

111TH CONGRESS  
1ST SESSION

# S. 1399

To amend the Commodity Exchange Act to establish a market for the trading of greenhouse gases, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 6, 2009

Mrs. FEINSTEIN (for herself and Ms. SNOWE) 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 establish a market for the trading of greenhouse gases, 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 “Carbon Market Over-  
5 sight Act of 2009”.

6 **SEC. 2. REGULATION OF CARBON MARKETS.**

7 (a) IN GENERAL.—The Commodity Exchange Act (7  
8 U.S.C. 1 et seq.) is amended by adding at the end the  
9 following:

1           **“TITLE II—REGULATION OF**  
2                           **CARBON MARKETS**

3   **“SEC. 201. PURPOSES.**

4           “The purposes of this title are—

5                   “(1) to ensure that the greenhouse gas market  
6           established by this title—

7                           “(A) is formed in a manner consistent with  
8           the public interest;

9                           “(B) is formed in a manner consistent  
10           with the goal of reducing greenhouse gas emis-  
11           sions in the United States;

12                           “(C) is designed to prevent fraud and ma-  
13           nipulation, which could potentially arise from  
14           many sources, including—

15                                   “(i) the concentration of market  
16           power within the control of a limited num-  
17           ber of individuals or entities;

18                                   “(ii) the abuse of material, nonpublic  
19           information; and

20                                   “(iii) the unique nature of the allow-  
21           ance markets in which supply is known  
22           and declining over time, but demand is un-  
23           known, which can create an inherent po-  
24           tential for scarcity;

1           “(D)(i) is appropriately transparent, with  
2           real-time reporting of quotes and trades;

3           “(ii) makes information on price, volume,  
4           and supply, and other important statistical in-  
5           formation, available to the public on fair, rea-  
6           sonable, and nondiscriminatory terms;

7           “(iii) is subject to appropriate record-  
8           keeping and reporting requirements regarding  
9           transactions; and

10          “(iv) has the confidence of investors;

11          “(E) functions smoothly and efficiently,  
12          generating prices that accurately reflect supply  
13          and demand for emission allowances;

14          “(F) promotes just and equitable principles  
15          of trade; and

16          “(G) establishes an equitable system for  
17          the best execution of customer orders;

18          “(2) to minimize transaction costs for regulated  
19          entities so that the cost of abatement is reduced for  
20          those entities and customers of those entities;

21          “(3) to establish a cost-effective capability for  
22          real-time monitoring of the market in order to avoid  
23          manipulation and market failure;

24          “(4) to minimize the volatility induced by the  
25          structure of the marketplace itself in the interest of

1 providing an accurate price signal for regulated enti-  
2 ties; and

3 “(5) to ensure that the markets will function in  
4 a stable and efficient manner to promote the envi-  
5 ronmental and economic objectives of the United  
6 States.

7 **“SEC. 202. DEFINITIONS.**

8 “In this title:

9 “(1) CARBON CLEARING ORGANIZATION.—The  
10 term ‘Carbon Clearing Organization’ means the enti-  
11 ty established under section 206(a).

12 “(2) CARBON DIOXIDE EQUIVALENT.—The  
13 term ‘carbon dioxide equivalent’ means for each  
14 greenhouse gas, the quantity of the greenhouse gas  
15 that the Administrator of the Environmental Protec-  
16 tion Agency determines makes the same contribution  
17 to global warming as 1 metric ton of carbon dioxide.

18 “(3) DEALER.—The term ‘dealer’ means an in-  
19 dividual, association, partnership, corporation, or  
20 trust that—

21 “(A) is engaged in soliciting or in accept-  
22 ing orders for the purchase or sale of a regu-  
23 lated instrument on or subject to the rules of  
24 a registered carbon trading facility; and

1           “(B) in or in connection with the solicita-  
2           tion or acceptance of such an order, accepts  
3           money, securities, or property (or extends credit  
4           in lieu of such an acceptance) to margin, guar-  
5           antee, or secure any trade or contract that re-  
6           sults or may result from such an acceptance.

7           “(4) DIRECTOR.—The term ‘Director’ means  
8           the Director of the Office.

9           “(5) ELECTRONIC MARKET TRADER.—The term  
10          ‘electronic market trader’ means a person who exe-  
11          cutes a trade on an electronic trading facility.

12          “(6) ELECTRONIC TRADING FACILITY.—The  
13          term ‘electronic trading facility’ means a trading fa-  
14          cility that—

15                 “(A) operates by means of an electronic or  
16                 telecommunications network; and

17                 “(B) maintains an automated audit trail of  
18                 bids, offers, and the matching of orders or the  
19                 execution of transactions on the facility.

20          “(7) EMISSION ALLOWANCE.—The term ‘emis-  
21          sion allowance’ means a Government-issued or Gov-  
22          ernment-accredited authorization to emit 1 carbon  
23          dioxide equivalent of greenhouse gas.

24          “(8) GREENHOUSE GAS.—The term ‘greenhouse  
25          gas’ means any of—

1           “(A) carbon dioxide;

2           “(B) methane;

3           “(C) nitrous oxide;

4           “(D) sulfur hexafluoride;

5           “(E) a perfluorocarbon; or

6           “(F) a hydrofluorocarbon.

7           “(9) INTRODUCING BROKER.—

8           “(A) IN GENERAL.—The term ‘introducing  
9           broker’ means any person engaged in soliciting  
10           or in accepting orders for the purchase or sale  
11           of a regulated instrument on or subject to the  
12           rules of a registered carbon trading facility,  
13           who does not accept money, securities, or prop-  
14           erty (or extend credit in lieu of such an accept-  
15           ance) to margin, guarantee, or secure any trade  
16           or contract that results or may result from such  
17           a solicitation or acceptance.

18           “(B) EXCLUSION.—The term ‘introducing  
19           broker’ does not include an individual who  
20           elects to be and is registered as an associated  
21           person of a dealer.

22           “(10) MEMBER.—The term ‘member’ means,  
23           with respect to a trading facility, an individual, asso-  
24           ciation, partnership, corporation, or trust owning or  
25           holding membership in, admitted to membership rep-

1       resentation on, or having trading privileges on the  
2       trading facility.

3               “(11) OFFICE.—The term ‘Office’ means the  
4       Office of Carbon Market Oversight established by  
5       section 203(a)(1).

6               “(12) PRIVATE BILATERAL CONTRACT.—The  
7       term ‘private bilateral contract’ means a non-  
8       standard contract that lacks each of the following  
9       characteristics:

10               “(A) The applicable transaction or class of  
11       transactions settles against any price (including  
12       the daily or final settlement price) of 1 or more  
13       contracts listed for trading on a registered trad-  
14       ing facility.

15               “(B) The price of the applicable trans-  
16       action or class of transactions is reported to a  
17       third party, published, or otherwise dissemi-  
18       nated.

19               “(C) The price of the applicable trans-  
20       action or class of transactions is referenced in  
21       another transaction.

22               “(D) There is a significant volume of the  
23       applicable transaction or class of transactions.

1           “(E) The value of the applicable trans-  
2           action is significant in comparison to the value  
3           of the underlying carbon derivative market.

4           “(F) The contract or applicable trans-  
5           actions meets other criteria that the Commis-  
6           sion determines to be appropriate.

7           “(13) REGISTERED CARBON TRADER.—The  
8           term ‘registered carbon trader’ means a member, in  
9           good standing, of a registered carbon trading facility  
10          who has registered with the Commission under sec-  
11          tion 205(b).

