

111TH CONGRESS
1ST SESSION

S. 447

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy and agricultural commodities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2009

Mr. LEVIN 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 prevent excessive price speculation with respect to energy and agricultural commodities, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Prevent Excessive Speculation Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definition of energy and agricultural commodity.

Sec. 3. Speculative limits and transparency of off-shore trading.

Sec. 4. Authority of Commodity Futures Trading Commission with respect to certain traders.

- Sec. 5. Working group of international regulators.
- Sec. 6. Position limits for energy and agricultural commodities.
- Sec. 7. Over-the-counter transactions.
- Sec. 8. Index traders and swap dealers.
- Sec. 9. Disaggregation of index funds and other data in energy and agricultural markets.
- Sec. 10. Additional Commodity Futures Trading Commission employees for improved enforcement.

1 **SEC. 2. DEFINITIONS OF ENERGY AND AGRICULTURAL**
 2 **COMMODITY.**

3 (a) DEFINITION OF ENERGY COMMODITY.—Section
 4 1a of the Commodity Exchange Act (7 U.S.C. 1a) is
 5 amended—

6 (1) by redesignating paragraphs (13) through
 7 (34) as paragraphs (14) through (35), respectively;
 8 and

9 (2) by inserting after paragraph (12) the fol-
 10 lowing:

11 “(13) ENERGY COMMODITY.—The term ‘energy
 12 commodity’ means—

13 “(A) crude oil;

14 “(B) natural gas;

15 “(C) coal;

16 “(D) gasoline, heating oil, diesel fuel, and any
 17 other source of energy derived from coal, crude oil,
 18 or natural gas;

19 “(E) electricity;

20 “(F) ethanol and any other fuel derived from a
 21 renewable biomass;

1 “(G) any commodity that results from the man-
 2 agement of air emissions, including but not limited
 3 to greenhouse gases, sulfur dioxide, and nitrogen ox-
 4 ides; and

5 “(H) any other substance that is used as a
 6 source of energy, as the Commission, in its discre-
 7 tion, deems appropriate.”.

8 (b) DEFINITION OF AGRICULTURAL COMMODITY.—
 9 Section 1a of the Commodity Exchange Act (7 U.S.C. 1a)
 10 is amended—

11 (1) by redesignating paragraphs (1) through
 12 (35) as paragraphs (2) through (36), respectively;
 13 and

14 (2) by inserting a new paragraph (1) as follows:

15 “(1) AGRICULTURAL COMMODITY.—The term
 16 ‘agricultural commodity’ means any commodity spe-
 17 cifically described in paragraph (5).”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 2(c)(2)(B)(i)(II)(cc) of the Com-
 20 modity Exchange Act (7 U.S.C.
 21 2(c)(2)(B)(i)(II)(cc)) is amended—

22 (A) in subitem (AA), by striking “section
 23 1a(20)” and inserting “section 1a(21)”; and

24 (B) in subitem (BB), by striking “section
 25 1a(20)” and inserting “section 1a(21)”.

1 (2) Section 13106(b)(1) of the Food, Conserva-
 2 tion, and Energy Act of 2008 is amended by striking
 3 “section 1a(32)” and inserting “section 1a”.

4 (3) Section 402 of the Legal Certainty for
 5 Bank Products Act of 2000 (7 U.S.C. 27) is amend-
 6 ed—

7 (A) in subsection (a)(7), by striking “sec-
 8 tion 1a(20)” and inserting “section 1a”; and

9 (B) in subsection (d)—

10 (i) in paragraph (1)(B), by striking
 11 “section 1a(33)” and inserting “section
 12 1a”; and

13 (ii) in paragraph (2)(D), by striking
 14 “section 1a(13)” and inserting “section
 15 1a”.

