment of this Act.

15 (c) TRANSITION RULE.—If this section becomes law  
16 after March 31 and before September 1 of a fiscal year,  
17 then paragraphs (5)(A) and (6) of section 12(e) of the  
18 Commodity Exchange Act shall be applied, in the case of  
19 the 1st fiscal year beginning after the date of the enact-  
20 ment of this Act, by substituting “August 31” for “April  
21 30”.

22 **SEC. 9. NO EFFECT ON AUTHORITY OF THE FEDERAL**  
23 **TRADE COMMISSION.**

24 Nothing in this Act shall be interpreted to affect or  
25 diminish the jurisdiction or authority of the Federal Trade

1 Commission with respect to its authorities under the Fed-  
 2 eral Trade Commission Act (15 U.S.C. 41 et seq.) or the  
 3 Energy Independence and Security Act of 2007 (Public  
 4 Law 110–140) to obtain information, to carry out enforce-  
 5 ment activities or otherwise carry out the responsibilities  
 6 of the Federal Trade Commission.

7 **SEC. 10. CEASE-AND-DESIST AUTHORITY.**

8 (a) NATURAL GAS ACT.—Section 20 of the Natural  
 9 Gas Act (15 U.S.C. 717s) is amended by adding the fol-  
 10 lowing at the end:

11 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY  
 12 ORDERS; AUTHORITY OF THE COMMISSION.—

13 “(1) IN GENERAL.—If the Commission finds,  
 14 after notice and opportunity for hearing, that any  
 15 entity may be violating, may have violated, or may  
 16 be about to violate any provision of this Act, or any  
 17 rule, regulation, restriction, condition, or order made  
 18 or imposed by the Commission under the authority  
 19 of this Act, the Commission may publish its findings  
 20 and issue an order requiring such entity, and any  
 21 other entity that is, was, or would be a cause of the  
 22 violation, due to an act or omission the entity knew  
 23 or should have known would contribute to such vio-  
 24 lation, to cease and desist from committing or caus-  
 25 ing such violation and any future violation of the



1 same provision, rule, or regulation. Such order may,  
2 in addition to requiring an entity to cease and desist  
3 from committing or causing a violation, require such  
4 entity to comply, to provide an accounting and  
5 disgorgement, or to take steps to effect compliance,  
6 with such provision, rule, or regulation, upon such  
7 terms and conditions and within such time as the  
8 Commission may specify in such order. Any such  
9 order may, as the Commission deems appropriate,  
10 require future compliance or steps to effect future  
11 compliance, either permanently or for such period of  
12 time as the Commission may specify.

13 “(2) TIMING OF ENTRY.—An order issued  
14 under this subsection shall be entered only after no-  
15 tice and opportunity for a hearing, unless the Com-  
16 mission determines that notice and hearing prior to  
17 entry would be impracticable or contrary to the pub-  
18 lic interest.

19 “(f) HEARING.—The notice instituting proceedings  
20 pursuant to subsection (e) shall fix a hearing date not ear-  
21 lier than 30 days nor later than 60 days after service of  
22 the notice unless an earlier or a later date is set by the  
23 Commission with the consent of any respondent so served.

24 “(g) TEMPORARY ORDER.—Whenever the Commis-  
25 sion determines that—

1           “(1) a respondent may take actions to dissipate  
2           or convert assets prior to the completion of the pro-  
3           ceedings referred to in subsection (e), and such as-  
4           sets would be necessary to comply with or otherwise  
5           satisfy a final enforcement order of the Commission  
6           pursuant to alleged violations or threatened viola-  
7           tions specified in the notice instituting proceedings,  
8           or

9           “(2) a respondent is engaged in actual or  
10          threatened violations of this Act or a Commission  
11          rule, regulation, restriction or order referred to in  
12          subsection (e),

13         the Commission may issue a temporary order requiring  
14         the respondent to take such action to prevent dissipation  
15         or conversion of assets, significant harm to energy con-  
16         sumers, or substantial harm to the public interest, frustra-  
17         tion of the Commission’s ability to conduct the pro-  
18         ceedings, or frustration of the Commission’s ability to re-  
19         dress said violation at the conclusion of the proceedings,  
20         as the Commission deems appropriate pending completion  
21         of such proceedings.