12          “(14) REGISTERED CARBON TRADING FACIL-  
13          ITY.—The term ‘registered carbon trading facility’  
14          means a facility that meets standards established by  
15          the Commission under section 203(d)(1).

16          “(15) REGULATED ALLOWANCE.—The term  
17          ‘regulated allowance’ means—

18                 “(A) an emission allowance; or

19                 “(B) a Government-issued unit of reduc-  
20                 tion in the quantity of emissions, or an increase  
21                 in sequestration, equal to 1 carbon dioxide  
22                 equivalent.

23          “(16) REGULATED ALLOWANCE DERIVATIVE.—  
24          The term ‘regulated allowance derivative’ means an  
25          instrument that is or includes—



1           “(A) any instrument, contract, or other ob-  
 2           ligation (or guaranty or indemnity of such an  
 3           obligation), the value of which, in whole or in  
 4           part, is linked to the price of a regulated allow-  
 5           ance or another regulated allowance derivative;

6           “(B) any contract for future delivery (in-  
 7           cluding an option, a swap agreement, or a fu-  
 8           tures contract) of—

9                   “(i) a regulated allowance; or

10                   “(ii) any obligation described in sub-  
 11           paragraph (A); or

12           “(C) any other contract—

13                   “(i) the value of which is derived from  
 14           the existence of a market for regulated al-  
 15           lowances; and

16                   “(ii) that the Commission has not de-  
 17           termined to be a private bilateral contract.

18           “(17) REGULATED INSTRUMENT.—The term  
 19           ‘regulated instrument’ means—

20                   “(A) a regulated allowance; or

21                   “(B) a regulated allowance derivative.

22           “(18) SHORT SALE.—The term ‘short sale’  
 23           means—

24                   “(A) any sale of a regulated allowance that  
 25           the seller does not own; and

1           “(B) any sale that is consummated by the  
2           delivery of a regulated allowance borrowed by,  
3           or for the account of, the seller.

4           “(19) TRADING FACILITY.—

5           “(A) IN GENERAL.—The term ‘trading fa-  
6           cility’ means 1 or more individuals or entities  
7           that constitute, maintain, or provide a physical  
8           or electronic facility or system in which multiple  
9           participants have the ability to execute or trade  
10          agreements, contracts, or transactions involving  
11          a regulated instrument by accepting bids and  
12          offers made by other participants that are open  
13          to multiple participants in the facility or sys-  
14          tem.

15          “(B) INCLUSION.—The term ‘trading facil-  
16          ity’ includes a telephone voice brokerage that  
17          executes multiple, largely offsetting, bilateral  
18          transactions.

19          “(20) UNITED STATES.—The term ‘United  
20          States’ includes the territories and possessions of the  
21          United States.

22       **“SEC. 203. OFFICE OF CARBON MARKET OVERSIGHT; JURIS-**  
23       **DICTION.**

24       “(a) ESTABLISHMENT OF OFFICE OF CARBON MAR-  
25       KET OVERSIGHT.—

1           “(1) IN GENERAL.—There is established within  
2 the Commission an Office of Carbon Market Over-  
3 sight.

4           “(2) DIRECTOR.—

5                 “(A) IN GENERAL.—The Office shall be  
6 headed by a Director for Carbon Market Over-  
7 sight.

8                 “(B) ADDITIONAL NATURE OF POSI-  
9 TION.—The position of Director for Carbon  
10 Market Oversight shall be in addition to the di-  
11 rectors of other offices of the Commission.

12                 “(C) APPOINTMENT; QUALIFICATIONS.—  
13 The Director shall be—

14                     “(i) appointed by the Commission;  
15 and

16                     “(ii) an individual who is, by reason  
17 of background and experience in the regu-  
18 lation of commodities, securities, or other  
19 financial markets, especially qualified to di-  
20 rect a program of oversight of the market  
21 in regulated instruments.

22           “(b) ADMINISTRATION OF THIS TITLE.—The Com-  
23 mission, acting through the Director, shall administer this  
24 title.

1       “(c) DUTY OF COMMISSION.—The Commission shall  
2 regulate all contracts of sale involving regulated instru-  
3 ments under the jurisdiction of the Commission.

4       “(d) REGULATIONS.—The Commission shall, not  
5 later than 1 year after the date of enactment of this title,  
6 promulgate regulations governing the implementation of  
7 this title, and periodically thereafter, revise the regulations  
8 as necessary, including regulations that relate to—

9               “(1) specific initial and ongoing standards for  
10 qualification as a registered carbon trading facility;

11               “(2) position limits for individual market par-  
12 ticipants, adjusted as necessary based on market  
13 conditions;

14               “(3) margin requirements for the instruments  
15 traded by registered carbon trading facilities;

16               “(4) suitability standards for the solicitation by  
17 members of carbon instruments to retail investors;

18               “(5) a best execution standard for regulated al-  
19 lowance trading, such as the standard used in the  
20 national securities markets;

21               “(6) approval of—

22                       “(A) specific protocols of the central limit  
23 order books of carbon trading facilities; and

24                       “(B) the connection of those facilities to—

1                   “(i) Carbon Clearing Organizations  
2                   established under section 206; and

3                   “(ii) the automated quotation system  
4                   established under section 207;

5                   “(7) the establishment of baseline initial and  
6                   ongoing membership standards for registered carbon  
7                   trading facilities;

8                   “(8) subject to section 204(a)(4), specific  
9                   standards for short sale transactions involving regu-  
10                  lated instruments;

11                  “(9) such other matters as are necessary for  
12                  the carbon market to operate with the highest stand-  
13                  ards of fairness and efficiency; and

14                  “(10) the establishment and operation of a car-  
15                  bon clearing organization.

16                  “(e) MEMORANDUM OF UNDERSTANDING.—

17                  “(1) IN GENERAL.—Not later than 180 days  
18                  after the date of enactment of this title, the Com-  
19                  mission shall enter into a memorandum of under-  
20                  standing with the Federal Energy Regulatory Com-  
21                  mission, the Environmental Protection Agency, and  
22                  any State or regional organization operating a mar-  
23                  ket-based greenhouse gas emissions control program  
24                  relating to information-sharing and coordination of  
25                  oversight roles regarding—

- 1                   “(A) trading facilities;
- 2                   “(B) registered carbon traders;
- 3                   “(C) carbon clearing organizations; and
- 4                   “(D) derivative clearing organizations.

5                   “(2) INCLUSIONS.—The memorandum of un-

6                   derstanding shall include, at a minimum, provi-

7                   sions—

8                   “(A) ensuring that information requests to

9                   markets within the respective jurisdictions of

10                  each agency are properly coordinated to mini-

11                  mize duplicative information requests; and

12                  “(B) regarding the treatment of propri-

13                  etary trading information.

14                  “(f) COORDINATION FOR FOREIGN REGULATORS.—

15                  Not later than 180 days after the date of enactment of

16                  this title, the Commission shall, to the maximum extent

17                  practicable, enter into agreements with foreign regulatory

18                  bodies to ensure that foreign boards of trade do not offer

19                  for sale allowance derivatives beyond the jurisdiction of

20                  the Commission that would undermine the authority of the

21                  carbon market regulators in the United States or reduce

22                  the effectiveness of Commission oversight.

23                  “(g) REGULATIONS.—The regulations issued to carry

24                  out this section shall take into account impacts on liquid-

25                  ity, flexibility, and robust participation in carbon markets,

1 in order to maximize cost-effective and efficient reductions  
2 in carbon emissions.