16 **SEC. 3. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF-**
 17 **SHORE TRADING.**

18 Section 4 of the Commodity Exchange Act (7 U.S.C.
 19 6) is amended by adding at the end the following:

20 “(e) FOREIGN BOARDS OF TRADE.—

21 “(1) IN GENERAL.—The Commission may not
 22 permit a foreign board of trade to provide to the
 23 members of the foreign board of trade or other par-
 24 ticipants located in the United States, or otherwise
 25 subject to the jurisdiction of the Commission, direct

1 access to the electronic trading and order matching
2 system of the foreign board of trade with respect to
3 an agreement, contract, or transaction in an energy
4 commodity that settles against any price (including
5 the daily or final settlement price) of one or more
6 contracts listed for trading on a registered entity,
7 unless—

8 “(A) the foreign board of trade—

9 “(i) makes public daily trading infor-
10 mation regarding the agreement, contract,
11 or transaction that is comparable to the
12 daily trading information published by the
13 registered entity for the one or more con-
14 tracts against which the agreement, con-
15 tract or transaction traded on the foreign
16 board of trade settles; and

17 “(ii) promptly notifies the Commission
18 of any change regarding—

19 “(I) the information that the for-
20 eign board of trade will make publicly
21 available;

22 “(II) the position limits and posi-
23 tion accountability provisions that the
24 foreign board of trade will adopt and
25 enforce;

1 “(III) the position reductions re-
 2 quired to prevent manipulation; and

3 “(IV) any other area of interest
 4 expressed by the Commission to the
 5 foreign board of trade; and

6 “(B) the foreign board of trade (or the for-
 7 eign futures authority that oversees the foreign
 8 board of trade)—

9 “(i) adopts position limits or position
 10 accountability provisions for the agree-
 11 ment, contract, or transaction that are
 12 comparable to the position limits or posi-
 13 tion accountability provisions adopted by
 14 the registered entity for the one or more
 15 contracts against which the agreement,
 16 contract or transaction traded on foreign
 17 board of trade settles;

18 “(ii) has the authority to require or
 19 direct market participants to limit, reduce,
 20 or liquidate any position the foreign board
 21 of trade (or the foreign futures authority
 22 that oversees the foreign board of trade)
 23 determines to be necessary to prevent or
 24 reduce the threat of price manipulation,
 25 excessive speculation, price distortion, or

1 disruption of delivery or the cash settle-
2 ment process; and

3 “(iii) provides information to the
4 Commission that is comparable to the in-
5 formation that the Commission determines
6 to be necessary to publish the commit-
7 ments of traders report of the Commission
8 for the one or more contracts against
9 which the agreement, contract or trans-
10 action traded on the foreign board of trade
11 settles.

12 “(2) EXISTING FOREIGN BOARDS OF TRADE.—

13 Paragraph (1) shall not be effective with respect to
14 any agreement, contract, or transaction in an energy
15 commodity executed on a foreign board of trade to
16 which the Commission had granted direct access
17 permission prior to the date of enactment of this
18 subsection until the date that is 180 days after the
19 date of enactment of this subsection.

20 “(3) EXISTING CONTRACTS.—No contract of

21 sale of a commodity for future delivery traded or ex-
22 ecuted on or through the facilities of a board of
23 trade, exchange or market located outside the
24 United States for purposes of subsection (a) shall be
25 void, voidable or unenforceable and no party to such

1 contract shall be entitled to rescind or recover any
 2 payments made with respect to such contract based
 3 upon the failure of the foreign board of trade to
 4 comply with any provision of this Act.”.

5 **SEC. 4. AUTHORITY OF COMMODITY FUTURES TRADING**

6 **COMMISSION WITH RESPECT TO CERTAIN**
 7 **TRADERS.**

8 (a) IN GENERAL.—

9 (1) RESTRICTION OF FUTURES TRADING TO
 10 CONTRACT MARKETS OR DERIVATIVES TRANSACTION
 11 EXECUTION FACILITIES.—Section 4(b) of the Com-
 12 modity Exchange Act (7 U.S.C. 6(b)) is amended by
 13 inserting after the first sentence the following: “The
 14 Commission may adopt rules and regulations requir-
 15 ing the maintenance of books and records by any
 16 person that is located within the United States (in-
 17 cluding the territories and possessions of the United
 18 States) or that enters trades directly into the trade
 19 matching system of a foreign board of trade from
 20 the United States (including the territories and pos-
 21 sessions of the United States).”