22         “(h) REVIEW OF TEMPORARY ORDERS.—

23                 “(1) COMMISSION REVIEW.—At any time after  
24                 the respondent has been served with a temporary  
25                 cease-and-desist order pursuant to subsection (g),

1 the respondent may apply to the Commission to have  
2 the order set aside, limited, or suspended. If the re-  
3 spondent has been served with a temporary cease-  
4 and-desist order entered without a prior Commission  
5 hearing, the respondent may, within 10 days after  
6 the date on which the order was served, request a  
7 hearing on such application and the Commission  
8 shall hold a hearing and render a decision on such  
9 application at the earliest possible time.

10 “(2) JUDICIAL REVIEW.—Within—

11 “(A) 10 days after the date the respondent  
12 was served with a temporary cease-and-desist  
13 order entered with a prior Commission hearing;  
14 or

15 “(B) 10 days after the Commission ren-  
16 ders a decision on an application and hearing  
17 under paragraph (1), with respect to any tem-  
18 porary cease-and-desist order entered without a  
19 prior Commission hearing, the respondent may  
20 apply to the United States district court for the  
21 district in which the respondent resides or has  
22 its principal place of business, or for the Dis-  
23 trict of Columbia, for an order setting aside,  
24 limiting, or suspending the effectiveness or en-  
25 forcement of the order, and the court shall have

1 jurisdiction to enter such an order. A respond-  
2 ent served with a temporary cease-and-desist  
3 order entered without a prior Commission hear-  
4 ing may not apply to the court except after  
5 hearing and decision by the Commission on the  
6 respondent's application under paragraph (1) of  
7 this subsection.

8 “(3) NO AUTOMATIC STAY OF TEMPORARY  
9 ORDER.—The commencement of proceedings under  
10 paragraph (2) of this subsection shall not, unless  
11 specifically ordered by the court, operate as a stay  
12 of the Commission's order.

13 “(4) EXCLUSIVE REVIEW.—Sections 19(d) and  
14 24 shall not apply to a temporary order entered pur-  
15 suant to this section.

16 “(i) IMPLEMENTATION.—The Commission is author-  
17 ized to adopt rules, regulations, and orders as it deems  
18 appropriate to implement this section.”.

19 (b) FEDERAL POWER ACT.—Section 314 of the Fed-  
20 eral Power Act (16 U.S.C. 825m) is amended by adding  
21 the following at the end:

22 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY  
23 ORDERS; AUTHORITY OF THE COMMISSION.—

24 “(1) IN GENERAL.—If the Commission finds,  
25 after notice and opportunity for hearing, that any

1       entity may be violating, may have violated, or may  
2       be about to violate any provision of this Act, or any  
3       rule, regulation, restriction, condition, or order made  
4       or imposed by the Commission under the authority  
5       of this Act, the Commission may publish its findings  
6       and issue an order requiring such entity, and any  
7       other entity that is, was, or would be a cause of the  
8       violation, due to an act or omission the entity knew  
9       or should have known would contribute to such vio-  
10      lation, to cease and desist from committing or caus-  
11      ing such violation and any future violation of the  
12      same provision, rule, or regulation. Such order may,  
13      in addition to requiring an entity to cease and desist  
14      from committing or causing a violation, require such  
15      entity to comply, to provide an accounting and  
16      disgorgement, or to take steps to effect compliance,  
17      with such provision, rule, or regulation, upon such  
18      terms and conditions and within such time as the  
19      Commission may specify in such order. Any such  
20      order may, as the Commission deems appropriate,  
21      require future compliance or steps to effect future  
22      compliance, either permanently or for such period of  
23      time as the Commission may specify.

24           “(2) TIMING OF ENTRY.—An order issued  
25      under this subsection shall be entered only after no-

1       tice and opportunity for a hearing, unless the Com-  
2       mission determines that notice and hearing prior to  
3       entry would be impracticable or contrary to the pub-  
4       lic interest.

5           “(3) HEARING.—The notice instituting pro-  
6       ceedings pursuant to paragraph (1) shall fix a hear-  
7       ing date not earlier than 30 days nor later than 60  
8       days after service of the notice unless an earlier or  
9       a later date is set by the Commission with the con-  
10      sent of any respondent so served.

