

States, and for the first time the London exchange imposed comparable position limits in order to be allowed to keep its trading terminals in the United States. This is the very action our legislation called for.

However, although the CFTC took those important steps that will go a long way toward closing the London loophole, Congress still needs to pass the legislation to make sure the London loophole is closed. The legislation would put the conditions the CFTC has imposed upon the London exchange into statute, and ensure that the CFTC has clear authority to take action against any U.S. trader who is manipulating the price of a commodity or excessively speculating through the London exchange, including requiring traders to reduce positions.

There are additional steps that need to be taken to address the issue of ensuring that increasing speculation in our commodity markets is not driving up commodity prices.

The legislation we are introducing today is a practical, workable approach that will enable the CFTC to obtain key information about the over-the-counter market to enable it to prevent manipulation and excessive speculation. It will provide the CFTC with the authority to take action in the over-the-counter market to prevent excessive speculation and price manipulation, such as by requiring large traders to reduce their holdings of futures contracts. It enables the CFTC to obtain information on large trades in the over-the-counter market so it can determine whether any trader or class of traders has excessive holdings that may affect market prices, and whether such positions should be reduced.

This legislation will ensure that large traders cannot avoid the CFTC reporting requirements by using the unregulated over-the-counter market instead of the regulated exchanges. It will ensure that the CFTC can take appropriate action, such as by requiring reductions in holdings of futures contracts against traders with large positions in order to prevent price manipulation or excessive speculation, regardless of whether the trader's position is on an exchange or in the over-the-counter market.

The approach in this bill is practical and workable. I thank Senator FEINSTEIN for her important support of this legislation.

Mr. President, I ask unanimous consent, that a summary of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE LEVIN-FEINSTEIN "OVER-THE-COUNTER  
SPECULATION ACT"

SUMMARY

The Levin-Feinstein "Over-the-Counter Speculation Act" would give the Commodity Futures Trading Commission (CFTC) authority to direct a trader to reduce its positions in the OTC market to prevent price manipulation and excessive speculation in CFTC-

regulated markets. To provide the CFTC with information necessary to prevent price manipulation and excessive speculation in these markets, it also would extend the large trader reporting requirement in the Commodity Exchange Act (CEA)—which currently applies only to trading on the regulated futures exchanges—to trading in the unregulated over-the-counter (OTC) market.

Under current law, the CFTC's market oversight and surveillance does not extend to the OTC market, and the CFTC's authority over traders in this market only applies if the trader has a position on one of the CFTC-regulated markets. This bill would extend the CFTC's market oversight and surveillance to large trades in the OTC market, regardless of whether the trader also has a position on a futures exchange, and provide the CFTC with the necessary authority to take action in the OTC market to prevent price manipulation or excessive speculation.

BACKGROUND

As a result of various exclusions and exemptions in the CEA and CFTC regulations, commodity trading in the over-the-counter markets is largely unregulated, although trading in these markets may have a direct and substantial effect upon the prices of contracts for future delivery of those same commodities on futures exchanges regulated by the CFTC. According to some estimates, trading of swaps and other instruments in the OTC market exceeds by several multiples the trading of futures contracts in the regulated futures markets.

There is substantial concern excessive speculation in the OTC market may be contributing to the extraordinary commodity price increases of the past several months. There is also concern that some large traders may be avoiding the position limits and accountability levels that apply to trading on the futures exchanges by trading in the unregulated OTC market. In the absence of data or reporting on the activity in the OTC market, however, it is difficult to evaluate the specific effect of this large amount of unregulated trading on commodity prices. Moreover, even if the data were to show that large trading in the OTC market is affecting prices, or that traders are using the OTC market to avoid position limits in the regulated markets, the CFTC has limited authority to take action to prevent any price distortions that may result from such trading.

EXPLANATION OF BILL

CFTC Oversight Authority. The bill provides the CFTC with authority to require large traders in the OTC market to reduce holdings, or suspend trading, in order to prevent price manipulation or excessive speculation.

Reporting of Large Over-the-Counter Trades. The bill requires the CFTC to promulgate regulations requiring the reporting of large OTC transactions in order to detect and prevent potential price manipulation or excessive speculations.