22 (2) COMMISSION AUTHORITY OVER TRADERS.—
 23 Section 4 of the Commodity Exchange Act (7 U.S.C.
 24 6) is amended by adding at the end the following:

1 “(e) The Commission shall have authority under this
 2 Act to require or direct a person located in the United
 3 States, or otherwise subject to the jurisdiction of the Com-
 4 mission, to limit, reduce, or liquidate any position on a
 5 foreign board of trade to prevent or reduce the threat of
 6 price manipulation, excessive speculation, price distortion,
 7 or disruption of delivery or the cash settlement process
 8 with respect to any contract listed for trading on a reg-
 9 istered entity.

10 “(f) CONSULTATION.—Before taking any action
 11 under subsection (e), the Commission shall consult with
 12 the appropriate—

13 “(1) foreign board of trade; and

14 “(2) foreign futures authority.”.

15 (3) VIOLATIONS.—Section 9(a) of the Com-
 16modity Exchange Act (7 U.S.C. 13(a)) is amended
 17by inserting “(including any person trading on a for-
 18eign board of trade)” after “Any person” each place
 19it appears.

20 (4) EFFECT.—No amendment made by this
 21subsection limits any of the otherwise applicable au-
 22thorities of the Commodity Futures Trading Com-
 23mission.

1 **SEC. 5. WORKING GROUP OF INTERNATIONAL REGU-**
 2 **LATORS.**

3 Section 4a of the Commodity Exchange Act (7 U.S.C.
 4 6a) (as amended by section 4(a)(2)(B)) is amended by
 5 adding at the end the following:

6 “(g) WORKING GROUP OF INTERNATIONAL REGU-
 7 LATORS.—Not later than 90 days after the date of enact-
 8 ment of this subsection, the Commission shall invite regu-
 9 lators of foreign boards of trade to participate in a work-
 10 ing group of international regulators to develop uniform
 11 international reporting and regulatory standards to ensure
 12 the protection of the energy and agricultural futures mar-
 13 kets from excessive speculation, manipulation, and other
 14 trading practices that may pose systemic risks to energy
 15 and agricultural futures markets, countries, and con-
 16 sumers.”.

17 **SEC. 6. POSITION LIMITS FOR ENERGY AND AGRICUL-**
 18 **TURAL COMMODITIES.**

19 Section 4a of the Commodity Exchange Act (7 U.S.C.
 20 6a) is amended—

21 (1) in subsection (a)—

22 (A) by inserting “(1)” after “(a)”; and

23 (B) by adding after and below the end the
 24 following:

25 “(2) In accordance with the standards set forth
 26 in paragraph (1) of this subsection and consistent

1 with the good faith exception cited in subsection
2 (b)(2), with respect to energy and agricultural com-
3 modities, the Commission, within 90 days after the
4 date of the enactment of this paragraph, shall issue
5 a proposed rule, and within 180 days after issuance
6 of such proposed rule shall adopt a final rule, after
7 notice and an opportunity for public comment, to es-
8 tablish limits on the amount of positions that may
9 be held by any person with respect to contracts of
10 sale for future delivery or with respect to options on
11 such contracts or commodities traded on or subject
12 to the rules of a contract market or derivatives
13 transaction execution facility, or on an electronic
14 trading facility with respect to a significant price
15 discovery contract.