11          “(4) TEMPORARY ORDER.—Whenever the Com-  
12      mission determines that—

13           “(A) a respondent may take actions to dis-  
14       sipate or convert assets prior to the completion  
15       of the proceedings referred to in paragraph (1),  
16       and such assets would be necessary to comply  
17       with or otherwise satisfy a final enforcement  
18       order of the Commission pursuant to alleged  
19       violations or threatened violations specified in  
20       the notice instituting proceedings, or

21           “(B) a respondent is engaged in actual or  
22       threatened violations of this Act or a Commis-  
23       sion rule, regulation, restriction or order re-  
24       ferred to in paragraph (1),

1 the Commission may issue a temporary order requir-  
2 ing the respondent to take such action to prevent  
3 dissipation or conversion of assets, significant harm  
4 to energy consumers, or substantial harm to the  
5 public interest, frustration of the Commission's abil-  
6 ity to conduct the proceedings, or frustration of the  
7 Commission's ability to redress said violation at the  
8 conclusion of the proceedings, as the Commission  
9 deems appropriate pending completion of such pro-  
10 ceedings.

11 “(5) REVIEW OF TEMPORARY ORDERS.—

12 “(A) COMMISSION REVIEW.—At any time  
13 after the respondent has been served with a  
14 temporary cease-and-desist order pursuant to  
15 paragraph (4), the respondent may apply to the  
16 Commission to have the order set aside, limited,  
17 or suspended. If the respondent has been served  
18 with a temporary cease-and-desist order entered  
19 without a prior Commission hearing, the re-  
20 spondent may, within 10 days after the date on  
21 which the order was served, request a hearing  
22 on such application and the Commission shall  
23 hold a hearing and render a decision on such  
24 application at the earliest possible time.

25 “(B) JUDICIAL REVIEW.—Within—

1           “(i) 10 days after the date the re-  
2           spondent was served with a temporary  
3           cease-and-desist order entered with a prior  
4           Commission hearing; or

5           “(ii) 10 days after the Commission  
6           renders a decision on an application and  
7           hearing under subparagraph (A), with re-  
8           spect to any temporary cease-and-desist  
9           order entered without a prior Commission  
10          hearing, the respondent may apply to the  
11          United States district court for the district  
12          in which the respondent resides or has its  
13          principal place of business, or for the Dis-  
14          trict of Columbia, for an order setting  
15          aside, limiting, or suspending the effective-  
16          ness or enforcement of the order, and the  
17          court shall have jurisdiction to enter such  
18          an order. A respondent served with a tem-  
19          porary cease-and-desist order entered with-  
20          out a prior Commission hearing may not  
21          apply to the court except after hearing and  
22          decision by the Commission on the re-  
23          spondent’s application under subparagraph  
24          (A) of this paragraph.



1           “(C) NO AUTOMATIC STAY OF TEMPORARY  
2           ORDER.—The commencement of proceedings  
3           under subparagraph (B) of this subsection shall  
4           not, unless specifically ordered by the court, op-  
5           erate as a stay of the Commission’s order.

6           “(D) EXCLUSIVE REVIEW.—Section 317  
7           shall not apply to a temporary order entered  
8           pursuant to this section.

9           “(6) IMPLEMENTATION.—The Commission is  
10          authorized to adopt rules, regulations, and orders as  
11          it deems appropriate to implement this subsection.”.

12          (c) NATURAL GAS POLICY ACT OF 1978.—Section  
13          504 of the Natural Gas Policy Act of 1978 (15 U.S.C.  
14          3414) is amended by adding the following at the end:

15          “(c) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY  
16          ORDERS; AUTHORITY OF THE COMMISSION.—

17               “(1) IN GENERAL.—If the Commission finds,  
18               after notice and opportunity for hearing, that any  
19               entity may be violating, may have violated, or may  
20               be about to violate any provision of this Act, or any  
21               rule, regulation, restriction, condition, or order made  
22               or imposed by the Commission under the authority  
23               of this Act, the Commission may publish its findings  
24               and issue an order requiring such entity, and any  
25               other entity that is, was, or would be a cause of the

1 violation, due to an act or omission the entity knew  
2 or should have known would contribute to such vio-  
3 lation, to cease and desist from committing or caus-  
4 ing such violation and any future violation of the  
5 same provision, rule, or regulation. Such order may,  
6 in addition to requiring an entity to cease and desist  
7 from committing or causing a violation, require such  
8 entity to comply, to provide an accounting and  
9 disgorgement, or to take steps to effect compliance,  
10 with such provision, rule, or regulation, upon such  
11 terms and conditions and within such time as the  
12 Commission may specify in such order. Any such  
13 order may, as the Commission deems appropriate,  
14 require future compliance or steps to effect future  
15 compliance, either permanently or for such period of  
16 time as the Commission may specify.