3 **“SEC. 204. REGULATION OF CARBON TRADING.**

4 “(a) LIMITATION OF CERTAIN ACTIVITIES TO REG-  
5 ISTERED ENTITIES.—

6 “(1) CARBON ALLOWANCE TRADING FACILITY  
7 ACTIVITIES.—It shall be unlawful for a person to  
8 offer to enter into, execute, confirm the execution of,  
9 or conduct an office or a business for the purpose  
10 of soliciting, accepting an order for, or otherwise  
11 dealing in, an agreement, contract, or transaction in-  
12 volving a contract for the purchase or sale of a regu-  
13 lated allowance, unless—

14 “(A) the transaction is conducted through  
15 the carbon allowance trading facility established  
16 under section 205(a);

17 “(B) the contract for the purchase or sale  
18 is evidenced by a record in writing (or other  
19 form acceptable to the Commission) that in-  
20 cludes—

21 “(i) the date;

22 “(ii) the names of the parties to the  
23 contract (including the addresses of those  
24 parties);

1           “(iii) a description of the property  
2 covered by the contract (including the price  
3 of the property);

4           “(iv) the terms of delivery; and

5           “(v) all other nonstandardized terms  
6 and conditions; and

7           “(C) the contract is cleared through the  
8 Carbon Clearing Organization.

9           “(2) CARBON DERIVATIVE TRADING FACILITY  
10 ACTIVITIES.—It shall be unlawful for a person to  
11 offer to enter into, execute, confirm the execution of,  
12 or conduct an office or a business for the purpose  
13 of soliciting, accepting an order for, or otherwise  
14 dealing in, an agreement, contract, or transaction in-  
15 volving a contract for the purchase or sale of a regu-  
16 lated allowance derivative, unless—

17           “(A) the Commission has determined that  
18 the contract is a private bilateral contract that  
19 has been reported to the Commission and in-  
20 cluded as part of the total market risk exposure  
21 of a participant; or

22           “(B)(i) the transaction is conducted  
23 through a trading facility designated as a reg-  
24 istered carbon derivative trading facility under  
25 section 205(a);



1           “(ii) the contract for the purchase or sale  
2           is evidenced by a record in writing (or other  
3           form acceptable to the Commission) that in-  
4           cludes—

5                   “(I) the date;

6                   “(II) the names of the parties to the  
7           contract (including the addresses of those  
8           parties);

9                   “(III) a description of the property  
10          covered by the contract (including the price  
11          of the property);

12                   “(IV) the terms of delivery; and

13                   “(V) all other nonstandardized terms  
14          and conditions; and

15           “(iii) the contract is cleared through a de-  
16          rivatives clearing organization registered with  
17          the Commission pursuant to section 5b.

18           “(3) BROKER OR DEALER ACTIVITIES.—It shall  
19          be unlawful for a person to act in the capacity of an  
20          introducing broker, dealer, floor broker, electronic  
21          market trader, or floor trader in connection with the  
22          purchase or sale of a regulated instrument, unless—

23                   “(A) the person is a registered carbon  
24          trader; and

1           “(B) the registration of the person is not  
2           suspended, revoked, or expired.

3           “(4) SHORT SALE TRANSACTIONS.—A short  
4           sale transaction involving a regulated instrument  
5           that occurs without the borrowing of a regulated al-  
6           lowance shall be unlawful unless the Commission de-  
7           termines that the transaction is in the best interest  
8           of regulated entities and the public.

9           “(b) PROHIBITION ON PRICE OR MARKET MANIPU-  
10          LATION, FRAUD, AND FALSE OR MISLEADING STATE-  
11          MENTS OR REPORTS.—It shall be unlawful for a person,  
12          directly or indirectly—

13           “(1) to use or employ, or attempt to use or em-  
14          ploy, in connection with a transaction involving the  
15          purchase or sale of a regulated instrument or private  
16          bilateral contract, in violation of such rules and reg-  
17          ulations as the Commission may promulgate to pro-  
18          tect the public interest or consumers, including—

19           “(A) any manipulative or deceptive device  
20          or contrivance (within the meaning of section  
21          10(b) of the Securities Exchange Act of 1934  
22          (15 U.S.C. 78j(b)));

23           “(B) any corner; or

24           “(C) any device or contrivance that cheats  
25          or defrauds any other person;

1           “(2) for the purpose of creating a false or mis-  
2           leading appearance of active trading in a regulated  
3           instrument or private bilateral contract, or a false or  
4           misleading appearance with respect to the market  
5           for such an instrument—

6                   “(A) to effect any transaction in the in-  
7                   strument that involves no change in the bene-  
8                   ficial ownership of the instrument;

9                   “(B) to enter an order for the purchase of  
10                  the instrument, with the knowledge that 1 or  
11                  more orders of substantially the same size, at  
12                  substantially the same time, and at substan-  
13                  tially the same price, for the sale of any such  
14                  instrument, has been or will be entered by or  
15                  for the same or different parties; or

16                  “(C) to enter an order for the sale of the  
17                  instrument with the knowledge that 1 or more  
18                  orders of substantially the same size, at sub-  
19                  stantially the same time, and at substantially  
20                  the same price, for the purchase of the instru-  
21                  ment, has been or will be entered by or for the  
22                  same or different parties;

23           “(3) to deliver or cause to be delivered a know-  
24           ingly false, misleading, or inaccurate report con-

1 cerning information or conditions that affect or tend  
2 to affect the price of a regulated instrument;

3 “(4)(A) to make, or cause to be made, in an ap-  
4 plication, report, or document required to be filed  
5 under this title or any regulation promulgated under  
6 this title, a statement that is false or misleading  
7 with respect to a material fact; or

8 “(B) to omit any material fact that is required  
9 to be stated in such an application, report, or docu-  
10 ment, or that is necessary to make the statements  
11 in such an application, report, or document not mis-  
12 leading; or

13 “(5) to falsify, conceal, or cover up by any  
14 trick, scheme, or artifice a material fact, make any  
15 false, fictitious, or fraudulent statements or rep-  
16 resentations, or make or use any false writing or  
17 document that contains a false, fictitious, or fraudu-  
18 lent statement or entry, to an entity registered  
19 under this title acting in furtherance of the official  
20 duties of the entity under this title.

21 “(c) PREVENTION OF EXCESSIVE SPECULATION.—

22 “(1) IN GENERAL.—To prevent, decrease, or  
23 eliminate burdens associated with excessive specula-  
24 tion relating to regulated instruments (which may be  
25 more severe in markets in which supply is known

1 and declining and demand is unknown), the Com-  
2 mission shall promulgate regulations establishing  
3 such position or transaction limitations, in the ag-  
4 gregate, as the Commission determines to be nec-  
5 essary to prevent potential upward bias in price with  
6 respect to any regulated instrument.

7 “(2) AGGREGATE POSITIONS.—In carrying out  
8 paragraph (1), the Commission shall, to the max-  
9 imum extent practicable, aggregate carbon dioxide  
10 equivalent positions in natural gas, electricity, and  
11 regulated instruments.

12 “(3) INAPPLICABILITY TO BONA FIDE HEDGING  
13 TRANSACTIONS AND POSITIONS.—The limitations  
14 and requirements established under paragraph (1)  
15 shall not apply to a position or transaction that is  
16 a bona fide hedging position or transaction, as de-  
17 fined by the Commission in accordance with the pur-  
18 poses of this title.