16 “(3) In establishing the limits required in para-
17 graph (2), the Commission shall set limits—

18 “(A) on the number of positions that may
19 be held by any person for the spot month, each
20 other month, and the aggregate number of posi-
21 tions that may be held by any person for all
22 months; and

23 “(B) to the maximum extent practicable,
24 in its discretion—

1 “(i) to diminish, eliminate, or prevent
2 excessive speculation;

3 “(ii) to deter and prevent market ma-
4 nipulation, squeezes, and corners;

5 “(iii) to ensure sufficient market li-
6 quidity; and

7 “(iv) to ensure that the price dis-
8 covery function of the underlying cash
9 market is not distorted or disrupted.

10 “(4) In addition to the position limits for en-
11 ergy and agricultural commodities that the Commis-
12 sion establishes under paragraph (2), the Commis-
13 sion may require or permit a contract market, de-
14 rivatives transaction execution facility, or electronic
15 trading facility with respect to a significant price
16 discovery contract, to establish and enforce position
17 accountability, as the Commission determines may
18 be necessary and appropriate to accomplish the ob-
19 jectives set forth in paragraph (3)(B), provided that
20 the number of positions that may be authorized
21 under position accountability may not exceed the po-
22 sition limits established under paragraph (2).

23 “(5) Nothing in this section shall require the
24 Commission to revise any position limit for an agri-

1 cultural commodity that is in effect on the date of
 2 enactment of this Act.”.

3 **SEC. 7. OVER-THE-COUNTER TRANSACTIONS.**

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

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

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) COVERED PERSON.—The term ‘cov-
 9 ered person’ means a person that enters into an
 10 over-the-counter transaction that is required to
 11 be reported under paragraph (3)(C).

12 “(B) OVER-THE-COUNTER TRANS-
 13 ACTION.—The term ‘over-the-counter trans-
 14 action’ means a contract, agreement, or trans-
 15 action in an energy or agricultural commodity
 16 that is—

17 “(i) entered into only between persons
 18 that are eligible contract participants at
 19 the time the persons enter into the agree-
 20 ment, contract, or transaction;

21 “(ii) not entered into on a trading fa-
 22 cility; and

23 “(iii) not a sale of any cash com-
 24 modity for delivery.

1 “(2) AUTHORITY IN MAJOR MARKET DISTURB-
2 ANCES.—

3 “(A) IN GENERAL.—In the case of a major
4 market disturbance, as determined by the Com-
5 mission, the Commission may require any trad-
6 er subject to the reporting requirements de-
7 scribed in paragraph (3) to take such action as
8 the Commission considers to be necessary to
9 maintain or restore orderly trading in any con-
10 tract listed for trading on a registered entity,
11 including—

12 “(i) the liquidation of any futures con-
13 tract; and

14 “(ii) the fixing of any limit that may
15 apply to a market position involving any
16 over-the-counter transaction acquired in
17 good faith before the date of the deter-
18 mination of the Commission.

19 “(B) MAJOR MARKET DISTURBANCE.—The
20 term ‘major market disturbance’ means any
21 disturbance in a commodity market that dis-
22 rupts the liquidity and price discovery function
23 of that market from accurately reflecting the
24 forces of supply and demand for a commodity,
25 including—

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

3 “(ii) excessive speculation; and

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

7 “(C) The term ‘market disturbance’ shall
8 be interpreted in a manner consistent with sec-
9 tion 8a(9).

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

14 “(3) REPORTING; RECORDKEEPING.—

15 “(A) IN GENERAL.—The Commission shall
16 require each covered person to submit to the
17 Commission a report—

18 “(i) at such time and in such manner
19 as the Commission determines to be appro-
20 priate; and

21 “(ii) containing the information re-
22 quired under subparagraph (B) to assist
23 the Commission in detecting and pre-
24 venting potential price manipulation of, or

excessive speculation in, any contract listed
for trading on a registered entity.

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

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

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

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

“(ii) any other information relating to
over-the-counter transactions required to
be reported under subparagraph (C) car-
ried out by the covered person that the
Commission determines to be necessary to
accomplish the purposes described in sub-
paragraph (A).

