

111TH CONGRESS
1ST SESSION

S. 1412

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

IN THE SENATE OF THE UNITED STATES

JULY 8, 2009

Ms. COLLINS introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commodity Specula-
5 tion Reform Act of 2009”.

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

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

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

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

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

1 **SEC. 3. TREATMENT OF PURCHASES OF CERTAIN COM-**
 2 **MODITY FUTURES CONTRACTS AND FINAN-**
 3 **CIAL INSTRUMENTS.**

4 Section 4a of the Commodity Exchange Act (7 U.S.C.
 5 6a) is amended—

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

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

9 “(a) BURDEN ON INTERSTATE COMMERCE; TRADING
 10 OR POSITION LIMITS.—

11 “(1) IN GENERAL.—Excessive speculation and”;
 12 and

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

15 “(2) TREATMENT OF PURCHASES OF CERTAIN
 16 COMMODITY FUTURES CONTRACTS AND FINANCIAL
 17 INSTRUMENTS.—

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

19 “(i) BONA FIDE HEDGING TRANS-
 20 ACTION.—

21 “(I) IN GENERAL.—The term
 22 ‘bona fide hedging transaction’ means
 23 a transaction that—

24 “(aa) represents a substitute
 25 for a transaction to be made or a
 26 position to be taken at a later

1 time in a physical marketing
2 channel;

3 “(bb) is economically appro-
4 priate for the reduction of risks
5 in the conduct and management
6 of a commercial enterprise; and

7 “(cc) arises from the poten-
8 tial change in the value of—

9 “(AA) assets that a
10 person owns, produces, man-
11 ufactures, possesses, or mer-
12 chandises (or anticipates
13 owning, producing, manufac-
14 turing, possessing, or mer-
15 chandising);

16 “(BB) liabilities that a
17 person incurs or anticipates
18 incurring; or

19 “(CC) services that a
20 person provides or purchases
21 (or anticipates providing or
22 purchasing).

23 “(II) EXCLUSION.—The term
24 ‘bona fide hedging transaction’ does
25 not include a transaction entered into

1 on a designated contract market for
2 the purpose of offsetting a financial
3 risk arising from an over-the-counter
4 commodity derivative.

5 “(ii) OVER-THE-COUNTER COMMODITY
6 DERIVATIVE.—The term ‘over-the-counter
7 commodity derivative’ means any agree-
8 ment, contract, or transaction that—

9 “(I)(aa) is traded or executed in
10 the United States; or

11 “(bb) is held by a person located
12 in the United States;

13 “(II) is not traded on a des-
14 ignated contract market or derivatives
15 transaction execution facility; and

16 “(III)(aa) is a put, call, cap,
17 floor, collar, or similar option of any
18 kind for the purchase or sale of, or
19 substantially based on the value of, 1
20 or more qualifying commodities or an
21 economic or financial index or meas-
22 ure of economic or financial risk pri-
23 marily associated with 1 or more
24 qualifying commodities;

“(bb) provides on an executory basis for the applicable transaction, on a fixed or contingent basis, of 1 or more payments substantially based on the value of 1 or more qualifying commodities or an economic or financial index or measure of economic or financial risk primarily associated with 1 or more qualifying commodities, and that transfers between the parties to the transaction, in whole or in part, the economic or financial risk associated with a future change in any such value without also conveying a current or future direct or indirect ownership interest in an asset or liability that incorporates the financial risk that is transferred; or

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

“(iii) OVER-THE-COUNTER COMMODITY DERIVATIVE DEALER.—The term ‘over-the-counter commodity derivative

dealer’ means a person that regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in over-the-counter commodity derivatives with customers in the ordinary course of a trade or business of the person.

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

“(I) an agricultural commodity;

and

“(II) an energy commodity.

“(B) REGULATIONS.—

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

“(I) speculative position limits for qualifying commodities;

“(II) a methodology—

“(aa) to enable persons to aggregate the positions held or controlled by the persons on designated contract markets, on derivatives transaction execution fa-

ilities, and in over-the-counter
commodity derivatives; and

“(bb) to ensure, to the maximum extent practicable, that the determinations made by the Commission with respect to each person examined under subparagraph (C) accurately reflect the net long and net short positions held or controlled by the person in the underlying qualifying commodity; and

“(III) information reporting rules to facilitate the monitoring and enforcement by the Commission of the speculative position limits established under subclause (I), including the monitoring of positions held in over-the-counter commodity derivatives.

“(ii) APPLICABILITY.—

“(I) POSITION LIMITS.—The speculative position limits established under clause (i)(I) shall apply to position limits that, with respect to each

1 applicable position limit, expire dur-
 2 ing—

3 “(aa) the spot month;

4 “(bb) each separate futures
 5 trading month (other than the
 6 spot month); or

7 “(cc) the sum of each trad-
 8 ing month (including the spot
 9 month).

10 “(II) SUM OF POSITIONS.—The
 11 speculative position limits established
 12 under clause (i)(I) shall apply to the
 13 sum of the positions held by a per-
 14 son—

15 “(aa) on designated contract
 16 markets;

17 “(bb) on derivatives trans-
 18 action execution facilities; and

19 “(cc) in over-the-counter
 20 commodity derivatives.

21 “(iii) MAXIMUM LEVEL OF POSITION
 22 LIMITS.—In establishing the speculative
 23 position limits under clause (i)(I), the
 24 Commission shall set the speculative posi-
 25 tion limits at the minimum level prac-

1 ticable to ensure sufficient market liquidity
 2 for the conduct of bona fide hedging activi-
 3 ties.

4 “(C) PROHIBITION RELATING TO CERTAIN
 5 POSITIONS.—

6 “(i) IN GENERAL.—Notwithstanding
 7 any other provision of this Act, no person
 8 may hold or control a position, separately
 9 or in combination, net long or net short,
 10 for the purchase or sale of a commodity for
 11 future delivery or, on a futures-equivalent
 12 basis, any option, or an over-the-counter
 13 commodity derivative that exceeds a specu-
 14 lative position limit established by the
 15 Commission under subparagraph (B)(i)(I).

16 “(ii) BONA FIDE HEDGING TRANS-
 17 ACTIONS.—In determining whether the
 18 sum of a position held or controlled by a
 19 person has exceeded the applicable specula-
 20 tive position limit established by the Com-
 21 mission under subparagraph (B)(i)(I), the
 22 Commission shall not consider positions at-
 23 tributable to a bona fide hedging trans-
 24 action.

1 “(iii) DETERMINATION OF POSITION
2 LIMITS FOR OVER-THE-COUNTER COM-
3 MODITY DERIVATIVE DEALERS.—To deter-
4 mine the position of an over-the-counter
5 commodity derivative dealer, the sum of
6 the positions held or controlled by the over-
7 the-counter commodity derivative dealer
8 shall be—

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

11 “(II) considered, for the monthly
12 period covered by the determination,
13 to be the average daily net position
14 held or controlled by the over-the-
15 counter commodity derivative dealer
16 for the period beginning on the first
17 day of the month and ending on the
18 last day of the month.”.

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