19 “(d) RECORDKEEPING; REPORTING; ACCESS TO  
20 BOOKS AND RECORDS.—

21 “(1) MEMBERS OF REGISTERED ENTITIES.—  
22 Each member of an entity registered under this title  
23 shall—

24 “(A) keep books and records, and make  
25 such reports as are required by the Commis-

1 sion, regarding the transactions and positions  
2 of the member, and the transactions and posi-  
3 tions of the customer involved, in regulated in-  
4 struments and private bilateral contracts, in  
5 such form and manner, and for such period, as  
6 may be required by the Commission; and

7 “(B) make the books and records available  
8 for inspection by any representative of the Com-  
9 mission or the Department of Justice.

10 “(2) REGISTERED ENTITIES.—Each entity reg-  
11 istered under this title shall—

12 “(A) maintain daily trading records (in-  
13 cluding a time-stamped audit trail), that in-  
14 clude such information, in such form, and for  
15 such period as the Commission may require by  
16 regulation;

17 “(B) before the beginning of trading each  
18 day, insofar as is practicable and under terms  
19 and conditions specified by the Commission,  
20 make public the volume of trading on each type  
21 of contract for the previous day and such other  
22 information as the Commission considers nec-  
23 essary in the public interest and prescribes by  
24 rule, order, or regulation; and

1           “(C) make such reports from the records,  
2           at such times and places, and in such form, as  
3           the Commission may require by regulation to  
4           protect the public interest and the interest of  
5           persons trading in regulated instruments.

6           “(e) FOREIGN TRANSACTIONS.—

7           “(1) IN GENERAL.—Any United States person  
8           or corporation shall be subject to this section for all  
9           contracts executed by the United States person or  
10          corporation, including contracts executed outside of  
11          the United States.

12          “(2) FOREIGN PERSONS AND CORPORATIONS.—  
13          A foreign person or corporation shall be subject to  
14          this section for all contracts executed by the foreign  
15          person or corporation within the United States.

16   **“SEC. 205. ESTABLISHMENT AND REGISTRATION OF A CAR-**  
17                   **BON TRADING FACILITIES; REGISTRATION OF**  
18                   **TRADERS, BROKERS, AND DEALERS.**

19          “(a) CARBON TRADING FACILITIES.—

20          “(1) ESTABLISHMENT OF A CARBON ALLOW-  
21          ANCE TRADING FACILITY.—The Commission may es-  
22          tablish a carbon allowance trading facility in accord-  
23          ance with this section to process trades of regulated  
24          allowances.

1           “(2) REGISTRATION OF CARBON TRADING FA-  
2           CILITIES.—

3           “(A) IN GENERAL.—A trading facility may  
4           apply to the Commission for designation as a  
5           registered carbon allowance trading facility or a  
6           registered carbon allowance derivative trading  
7           facility by submitting to the Commission an ap-  
8           plication that contains such information and  
9           commitments as the Commission may require.

10           “(B) REVIEW.—A designation under this  
11           paragraph shall be reviewed by the Commission  
12           from time to time, but not less frequently than  
13           once every 3 years.

14           “(3) OPERATION OF THE CARBON TRADING FA-  
15           CILITIES.—

16           “(A) IN GENERAL.—To obtain or maintain  
17           designation and continue operating as a reg-  
18           istered carbon allowance trading facility or a  
19           registered carbon allowance derivative trading  
20           facility under this title, a carbon allowance  
21           trading facility established by the Commission  
22           or registered with the Commission under this  
23           section shall comply with the requirements and  
24           principles described in this paragraph.



1           “(B) PREVENTION OF MARKET MANIPULA-  
2           TION.—The trading facility shall demonstrate  
3           capability to prevent market manipulation  
4           through market surveillance, compliance, and  
5           enforcement practices and procedures, including  
6           methods for conducting real-time monitoring of  
7           trading and comprehensive and accurate trade  
8           reconstructions.

9           “(C) ELECTRONIC MONITORING OF TRAD-  
10          ING.—The trading facility shall demonstrate—

11                 “(i) that the trading facility monitors  
12                 trading on or through the facility to pre-  
13                 vent manipulation, price distortion, and  
14                 disruptions of the delivery or cash-settle-  
15                 ment process; and

16                 “(ii) in addition to traditional meth-  
17                 ods, a capability to monitor market activi-  
18                 ties electronically on a real-time basis and,  
19                 if appropriate, by algorithm and other such  
20                 means as are determined to be appropriate  
21                 by the Commission.

22           “(D) FAIR AND EQUITABLE TRADING.—  
23           The trading facility shall establish and enforce  
24           rules to ensure—

1           “(i) fair and equitable trading  
2 through the trading facility;

3           “(ii) the capacity to detect, inves-  
4 tigate, and discipline any person that vio-  
5 lates the rules;

6           “(iii) the operation of any electronic  
7 matching platform;

8           “(iv) the terms and conditions of any  
9 contracts to be traded on or through the  
10 trading facility;

11           “(v) any limitations on access to the  
12 trading facility;

13           “(vi) the financial integrity of trans-  
14 actions and contracts entered into by or  
15 through the trading facility, including the  
16 clearance and settlement of the trans-  
17 actions;

18           “(vii) the financial integrity of bro-  
19 kers, dealers, and traders doing business  
20 on or through the trading facility;

21           “(viii) the protection of customer  
22 funds;

23           “(ix) that the trading facility is able  
24 to discipline, suspend, or expel members or  
25 market participants that violate the rules

1 of the trading facility, or similar methods  
2 for performing the same functions, includ-  
3 ing delegation of the functions to third  
4 parties; and

5 “(x) that market participants are pro-  
6 tected from abusive practices committed by  
7 any party acting as an agent for the par-  
8 ticipants.

9 “(E) AGGREGATE POSITION LIMITATIONS  
10 OR ACCOUNTABILITY.—The trading facility  
11 shall—

12 “(i) adopt and enforce aggregate posi-  
13 tion limitations or position accountability  
14 for speculators, as necessary and appro-  
15 priate, to reduce the potential threat of  
16 market manipulation and excessive specu-  
17 lation in a marketplace in which supply is  
18 fixed by government policy and demand is  
19 set by market prices;

20 “(ii) facilitate netting of members’ po-  
21 sitions across all of the instruments  
22 through the trading facility, in order to  
23 minimize the cost of trading while ensuring  
24 adequate risk management; and

1           “(iii) monitor and enforce any limita-  
2           tions on leverage or position size that  
3           might be imposed by the Commission.

4           “(F) EMERGENCY AUTHORITY.—The trad-  
5           ing facility shall adopt and enforce rules to pro-  
6           vide for the exercise of emergency authority, in  
7           consultation or cooperation with the Commis-  
8           sion, as necessary and appropriate, including  
9           the authority—

10           “(i) to liquidate or transfer open posi-  
11           tions in any contract;

12           “(ii) to suspend or curtail trading in  
13           any regulated instrument; and

14           “(iii) in the case of a regulated deriva-  
15           tive, to require market participants to meet  
16           special margin requirements.

17           “(G) AVAILABILITY OF GENERAL INFOR-  
18           MATION.—The trading facility shall make avail-  
19           able to market authorities, market participants,  
20           and the public information concerning—

21           “(i) the terms, conditions, and speci-  
22           fications of the contracts traded on or  
23           through the trading facility;

1           “(ii) the mechanisms for executing  
2 transactions on or through the trading fa-  
3 cility; and

4           “(iii) the rules and regulations of the  
5 trading facility.

6           “(H) PUBLICATION OF TRADING INFORMA-  
7 TION.—

8           “(i) IN GENERAL.—The trading facil-  
9 ity shall, in real time, to the maximum ex-  
10 tent practicable, provide the public with in-  
11 formation on bids, offers, settlement  
12 prices, volume, open interest, and opening  
13 and closing ranges for all regulated instru-  
14 ments traded on the trading facility.