“(C) OVER-THE-COUNTER TRANSACTIONS
TO BE REPORTED.—

“(i) IN GENERAL.—The Commission
shall identify each large over-the-counter

1 transaction or class of large over-the-
 2 counter transactions the reporting of which
 3 the Commission determines to be appro-
 4 priate to assist the Commission in detect-
 5 ing and preventing potential price manipu-
 6 lation of, or excessive speculation in, any
 7 contract listed for trading on a registered
 8 entity.

9 “(ii) MANDATORY FACTORS FOR DE-
 10 TERMINATIONS.—

11 “(I) IN GENERAL.—In carrying
 12 out a determination under clause (i),
 13 the Commission shall consider the ex-
 14 tent to which each factor described in
 15 subclause (II) applies.

16 “(II) FACTORS.—The factors re-
 17 quired for carrying out a determina-
 18 tion under clause (i) include wheth-
 19 er—

20 “(aa) a standardized agree-
 21 ment is used to execute the over-
 22 the-counter transaction;

23 “(bb) the over-the-counter
 24 transaction settles against any
 25 price (including the daily or final

1 settlement price) of one or more
2 contracts listed for trading on a
3 registered entity;

4 “(cc) the price of the over-
5 the-counter transaction is re-
6 ported to a third party, pub-
7 lished, or otherwise disseminated;

8 “(dd) the price of the over-
9 the-counter transaction is ref-
10 erenced in any other transaction;

11 “(ee) there is a significant
12 volume of the over-the-counter
13 transaction or class of over-the-
14 counter transactions; and

15 “(ff) there is any other fac-
16 tor that the Commission deter-
17 mines to be appropriate.

18 “(iii) PERIODIC REVIEW.—The Com-
19 mission shall periodically conduct a review,
20 but not less than once every 2 years, to de-
21 termine whether to initiate a rulemaking to
22 include any additional transactions or
23 classes of transactions or to exclude any
24 transactions or classes of transactions from

1 the reporting requirements of this para-
2 graph.

3 “(D) ALTERNATE REPORTING.—The Com-
4 mission may permit any report required to be
5 reported under paragraph (A) by—

6 “(i) a member of a derivatives clear-
7 ing organization; or

8 “(ii) only one of the persons entering
9 into the transaction, provided that each
10 person entering into the transaction or
11 transactions has notified the Commission,
12 in the manner specified by the Commis-
13 sion, that one of the persons to the trans-
14 action or transactions has assumed, on be-
15 half of the other person to the transaction,
16 the legal obligations for such other person
17 to submit reports under this section, in-
18 cluding liabilities for failure to file such re-
19 ports in accordance with the Commission’s
20 regulations. Any notification provided
21 under this paragraph shall be effective in
22 imposing such legal obligations and liabil-
23 ities upon such person.

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

1 “(i) in accordance with section 4i, to
 2 maintain such records as directed by the
 3 Commission for a period of 5 years, or
 4 longer, if directed by the Commission; and

5 “(ii) to provide such records upon re-
 6 quest to the Commission or the Depart-
 7 ment of Justice.

8 “(4) POSITION LIMITS FOR OVER-THE-COUNTER
 9 TRANSACTIONS.—Upon review of the information re-
 10 ported to the Commission under paragraph (3), or
 11 following a major market disturbance as determined
 12 by the Commission under paragraph (2), the Com-
 13 mission may establish, after due notice and oppor-
 14 tunity for hearing, by rule, regulation, or order, such
 15 limits on the amount of trading in over-the-counter
 16 transactions as the Commission determines are nec-
 17 essary and appropriate to accomplish one or more of
 18 the following objectives with respect to any contract
 19 listed for trading on a registered entity—

20 “(A) diminish, eliminate, or prevent exces-
 21 sive speculation;

22 “(B) deter and prevent market manipula-
 23 tion, squeezes, and corners;

24 “(C) ensure sufficient market liquidity;
 25 and

1 “(D) ensure that the price discovery func-
 2 tion of the underlying cash market is not dis-
 3 torted or disrupted.

