

112TH CONGRESS
2D SESSION

H. R. 5186

To prevent excessive speculation in energy commodities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2012

Mr. MARKEY (for himself, Mr. FRANK of Massachusetts, Ms. DELAURO, Ms. EDWARDS, Mr. LARSON of Connecticut, Mr. MORAN, Mr. PASCRELL, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To prevent excessive speculation in energy 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.**

4 This Act may be cited as the “Halt Index Trading
5 of Energy Commodities (HITEC) Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Investment in our commodities markets has
9 grown dramatically in recent years. While the vol-

1 ume of futures contracts traded in the United States
2 was only 630,000,000 in 1998, that volume
3 ballooned to over 3,200,000,000 in 2007.

4 (2) According to testimony provided to the
5 Committee on Natural Resources of the House of
6 Representatives, this growth in volume has been ac-
7 companied by a huge increase in the percentage of
8 commodity futures contracts owned by speculators.
9 While physical hedgers used to account for 70 per-
10 cent of futures contracts and speculators accounted
11 for just 30 percent, those numbers have reversed,
12 and speculators now possess 70 percent of all open
13 commodity futures contracts.

14 (3) Almost all of this increase in speculation
15 has been caused by a surge in trading of commodity
16 index funds.

17 (4) Commodity index trading is investing in
18 funds or other financial products which are indexed
19 to changes in value of various commodities traded on
20 commodity markets in the United States. These
21 funds can be tied to a basket of different commod-
22 ities or just to a single commodity.

23 (5) Investment in funds tied to these indexes
24 has grown enormously in the last 2 decades. Accord-
25 ing to the Commodity Futures Trading Commission,

1 a partial tally of net long positions in United States
2 markets in these indexes reached to over
3 \$160,000,000,000 in February 2012, and net long
4 positions in West Texas Intermediate Crude Oil
5 reached to over \$39,000,000,000. Many of the inves-
6 tors in these funds are institutional clients, such as
7 pension funds and universities.

8 (6) The vast majority of investors in commodity
9 index funds do not use the commodities involved.
10 These investors are only interested in profiting from
11 a rise in value of the commodities and must sell
12 their interests in the commodities before the futures
13 contracts they own close. This practice, known as
14 rolling, causes hundreds of billions of dollars of addi-
15 tional trading to flow through our commodities mar-
16 kets each month, artificially increasing the volatility
17 of our markets and driving up prices for many of
18 our commodities, including crude oil.

19 (7) Because our commodities markets are tied
20 to the actual retail prices of our commodities, the
21 artificial and excessive levels of speculation have sig-
22 nificantly increased the retail prices our citizens pay
23 for their commodities. In the case of oil, excessive
24 speculation may have added nearly \$1.00 to the per
25 gallon price of gasoline.

1 (8) As sharp increases in energy costs reduce
2 economic growth, these commodity index funds are
3 creating a weight on the overall economy, threat-
4 ening to delay our Nation's full recovery from the
5 2008 financial crisis and recession.

6 (9) Thus, commodity index funds hurt economic
7 growth and consumer's wallets.

8 (10) In the Dodd-Frank Wall Street Reform
9 Act, Congress ordered the Commodity Futures
10 Trading Commission to limit the number of posi-
11 tions that a person or a class of persons may hold
12 in the commodities markets. Congress has taken ini-
13 tial steps to set boundaries on commodity trading,
14 but more must be done to address the role of com-
15 modity index funds in the energy commodity mar-
16 kets.

17 (11) Because oil prices have been at elevated
18 levels for much of the last year, Congress believes
19 the situation is an emergency and warrants imme-
20 diate action to ban commodity index trading in en-
21 ergy commodities.

22 **SEC. 3. PREVENTION OF EXCESSIVE SPECULATION IN EN-**
23 **ERGY COMMODITIES.**

24 Section 4c of the Commodity Exchange Act (7 U.S.C.
25 6c) is amended by adding at the end the following:

1 “(h)(1)(A) It shall be unlawful for a commodity index
2 fund to engage in a transaction involving an energy com-
3 modity if any person investing in the fund is an excluded
4 investor.

5 “(B) It shall be unlawful for an energy commodity
6 index fund to accept an investment from a person who
7 is an excluded investor.

8 “(C) Beginning 2 years after the date of the enact-
9 ment of this subsection, it shall be unlawful for a com-
10 modity index fund to hold an investment in an energy
11 commodity if any person investing in the fund is an ex-
12 cluded investor.

13 “(2) In this subsection:

14 “(A) The term ‘commodity index fund’ means a
15 fund that consists principally of swaps involving, or
16 contracts of sale for future delivery of, more than 1
17 commodity, the value or level of which is based, in
18 whole or in part, on the value or level of more than
19 1 commodity, and that transfers, as between the
20 parties to the transaction, in whole or in part, the
21 financial risk associated with a future change in any
22 such value or level.

23 “(B) The term ‘energy commodity index fund’
24 means a commodity index fund that consists prin-

1 cipally of swaps involving, or contracts of sale for fu-
2 ture delivery of, more than 1 energy commodity.

3 “(C) The term ‘energy commodity’ means crude
4 oil, natural gas, or any other product (other than an
5 agricultural commodity) that is produced or refined,
6 in whole or in part, from crude oil or natural gas
7 and that may be used as fuel for a power source of
8 any kind, but does not include electricity.

9 “(D) The term ‘excluded investor’ means a per-
10 son with respect to whom there is no position in at
11 least 1 energy commodity which, if held by the per-
12 son, would be considered a bona fide hedging posi-
13 tion (within the meaning of section 4a(c)(1)).

14 “(E) The term ‘swap’ shall have the meaning
15 the term would have if the provisions of title VII of
16 the Dodd-Frank Wall Street Reform and Consumer
17 Protection Act defining, and authorizing further def-
18 inition of, the term were in effect.”.

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