17 “(2) TIMING OF ENTRY.—An order issued  
18 under this subsection shall be entered only after no-  
19 tice and opportunity for a hearing, unless the Com-  
20 mission determines that notice and hearing prior to  
21 entry would be impracticable or contrary to the pub-  
22 lic interest.

23 “(3) HEARING.—The notice instituting pro-  
24 ceedings pursuant to paragraph (1) shall fix a hear-  
25 ing date not earlier than 30 days nor later than 60

1 days after service of the notice unless an earlier or  
2 a later date is set by the Commission with the con-  
3 sent of any respondent so served.

4 “(4) TEMPORARY ORDER.—Whenever the Com-  
5 mission determines that—

6 “(A) a respondent may take actions to dis-  
7 sipate or convert assets prior to the completion  
8 of the proceedings referred to in paragraph (1)  
9 and such assets would be necessary to comply  
10 with or otherwise satisfy a final enforcement  
11 order of the Commission pursuant to alleged  
12 violations or threatened violations specified in  
13 the notice instituting proceedings, or

14 “(B) a respondent is engaged in actual or  
15 threatened violations of this Act or a Commis-  
16 sion rule, regulation, restriction or order re-  
17 ferred to in paragraph (1),

18 the Commission may issue a temporary order requir-  
19 ing the respondent to take such action to prevent  
20 dissipation or conversion of assets, significant harm  
21 to energy consumers, or substantial harm to the  
22 public interest, frustration of the Commission’s abil-  
23 ity to conduct the proceedings, or frustration of the  
24 Commission’s ability to redress said violation at the  
25 conclusion of the proceedings, as the Commission

1       deems appropriate pending completion of such pro-  
2       ceedings.

3               “(5) REVIEW OF TEMPORARY ORDERS.—

4               “(A) COMMISSION REVIEW.—At any time  
5       after the respondent has been served with a  
6       temporary cease-and-desist order pursuant to  
7       paragraph (4), the respondent may apply to the  
8       Commission to have the order set aside, limited,  
9       or suspended. If the respondent has been served  
10      with a temporary cease-and-desist order entered  
11      without a prior Commission hearing, the re-  
12      spondent may, within 10 days after the date on  
13      which the order was served, request a hearing  
14      on such application and the Commission shall  
15      hold a hearing and render a decision on such  
16      application at the earliest possible time.

17              “(B) JUDICIAL REVIEW.—Within—

18              “(i) 10 days after the date the re-  
19      spondent was served with a temporary  
20      cease-and-desist order entered with a prior  
21      Commission hearing; or

22              “(ii) 10 days after the Commission  
23      renders a decision on an application and  
24      hearing under subparagraph (A), with re-  
25      spect to any temporary cease-and-desist

1 order entered without a prior Commission  
2 hearing, the respondent may apply to the  
3 United States district court for the district  
4 in which the respondent resides or has its  
5 principal place of business, or for the Dis-  
6 trict of Columbia, for an order setting  
7 aside, limiting, or suspending the effective-  
8 ness or enforcement of the order, and the  
9 court shall have jurisdiction to enter such  
10 an order. A respondent served with a tem-  
11 porary cease-and-desist order entered with-  
12 out a prior Commission hearing may not  
13 apply to the court except after hearing and  
14 decision by the Commission on the re-  
15 spondent's application under paragraph (1)  
16 of this subsection.

17 “(C) NO AUTOMATIC STAY OF TEMPORARY  
18 ORDER.—The commencement of proceedings  
19 under subparagraph (B) of this paragraph shall  
20 not, unless specifically ordered by the court, op-  
21 erate as a stay of the Commission's order.

22 “(6) IMPLEMENTATION.—The Commission is  
23 authorized to adopt rules, regulations, and orders as  
24 it deems appropriate to implement this subsection.”.

1 **SEC. 11. NATURAL GAS ACT REFUNDS.**

2 Section 5(a) of the Natural Gas Act (15 U.S.C.  
3 717d(a)) is amended by adding the following new para-  
4 graphs at the end thereof:

5 “(3) REFUND EFFECTIVE DATE.—

6 “(A) IN GENERAL.—In accordance with  
7 subparagraphs (B) and (C), the Commission  
8 shall establish a refund effective date for any  
9 proceeding initiated under this subsection.