15           “(ii) CENTRALIZED ENTITY.—The  
16 Commission may by regulation permit  
17 compliance with this subparagraph through  
18 the provision of pricing information de-  
19 scribed in clause (i) to a centralized entity  
20 that will simultaneously post that informa-  
21 tion to the public.

22           “(I) EXECUTION OF TRANSACTIONS.—The  
23 trading facility shall provide a competitive,  
24 open, and efficient market and mechanism for

1           executing transactions on or through the trad-  
2           ing facility.

3           “(J) SECURITY OF TRADE INFORMA-  
4           TION.—The trading facility shall maintain rules  
5           and procedures to provide for the recording and  
6           safe storage of all identifying trade information  
7           in a manner that enables the trading facility to  
8           use the information—

9                     “(i) to assist the prevention of cus-  
10                    tomer and market abuses; and

11                   “(ii) provide evidence of violations of  
12                   the rules of the trading facility.

13           “(K) DISPUTE RESOLUTION.—The trading  
14           facility shall establish and enforce rules regard-  
15           ing and provide facilities for alternative dispute  
16           resolution as appropriate for market partici-  
17           pants and any market intermediaries.

18           “(L) GOVERNANCE FITNESS STAND-  
19           ARDS.—The trading facility shall establish and  
20           enforce appropriate fitness standards for direc-  
21           tors, members of any disciplinary committee,  
22           members of the trading facility, and any other  
23           person with direct access to the trading facility  
24           (including any parties affiliated with any of the  
25           persons described in this subparagraph).

1           “(M) CONFLICTS OF INTEREST.—The  
2 trading facility shall—

3           “(i) establish and enforce rules to  
4 minimize conflicts of interest in the deci-  
5 sionmaking process of the trading facility;  
6 and

7           “(ii) establish a process for resolving  
8 any such conflict of interest.

9           “(N) COMPOSITION OF BOARDS OF MUTU-  
10 ALLY OWNED TRADING FACILITIES.—In the  
11 case of a mutually owned trading facility, the  
12 trading facility shall ensure that the composi-  
13 tion of the governing board reflects market par-  
14 ticipants.

15           “(O) RECORDKEEPING.—The trading facil-  
16 ity shall maintain records of all activities relat-  
17 ing to the business of the trading facility in a  
18 form and manner acceptable to the Commission  
19 for a period of at least 5 years.

20           “(P) ANTITRUST CONSIDERATIONS.—Un-  
21 less necessary or appropriate to achieve the  
22 purposes of this title, the trading facility shall  
23 endeavor to avoid—

1           “(i) adopting any rules or taking any  
2           actions that result in any unreasonable re-  
3           straint of trade; or

4           “(ii) imposing any material anti-  
5           competitive burden on trading on or  
6           through the trading facility.

7           “(Q) TRADING FEES.—The trading facility  
8           shall establish and enforce rules requiring the  
9           payment of fees for the purpose of funding  
10          Commission oversight, as established under sec-  
11          tion 208(h).

12          “(R) CENTRAL LIMIT ORDER BOOK.—The  
13          trading facility shall operate an electronic cen-  
14          tral limit order book as the trading mechanism  
15          for regulated derivatives and regulated alloca-  
16          tions and share sufficient information, in a  
17          timely manner, with the automated quotation  
18          system to allow implementation of section 207.

19          “(S) NATIONAL MARKET SYSTEM.—The  
20          trading facility shall participate, along with the  
21          Commission, in the formation and operation of  
22          a national market system that allows for best  
23          execution in the trading of regulated instru-  
24          ments among registered carbon trading facili-  
25          ties.



1           “(T) SCREENING.—The trading facility  
2 shall establish and enforce rules to screen mem-  
3 bers based on capital, systems, and standards  
4 of compliance, and other such membership  
5 standards as the Commission determines to be  
6 appropriate.

7           “(U) USE OF CLEARING.—The trading fa-  
8 cility shall facilitate the clearing of all trades of  
9 regulated allowances through the Carbon Clear-  
10 ing Organization and the clearing of all trades  
11 of regulated allowance derivatives through a  
12 Derivatives Clearing Organization registered  
13 with the Commission.

14           “(V) ENFORCEMENT.—The trading facility  
15 shall establish and enforce rules that allow the  
16 trading facility to obtain any necessary infor-  
17 mation to perform any of the functions de-  
18 scribed in this paragraph, including the capac-  
19 ity to carry out such international information-  
20 sharing agreements as the Commission may re-  
21 quire.

22           “(b) BROKERS, DEALERS, TRADERS, AND THEIR AS-  
23 SOCIATES.—The Commission shall promulgate regulations  
24 governing—

1           “(1) the eligibility of a person to act in the ca-  
2           capacity of an introducing broker, a dealer, a floor  
3           broker, an electronic market trader, or a floor trader  
4           of regulated instruments in the United States;

5           “(2) the registration of introducing brokers,  
6           dealers, floor brokers, electronic market traders, and  
7           floor traders as registered carbon traders with the  
8           Commission;

9           “(3) the conduct of a person registered pursu-  
10          ant to regulations promulgated under paragraph (2),  
11          and of a partner, officer, employee, or agent of the  
12          registered person, in connection with transactions in-  
13          volving a regulated instrument; and

14          “(4) minimum standards for eligibility of a per-  
15          son to register as a registered carbon trader, includ-  
16          ing the requirements that an applicant for such a  
17          position—

18                 “(A) has never had an applicable license or  
19                 registration revoked in any governmental juris-  
20                 diction;

21                 “(B) has never been convicted of, or pled  
22                 guilty or nolo contendere to, a felony in a do-  
23                 mestic, foreign, or military court;

24                 “(C) has demonstrated such financial re-  
25                 sponsibility, character, and general fitness as to

1           command the confidence of the community and  
2           to warrant a determination that the applicant  
3           will operate honestly, fairly, and efficiently  
4           within the purposes of this title;

5           “(D) has completed the preregistration  
6           education requirement described in paragraph  
7           (5); and

8           “(E) has passed a written test that meets  
9           the test requirement described in paragraph  
10          (6).

11          “(5) PREREGISTRATION EDUCATION OF A CAR-  
12          BON TRADER.—

13           “(A) MINIMUM EDUCATIONAL REQUIRE-  
14           MENTS.—In order to meet the preregistration  
15           education requirement referred to in paragraph  
16           (4)(D), a person shall complete at least 20  
17           hours of education approved in accordance with  
18           subparagraph (B), which shall include at  
19           least—

20           “(i) 6 hours of instruction on applica-  
21           ble Federal law (including regulations);

22           “(ii) 10 hours of instruction in ethics,  
23           which shall include instruction on fraud,  
24           manipulation, excessive speculation, and  
25           consumer protection; and

1                   “(iii) 2 hours of training relating to  
2                   reporting requirements under this title.

3                   “(B)           APPROVED           EDUCATIONAL  
4                   COURSES.—

5                   “(i) IN GENERAL.—For the purpose  
6                   of subparagraph (A), preregistration edu-  
7                   cational courses shall be reviewed and ap-  
8                   proved by the Commission.

9                   “(ii) PROHIBITION.—To maintain the  
10                  independence of the approval process, the  
11                  Commission shall not directly or indirectly  
12                  offer preregistration educational courses  
13                  for loan originators.

14                  “(C) STANDARDS.—In approving courses  
15                  under this paragraph, the Commission shall  
16                  apply reasonable standards in the review and  
17                  approval of courses.