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

7 “(A) require the publication of any propri-
 8 etary information;

9 “(B) prohibit the commercial sale or li-
 10 censing of any proprietary information; and

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

16 “(6) APPLICABILITY.—Notwithstanding sub-
 17 sections (g) and (h), and any exemption issued by
 18 the Commission for any energy or agricultural com-
 19 modity, each over-the-counter transaction shall be
 20 subject to this subsection.

21 “(7) SAVINGS CLAUSE.—Nothing in this sub-
 22 section modifies or alters—

23 “(A) the guidance of the Commission; or

24 “(B) any applicable requirements with re-
 25 spect the disclosure of proprietary information.

1 “(8) BONA FIDE HEDGING TRANSACTION RE-
2 VIEW.—

3 “(A) IN GENERAL.—The Commission shall
4 review and revise the definition of bona fide
5 hedging transaction in subsection (c) of Section
6 4a of the Commodity Exchange Act (7 U.S.C
7 2(h)(2)(A)) as the Commission determines is
8 necessary and appropriate to ensure that the
9 commodity markets effectively perform their
10 risk management and price discovery func-
11 tions.”.

12 **SEC. 8. INDEX TRADERS AND SWAP DEALERS.**

13 Section 4 of the Commodity Exchange Act (7 U.S.C.
14 6) (as amended by section 3) is amended by adding at
15 the end the following:

16 “(f) INDEX TRADERS AND SWAP DEALERS.—Not
17 later than 60 days after the date of enactment of this sub-
18 section, the Commission shall—

19 “(1) routinely require detailed reporting from
20 index traders and swap dealers in markets under the
21 jurisdiction of the Commission;

22 “(2) reclassify the types of traders for regu-
23 latory and reporting purposes to distinguish between
24 index traders and swaps dealers; and

1 “(3) review the trading practices for index trad-
 2 ers in markets under the jurisdiction of the Commis-
 3 sion—

4 “(A) to ensure that index trading is not
 5 adversely impacting the price discovery process;
 6 and

7 “(B) to determine whether different prac-
 8 tices or regulations should be implemented.”.

9 **SEC. 9. DISAGGREGATION OF INDEX FUNDS AND OTHER**
 10 **DATA IN ENERGY AND AGRICULTURAL MAR-**
 11 **KETS.**

12 Section 4 of the Commodity Exchange Act (7 U.S.C.
 13 6) (as amended by section 8) is amended by adding at
 14 the end the following:

15 “(g) DISAGGREGATION OF INDEX FUNDS AND
 16 OTHER DATA IN ENERGY AND AGRICULTURAL MAR-
 17 KETS.—The Commission shall disaggregate and make
 18 public monthly—

19 “(1) the number of positions and total value of
 20 index funds and other passive, long-only positions in
 21 energy and agricultural markets; and

22 “(2) data on speculative positions relative to
 23 bona fide physical hedgers in those markets.”.

1 **SEC. 10. ADDITIONAL COMMODITY FUTURES TRADING**
 2 **COMMISSION EMPLOYEES FOR IMPROVED**
 3 **ENFORCEMENT.**

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

7 “(D) ADDITIONAL EMPLOYEES.—As soon
 8 as practicable after the date of enactment of
 9 this subparagraph, the Commission shall ap-
 10 point at least 100 full-time employees (in addi-
 11 tion to the employees employed by the Commis-
 12 sion as of the date of enactment of this sub-
 13 paragraph)—

14 “(i) to increase the public trans-
 15 parency of operations in energy futures
 16 markets;

17 “(ii) to improve the enforcement of
 18 this Act in those markets; and

19 “(iii) to carry out such other duties as
 20 are prescribed by the Commission.”.

○