Recordkeeping for Large Over-the-Counter Trades. The bill requires the CFTC to promulgate regulations requiring the keeping of trading records by persons required to report large OTC transactions.

AMENDMENTS SUBMITTED AND  
PROPOSED

SA 5069. Mr. REID (for Mr. BIDEN) proposed an amendment to the concurrent resolution H. Con. Res. 236, recognizing the close relationship between the United States and the Republic of San Marino.

SA 5070. Mr. REID (for Mr. HATCH) proposed an amendment to the resolution S. Res. 576, designating August 2008 as "Digital Television Transition Awareness Month".

SA 5071. Mr. REID (for Mr. HATCH) proposed an amendment to the resolution S. Res. 576, *supra*.

SA 5072. Mr. REID (for Mr. VOINOVICH) proposed an amendment to the bill S. 1046, to modify pay provisions relating to certain senior-level positions in the Federal Government, and for other purposes.

TEXT OF AMENDMENTS

**SA 5069.** Mr. REID (for Mr. BIDEN) proposed an amendment to the concurrent resolution H. Con. Res. 26, recognizing the close relationship between the United States and the Republic of San Marino; as follows:

In the tenth whereas clause of the preamble, strike "earlier this year" and insert ", in 2007".

**SA 5070.** Mr. REID (for Mr. HATCH) proposed an amendment to the resolution S. Res. 576, designating August 2008 as "Digital Television Transition Awareness Month"; as follows:

The preamble is amended by striking the third whereas clause and inserting "Whereas many consumers who are unaware of both the transition and the Government coupon program crafted to defray the cost of a converter box may be left without any television service after February 17, 2009;"

**SA 5071.** Mr. REID (for Mr. HATCH) proposed an amendment to the resolution S. Res. 576, designating August 2008 as "Digital Television Transition Awareness Month"; as follows:

On page 3, line 7, insert "the steps they need to take to retain their television service, including possibly" after "about".

On page 3, lines 11 and 12, strike ", so that consumers have time to obtain and connect converter boxes".

**SA 5072.** Mr. REID (for Mr. VOINOVICH) proposed an amendment to the bill S. 1046, to modify pay provisions relating to certain senior-level positions in the Federal Government, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Senior Professional Performance Act of 2008".

**SEC. 2. PAY PROVISIONS RELATING TO CERTAIN SENIOR-LEVEL POSITIONS.**

(a) LOCALITY PAY.—Section 5304 of title 5, United States Code, is amended—

(1) in subsection (g), by amending paragraph (2) to read as follows:

"(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

"(A) positions under subparagraphs (A) and (B) of subsection (h)(1); and

"(B) any positions under subsection (h)(1)(C) as the President may determine."; and

(2) in subsection (h)—

(A) in paragraph (1)—

(i) by striking subparagraph (A);

(ii) in subparagraph (D)—

(I) in clause (v), by striking "or" at the end;

(II) in clause (vi), by striking the period at the end and inserting "; or"; and

(III) by adding at the end the following:

"(vii) a position to which section 5376 applies (relating to certain senior-level and scientific and professional positions)."; and

(iii) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively; and

(B) in paragraph (2)(B)—

(i) in clause (i)—

(I) by striking “subparagraphs (A) through (C)” and inserting “subparagraphs (A) and (B)”;

(II) by striking “or (vi)” and inserting “(vi), or (vii)”;

(ii) in clause (ii)—

(I) by striking “paragraph (1)(D)” and inserting “paragraph (1)(C)”;

(II) by striking “or (vi)” and inserting “(vi), or (vii)”.

(b) ACCESS TO HIGHER MAXIMUM RATE OF BASIC PAY.—Section 5376(b) of title 5, United States Code, is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B) subject to paragraph (3), not greater than the rate of basic pay payable for level III of the Executive Schedule.”;

(2) by adding at the end the following:

“(3) In the case of an agency which has a performance appraisal system which, as designed and applied, is certified under section 5307(d) as making meaningful distinctions based on relative performance, paragraph (1)(B) shall apply as if the reference to ‘level III’ were a reference to ‘level II’.