18                  “(6) TESTING OF A CARBON TRADER.—

19                  “(A) IN GENERAL.—In order to meet the  
20                  written test requirement referred to in para-  
21                  graph (4)(E), an individual shall pass, in ac-  
22                  cordance with the standards established under  
23                  this paragraph, a qualified written test devel-  
24                  oped by the Commission and administered by  
25                  an approved test provider.

1           “(B) QUALIFIED TEST.—A written test  
2 shall not be treated as a qualified written test  
3 for purposes of subparagraph (A) unless—

4                   “(i) the test consists of a minimum of  
5 100 questions; and

6                   “(ii) the test adequately measures the  
7 knowledge and comprehension of the indi-  
8 vidual taking the test in appropriate sub-  
9 ject areas, including—

10                           “(I) ethics;

11                           “(II) Federal law (including reg-  
12 ulations) pertaining to trading regu-  
13 lated instruments; and

14                           “(III) Federal law (including reg-  
15 ulations) on fraud, manipulation, ex-  
16 cessive speculation, and reporting.

17           “(C) MINIMUM COMPETENCE.—

18                   “(i) PASSING SCORE.—An individual  
19 shall not be considered to have passed a  
20 qualified written test under this paragraph  
21 unless the individual achieves a test score  
22 of not less than 75 percent correct answers  
23 to questions on the test.

24                   “(ii) INITIAL RETESTS.—An indi-  
25 vidual may retake a test 3 consecutive

1 times, with each consecutive taking occur-  
2 ring not later than 14 days after the pre-  
3 ceding test.

4 “(iii) SUBSEQUENT RETESTS.—After  
5 3 consecutive tests, an individual shall be  
6 required to wait at least 14 days before re-  
7 taking the test.

8 “(iv) RETEST AFTER LAPSE OF REG-  
9 ISTRATION.—A registered carbon trader  
10 who fails to maintain a valid registration  
11 for a period of 5 years or longer shall re-  
12 take the test.

13 “(7) BACKGROUND CHECKS.—An applicant for  
14 registration shall, at a minimum, provide to the  
15 Commission—

16 “(A) fingerprints for submission to the  
17 Federal Bureau of Investigation for a State and  
18 national criminal history background check;

19 “(B) a description of personal history and  
20 experience, including an independent credit re-  
21 port obtained from a consumer reporting agen-  
22 cy described in section 603(p) of the Fair Cred-  
23 it Reporting Act (15 U.S.C. 1681a(p)); and

1           “(C) information relating to any adminis-  
2           trative, civil, or criminal findings by any gov-  
3           ernmental jurisdiction.

4 **“SEC. 206. CARBON CLEARING ORGANIZATION.**

5           “(a) ESTABLISHMENT.—

6           “(1) IN GENERAL.—The Commission shall es-  
7           tablish an entity to be known as the ‘Carbon Clear-  
8           ing Organization’ for the purpose of creating a com-  
9           mon clearing platform for regulated allowances.

10           “(2) APPLICATION BY DERIVATIVES CLEARING  
11           ORGANIZATION.—A derivatives clearing organization  
12           registered with the Commission pursuant to section  
13           5b may apply to the Commission for designation as  
14           the Carbon Clearing Organization by submitting to  
15           the Commission an application that contains such  
16           information and commitments as the Commission  
17           may require.

18           “(b) OPERATION.—

19           “(1) REQUIREMENTS.—

20           “(A) IN GENERAL.—The Carbon Clearing  
21           Organization shall comply with the require-  
22           ments described in this paragraph.

23           “(B) FINANCIAL RESOURCES.—The Car-  
24           bon Clearing Organization shall demonstrate  
25           adequate financial, operational, and managerial

1 resources to discharge the responsibilities of a  
2 clearing organization.

3 “(C) PARTICIPANT AND PRODUCT ELIGI-  
4 BILITY.—The Carbon Clearing Organization  
5 shall establish—

6 “(i) appropriate admission and con-  
7 tinuing eligibility standards (including ap-  
8 propriate minimum financial requirements)  
9 for members of and participants in the  
10 Carbon Clearing Organization; and

11 “(ii) appropriate standards for deter-  
12 mining eligibility of agreements, contracts,  
13 or transactions submitted to the Carbon  
14 Clearing Organization.

15 “(D) RISK MANAGEMENT.—The Carbon  
16 Clearing Organization shall manage the risks  
17 associated with discharging the responsibilities  
18 of a clearing organization through the use of  
19 appropriate tools and procedures.

20 “(E) SETTLEMENT PROCEDURES.—The  
21 Carbon Clearing Organization shall—

22 “(i) complete settlements on a timely  
23 basis under varying circumstances; and

24 “(ii) maintain an adequate record of  
25 the flow of funds associated with each



1 transaction that the Carbon Clearing Or-  
2 ganization clears.

3 “(F) TREATMENT OF FUNDS.—The Car-  
4 bon Clearing Organization shall have standards  
5 and procedures designed to protect and ensure  
6 the safety of member and participant funds.

7 “(G) DEFAULT RULES AND PROCE-  
8 DURES.—The Carbon Clearing Organization  
9 shall have rules and procedures designed to  
10 allow for efficient, fair, and safe management of  
11 events if members or participants become insol-  
12 vent or otherwise default on obligations to the  
13 Carbon Clearing Organization.

14 “(H) RULE ENFORCEMENT.—The Carbon  
15 Clearing Organization shall—

16 “(i) maintain adequate arrangements  
17 and resources for the effective monitoring  
18 and enforcement of compliance with rules  
19 of Carbon Clearing Organization and for  
20 resolution of disputes; and

21 “(ii) have the authority and ability to  
22 discipline, limit, suspend, or terminate the  
23 activities of a member or participant for  
24 violations of rules of the Carbon Clearing  
25 Organization.

1           “(I) SYSTEM SAFEGUARDS.—The Carbon  
2 Clearing Organization shall—

3           “(i) establish and maintain a program  
4 of oversight and risk analysis to ensure  
5 that the automated systems of the Carbon  
6 Clearing Organization function properly  
7 and have adequate capacity and security;  
8 and

9           “(ii) establish and maintain emer-  
10 gency procedures and a plan for disaster  
11 recovery, and will periodically test backup  
12 facilities sufficient to ensure daily proc-  
13 essing, clearing, and settlement of trans-  
14 actions.

15           “(J) PUBLIC INFORMATION.—The Carbon  
16 Clearing Organization shall make information  
17 concerning the rules and operating procedures  
18 governing the clearing and settlement systems  
19 (including default procedures) available to mar-  
20 ket participants.

21           “(K) INFORMATION-SHARING.—The Car-  
22 bon Clearing Organization shall—

23           “(i) enter into and abide by the terms  
24 of all appropriate and applicable domestic

1                   and international information-sharing  
2                   agreements; and

3                   “(ii) use relevant information obtained  
4                   from the agreements in carrying out the  
5                   risk management program of the Carbon  
6                   Clearing Organization.

7   **“SEC. 207. AUTOMATED QUOTATION SYSTEMS.**

8           “(a) IN GENERAL.—The Commission shall facilitate  
9 the widespread dissemination of reliable and accurate last-  
10 sale and quotation information with respect to regulated  
11 instruments, short sales, and private bilateral contracts  
12 the value of which, in whole or in part, is linked to the  
13 price of a regulated instrument by establishing an auto-  
14 mated quotation system that will collect and disseminate  
15 information regarding all regulated instruments.