10 “(B) COMPLAINTS.—In the case of a pro-  
11 ceeding initiated by a complaint, the refund ef-  
12 fective date shall be—

13 “(i) not earlier than the date on which  
14 the complaint is submitted to the Commis-  
15 sion; and

16 “(ii) not later than 150 days after the  
17 date on which the complaint was submitted  
18 to the Commission.

19 “(C) COMMISSION MOTION.—In the case of  
20 a proceeding initiated on motion of the Com-  
21 mission, the refund effective date shall be—

22 “(i) not earlier than the date on which  
23 the Commission publishes notice of the in-  
24 tention of the Commission to initiate the  
25 proceeding; and

1 “(ii) not later than 150 days after the  
2 date on which the notice under clause (i)  
3 is published.

4 “(4) ISSUANCE OF REFUNDS.—

5 “(A) IN GENERAL.—At the conclusion of  
6 any hearing under this section, the Commission  
7 may order, for the period beginning on the re-  
8 fund effective date and ending on a date 15  
9 months after the refund effective date, refunds  
10 of any amounts paid in excess of the amounts  
11 that would have been paid under the just and  
12 reasonable rate, charge, classification, rule, reg-  
13 ulation, practice, or contract that the Commis-  
14 sion orders that would be in effect after the  
15 hearing.

16 “(B) EXCEPTION.—Notwithstanding sub-  
17 paragraph (A), the Commission may order re-  
18 funds of any or all amounts paid for the period  
19 beginning on the refund effective date and end-  
20 ing on the date on which the hearing con-  
21 cludes—

22 “(i) if the proceeding is not concluded  
23 by the date that is 15 months after the re-  
24 fund effective date; and

1                   “(ii) if the Commission determines at  
2                   the conclusion of the proceeding that the  
3                   proceeding was not resolved within the 15-  
4                   month period primarily because of dilatory  
5                   behavior by the natural gas company.

6                   “(C) INTEREST.—Refunds under this sub-  
7                   section shall be issued in an amount determined  
8                   by the proceeding, plus interest, to the persons  
9                   that paid the rates or charges.”.

10 **SEC. 12. REGULATION OF CARBON DERIVATIVES MARKETS.**

11           (a) IN GENERAL.—Section 2 of the Commodity Ex-  
12   change Act (7 U.S.C. 2), as amended by section 4 of this  
13   Act, is amended by adding at the end the following:

14           “(k) The Commission shall have jurisdiction over the  
15   establishment, operation, and oversight of markets for reg-  
16   ulated allowance derivatives, and shall provide for the es-  
17   tablishment, operation, and oversight of the markets in  
18   accordance with the same regulations that apply under  
19   this Act to included energy transactions.”.

20           (b) DEFINITIONS.—Section 1a of such Act (7 U.S.C.  
21   1a), as amended by section 3(a) of this Act, is amended  
22   by redesignating paragraphs (32) through (36) as para-  
23   graphs (34) through (38), respectively, and by inserting  
24   after paragraph (31) the following:



1           “(32) REGULATED ALLOWANCE.—The term  
2           ‘regulated allowance’ means any allowance author-  
3           ized under law to emit a greenhouse gas, and any  
4           credit authorized under law based on a reduction in  
5           greenhouse gas emissions, the production of renew-  
6           able energy, a carbon emission offset, or an increase  
7           in carbon sequestration.

8           “(33) REGULATED ALLOWANCE DERIVATIVE.—  
9           The term ‘regulated allowance derivative’ means an  
10          instrument that is, or includes, an instrument—

11               “(A) which—

12                       “(i) is of the character of, or is com-  
13                       monly known to the trade as, a ‘put op-  
14                       tion’, ‘call option’, ‘privilege’, ‘indemnity’,  
15                       ‘advance guaranty’, ‘decline guaranty’, or  
16                       ‘swap agreement’; or

17                       “(ii) is a contract of sale for future  
18                       delivery, other than a written agreement  
19                       for the origination and development of an  
20                       offset project, and the related issuance of  
21                       offset credits, pursuant to title VII of the  
22                       Clean Air Act; and

23               “(B) the value of which, in whole or in  
24          part, is expressly linked to the price of a regu-

- 1 lated allowance or another regulated allowance
- 2 derivative.”.