16           “(b) CHARACTERISTICS OF SYSTEM.—The auto-  
17 mated quotation system shall—

18                   “(1) collect and disseminate quotation and  
19                   transaction information;

20                   “(2) provide bid and ask quotations of partici-  
21                   pating brokers or dealers; and

22                   “(3) provide for the reporting of information on  
23                   bids, offers, settlement prices, volume, open interest,  
24                   and opening and closing ranges for all regulated in-  
25                   strument transactions, including last-sale reporting.

1       “(c) ELECTRONIC LINKAGE.—The carbon allowance  
2 trading facility and all registered carbon derivative trading  
3 facilities shall be linked electronically with the automated  
4 quotation system.

5       “(d) MISSING.—All registered carbon trading facili-  
6 ties shall share sufficient information with the automated  
7 quotation system to allow the implementation of this sec-  
8 tion.

9       **“SEC. 208. ADMINISTRATIVE ENFORCEMENT.**

10       “(a) INVESTIGATIONS.—The Commission may con-  
11 duct such investigations as the Commission determines to  
12 be necessary to carry out this title, in accordance with this  
13 Act.

14       “(b) REVIEW OF ADVERSE ACTION BY REGISTERED  
15 CARBON TRADING FACILITY.—

16               “(1) IN GENERAL.—

17                       “(A) DISCIPLINARY ACTIONS.—The Com-  
18 mission may, in accordance with such standards  
19 and procedures as the Commission determines  
20 to be appropriate, review a decision by a reg-  
21 istered carbon trading facility—

22                               “(i) to suspend, expel, or otherwise  
23 discipline a member of the trading facility;  
24                               or

1                   “(ii) to deny access to the trading fa-  
2                   cility.

3                   “(B) OTHER ACTIONS.—On application of  
4                   any person who is adversely affected by any de-  
5                   cision by a registered carbon trading facility de-  
6                   scribed in subparagraph (A), the Commission  
7                   may—

8                   “(i) review the decision; and

9                   “(ii) issue such order with respect to  
10                  the decision as the Commission determines  
11                  to be appropriate to protect the public in-  
12                  terest.

13                  “(2) SCOPE OF AUTHORITY.—The Commission  
14                  may affirm, modify, set aside, or remand a trading  
15                  facility decision reviewed under paragraph (1), after  
16                  a determination on the record as to whether the de-  
17                  cision was made in accordance with the rules of the  
18                  trading facility.

19                  “(c) COMPLAINTS.—The Commission shall enforce  
20                  this title in accordance with this Act.

21                  “(d) AUTHORITY TO SUSPEND OR REVOKE REG-  
22                  ISTERED CARBON TRADING FACILITY DESIGNATION.—  
23                  The Commission may suspend for a period of not more  
24                  than 180 days, or revoke, the designation of a trading fa-  
25                  cility as a registered carbon trading facility if, after notice

1 and opportunity for a hearing on the record, the Commis-  
2 sion finds that—

3 “(1) the trading facility or the entity, as the  
4 case may be, has not complied with a requirement  
5 of subsection (a)(3) or (c) of section 205, as the case  
6 may be; or

7 “(2) a director, officer, employee, or agent of  
8 the trading facility or entity, as the case may be, has  
9 violated this title or a regulation or order promul-  
10 gated or issued under this title.

11 “(e) INJUNCTIVE RELIEF.—If the Commission finds  
12 that a person has violated this title or a regulation or  
13 order promulgated or issued under this title, the Commis-  
14 sion may seek injunctive relief in accordance with this Act.

15 “(f) TRADING SUSPENSIONS; EMERGENCY AUTHOR-  
16 ITY.—

17 “(1) DEFINITION OF EMERGENCY.—In this  
18 subsection, the term ‘emergency’ means—

19 “(A) a major market disturbance charac-  
20 terized by or constituting—

21 “(i) sudden and excessive fluctuations  
22 of prices of regulated instruments gen-  
23 erally (or a substantial threat of such sud-  
24 den and excessive fluctuations) that threat-  
25 en fair and orderly markets; or

1           “(ii) a substantial disruption of the  
2           safe or efficient operation of the national  
3           system for clearance and settlement of  
4           transactions in regulated instruments (or a  
5           substantial threat of such a disruption); or

6           “(B) a major disturbance that substan-  
7           tially disrupts, or threatens to substantially dis-  
8           rupt—

9           “(i) the functioning of markets in reg-  
10          ulated instruments, or any significant por-  
11          tion or segment of the markets; or

12          “(ii) the transmission or processing of  
13          transactions in regulated instruments.

14          “(2) TRADING SUSPENSIONS.—

15          “(A) IN GENERAL.—Subject to subpara-  
16          graph (B), if the Commission determines that  
17          the public interest so requires, the Commission  
18          may, by order, summarily suspend all trading of  
19          regulated instruments on any trading facility or  
20          otherwise, for a period not exceeding 90 cal-  
21          endar days.

22          “(B) NOTIFICATION OF DECISION.—An  
23          order issued by the Commission under subpara-  
24          graph (A) shall not take effect unless—

1           “(i) the Commission notifies the  
2           President of the decision of the Commis-  
3           sion; and

4           “(ii) the President notifies the Com-  
5           mission that the President does not dis-  
6           approve of the decision.

7           “(3) EMERGENCY ORDERS.—

8           “(A) IN GENERAL.—The Commission, in  
9           an emergency, may by order summarily take  
10          such action to alter, supplement, suspend, or  
11          impose requirements or restrictions with respect  
12          to any matter or action subject to regulation by  
13          the Commission or an entity registered under  
14          this title, as the Commission determines is nec-  
15          essary in the public interest—

16               “(i) to maintain or restore fair and  
17               orderly markets in regulated instruments;  
18               or

19               “(ii) to ensure prompt, accurate, and  
20               safe clearance and settlement of trans-  
21               actions in regulated instruments.

22           “(B) EFFECTIVE PERIOD.—An order of  
23          the Commission under this paragraph—

24               “(i) shall continue in effect for the pe-  
25               riod specified by the Commission;



1           “(ii) may be extended in accordance  
2           with subparagraph (C); and

3           “(iii) except as provided in subpara-  
4           graph (C), may not continue in effect for  
5           more than 10 business days, including ex-  
6           tensions.

7           “(C) EXTENSION.—An order of the Com-  
8           mission under this paragraph may be extended  
9           to continue in effect for more than 10 business  
10          days, but in no event may continue in effect for  
11          more than 30 calendar days, if, at the time of  
12          the extension, the Commission determines  
13          that—

14                 “(i) the emergency situation still ex-  
15                 ists; and

16                 “(ii) the continuation of the order be-  
17                 yond 10 business days is necessary in the  
18                 public interest and for the protection of in-  
19                 vestors to attain an objective described in  
20                 clause (i) or (ii) of subparagraph (A).

21           “(D) EXEMPTION.—In exercising the au-  
22           thority provided by this paragraph, the Com-  
23           mission shall not be required to comply with  
24           section 553 of title 5, United States Code.

1           “(4) TERMINATION OF EMERGENCY ACTIONS  
2 BY PRESIDENT.—The President may direct that ac-  
3 tion taken by the Commission under paragraph (3)  
4 shall not continue in effect.

5           “(5) COMPLIANCE WITH ORDERS.—A member  
6 of a trading facility, introducing broker, dealer, floor  
7 broker, or floor trader shall not effect any trans-  
8 action in, or induce the purchase or sale of, any reg-  
9 ulated instrument in contravention of an order of  
10 the Commission under this subsection, unless the  
11 order—

12           “(A) has been stayed, modified, or set  
13 aside as provided in paragraph (6); or

14           “(B) has ceased to be effective on direction  
15 of the President as provided in paragraph (4).

16           “(6) LIMITATIONS ON REVIEW OF ORDERS.—

17           “(A) IN GENERAL.—An order of the Com-  
18 mission pursuant to this subsection shall be  
19 subject to review by the United States Court of  
20 Appeals for the District of Columbia Circuit.

21           “(B) BASIS.—A review of an order under  
22 subparagraph (A) shall be based on an exam-  
23 ination of all the information before the Com-  
24 mission at the time the order was issued.

1           “(C) STANDARD FOR FINDINGS.—The re-  
2           viewing court shall not enter a stay, writ of  
3           mandamus, or similar relief unless the court  
4           finds, after notice and hearing before a panel of  
5           the court, that the action of the Commission is  
6           arbitrary, capricious, an abuse of discretion, or  
7           otherwise not in accordance with law.

8           “(g) OTHER AUTHORITY TO ISSUE ORDERS.—The  
9           Commission may issue such other orders as are necessary  
10          to ensure compliance with this title (including regulations  
11          promulgated under this title).

12          “(h) TRADING FEES TO SUPPORT COMMISSION AC-  
13          TIVITIES.—

14                 “(1) IN GENERAL.—To support oversight by  
15                 the Commission of markets under this title, each  
16                 registered trading facility shall charge a trading fee,  
17                 per transaction, to be established by the Commission  
18                 at a level not to exceed  $\frac{1}{2}$  of 1 percent of the value  
19                 of the contract being executed.

20                 “(2) REMITTANCE OF FEES.—Each registered  
21                 trading facility shall submit fees charged under this  
22                 subsection to the Commission on such schedule as  
23                 the Commission shall designate.

1 **“SEC. 209. CIVIL JUDICIAL ENFORCEMENT.**

2       “(a) IN GENERAL.—If it appears to the Commission  
3 that a person has engaged, is engaging, or is about to en-  
4 gage in any act or practice constituting a violation of this  
5 title (including a regulation promulgated or order issued  
6 under this title), the Commission may bring a civil action  
7 in the appropriate United States district court or United  
8 States court of any territory or other place subject to the  
9 jurisdiction of the United States—

10               “(1) to enjoin the act or practice; or

11               “(2) to enforce compliance with this title (or a  
12 regulation or order promulgated or issued under this  
13 title).

14       “(b) FORMS OF RELIEF.—

15               “(1) INJUNCTIVE RELIEF; RESTRAINING  
16 ORDER.—On a proper showing, a court described in  
17 subsection (a) shall grant a permanent or temporary  
18 injunction or issue a restraining order, without bond.

19               “(2) CIVIL MONEY PENALTY.—

20               “(A) IN GENERAL.—The Commission may  
21 seek and the court, on a proper showing, shall  
22 have jurisdiction to impose on any person found  
23 in the civil action brought under this section to  
24 have committed a violation, a civil penalty in an  
25 amount that is not more than the greater of—

26                       “(i) \$100,000; or

1                   “(ii) triple the monetary gain to the  
2                   person for the violation.

3                   “(B) ENFORCEMENT OF PENALTY BY THE  
4                   ATTORNEY GENERAL.—If a person on whom  
5                   such a penalty is imposed fails to pay the pen-  
6                   alty within the time prescribed in the order of  
7                   the court, the Commission may refer the matter  
8                   to the Attorney General, who shall recover the  
9                   penalty by action in the appropriate United  
10                  States district court.

11 **“SEC. 210. CRIMINAL ENFORCEMENT.**

12                  “(a) VIOLATIONS GENERALLY.—A person that know-  
13                  ingly violates section 204 (or any regulation promulgated  
14                  under section 204), or willfully violates any other provision  
15                  of this title (or a regulation promulgated under this title)  
16                  the violation of which is made unlawful or the observance  
17                  of which is required by or under this title, shall—

18                         “(1) be fined not more than \$1,000,000 (or not  
19                         more than \$500,000, if the violator is an individual),  
20                         imprisoned not more than 5 years, or both; and

21                         “(2) shall pay the costs of prosecution.

22                  “(b) FAILURE TO COMPLY WITH CEASE AND DESIST  
23                  ORDER.—

24                         “(1) IN GENERAL.—If, after the period allowed  
25                         for appeal of an order issued under section 206(e)

1 or after the affirmance of such an order, a person  
2 subject to the order fails or refuses to comply with  
3 the order, the person shall be—

4 “(A) fined not more than the greater of  
5 \$100,000 or triple the monetary gain to the  
6 person, imprisoned not less than 180 days nor  
7 more than 1 year, or both; or

8 “(B) if the failure or refusal to comply in-  
9 volves a violation referred to in subsection (a),  
10 subject to the penalties provided in that sub-  
11 section for the violation.

12 “(2) SPECIAL RULE.—Each day during which a  
13 failure or refusal to comply with such an order con-  
14 tinues shall be considered to be a separate offense  
15 for purposes of paragraph (1).

16 **“SEC. 211. MARKET REPORTS.**

17 “(a) COLLECTION AND ANALYSIS OF INFORMA-  
18 TION.—The Commission shall, on a continuous basis, col-  
19 lect and analyze the following information on the func-  
20 tioning of the markets for regulated instruments estab-  
21 lished under this title:

22 “(1) The status of, and trends in, the markets,  
23 including prices, trading volumes, transaction types,  
24 and trading channels and mechanisms.

1           “(2) Spikes, collapses, and volatility in prices of  
2 regulated instruments, and the causes of the spikes,  
3 collapses, and volatility.

4           “(3) The relationship between the market for  
5 emission allowances, offset credits, and allowance de-  
6 rivatives, and the spot and futures markets for en-  
7 ergy commodities, including electricity.

8           “(4) Evidence of fraud or manipulation in any  
9 such market, the effects on any such market of any  
10 such fraud or manipulation (or threat of fraud or  
11 manipulation) that the Commission has identified,  
12 and the effectiveness of corrective measures under-  
13 taken by the Commission to address the fraud or  
14 manipulation, or threat.

15           “(5) The economic effects of the markets, in-  
16 cluding to the macro- and micro-economic effects of  
17 unexpected significant increases and decreases in the  
18 price of regulated instruments.

19           “(6) Any changes in the roles, activities, or  
20 strategies of various market participants.

21           “(7) Regional, industrial, and consumer re-  
22 sponses to the market, and energy investment re-  
23 sponses to the markets.

24           “(8) Any other issue relating to the markets  
25 that the Commission determines to be appropriate.

1       “(b) QUARTERLY REPORTS TO CONGRESS.—Not  
2 later than 30 days after the end of each calendar quarter,  
3 the Commission shall submit to the President, the Com-  
4 mittee on Energy and Commerce of the House of Rep-  
5 resentatives, the Committee on Energy and Natural Re-  
6 sources of the Senate, and the Committee on Environment  
7 and Public Works of the Senate, and make available to  
8 the public, a report on the matters described in subsection  
9 (a) with respect to the quarter, including recommenda-  
10 tions for any administrative or statutory measures the  
11 Commission considers necessary to address any threats to  
12 the transparency, fairness, or integrity of the markets in  
13 regulated instruments.

14 **“SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

15       “In addition to any fees collected by the Commission  
16 under this Act, there are authorized to be appropriated  
17 such sums as are necessary to carry out this title.”.

18       (b) CONFORMING AMENDMENT.—The Commodity  
19 Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting  
20 after section 1a (7 U.S.C. 1a) the following:

21       **“TITLE I—REGULATION OF**  
22       **COMMODITY EXCHANGES”.**

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