“(4) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under paragraph (3) to an agency with an applicable maximum rate of pay prescribed under paragraph (1)(B).”.

(c) AUTHORITY FOR EMPLOYMENT; APPOINTMENTS; CLASSIFICATION STANDARDS.—Title 5, United States Code is amended—

(1) in section 3104(a), in the second sentence, by striking “prescribes” and inserting “prescribes and publishes in such form as the Director may determine”;

(2) in section 3324(a) by striking “the Office of Personnel Management” and inserting: “the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director”;

(3) in section 3325—

(A) in subsection (a), in the second sentence, by striking “or its designee for this purpose” and inserting the following: “on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management”;

(B) by adding at the end the following:

“(c) The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this section.”; and

(4) in section 5108(a)(2) by inserting “published by the Director of the Office of Personnel Management in such form as the Director may determine” after “and procedures”.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first pay period beginning on or after the 180th day following the date of enactment of this Act.

(2) NO REDUCTIONS IN RATES OF PAY.—

(A) IN GENERAL.—The amendments made by this section may not result, at the time such amendments take effect, in a reduction in the rate of basic pay for an individual holding a position to which section 5376 of title 5, United States Code, applies.

(B) DETERMINATION OF RATE OF PAY.—For the purposes of subparagraph (A), the rate of basic pay for an individual described in that subparagraph shall be deemed to be the rate of basic pay set for the individual under sec-

tion 5376 of title 5, United States Code, plus any applicable locality pay paid to that individual on the day before the effective date under paragraph (1), subject to regulations that the Director of the Office of Personnel Management may prescribe.

(3) REFERENCES TO MAXIMUM RATES.—Except as otherwise provided by law, any reference in a provision of law to the maximum rate under section 5376 of title 5, United States Code—

(A) as provided before the effective date of the amendments made by this section, shall be considered a reference to the rate of basic pay for level IV of the Executive Schedule; and

(B) as provided on or after the effective date of the amendments made by this section, shall be considered a reference to—

(i) the rate of basic pay for level III of the Executive Schedule; or

(ii) if the head of the agency responsible for administering the applicable pay system certifies that the employees are covered by a performance appraisal system meeting the certification criteria established by regulation under section 5307(d), level II of the Executive Schedule.

### SEC. 3. LIMITATIONS ON CERTAIN PAYMENTS.

(a) IN GENERAL.—Section 5307(d) of title 5, United States Code, is amended—

(1) in paragraph (2), by striking all after “purposes of” and inserting: “applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance.”; and

(2) in paragraph (3)(B)—

(A) by striking all beginning with “An” through “2 calendar years” and inserting “The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months”;

(B) by striking “, for purposes of either or both of those years.”.

(b) EXTENSION OF CERTIFICATION.—

(1) EXTENSION TO 2009.—

(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment of this Act and scheduled to expire at the end of calendar year 2008, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

(i) June 30, 2009; or

(ii) the first anniversary of the date of the certification.

(2) EXTENSION TO 2010.—

(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment and scheduled to expire at the end of calendar year 2009, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

(i) June 30, 2010; or

(ii) the second anniversary of the date of the certification.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

## NOTICE OF HEARING

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a Senate workshop has been scheduled before the Committee on Energy and Natural Resources.

The workshop will be held on Thursday, July 17, beginning at 9 a.m., in room SD-G50 of the Dirksen Senate Office Building.

The purpose of the workshop is examine why gasoline prices are so high, and what can be done about it; and why home heating oil and natural gas prices are expected to be so high this winter, and what can be done about that.

All Senators are invited to attend and present their views and recommendations. A limited number of experts will also be invited to participate and make oral statements. In addition, anyone wishing to submit written statements for the record may send them to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150, or by e-mail to [rosemarie\\_calabro@energy.senate.gov](mailto:rosemarie_calabro@energy.senate.gov).

For further information, please contact Tara Billingsley at (202) 224-4756 or Rosemarie Calabro at (202) 224-5039.

### SENIOR PROFESSIONAL PERFORMANCE ACT OF 2007

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to Calendar No. 703, S. 1046.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1046) to modify pay provisions relating to certain senior-level positions within the Federal Government, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the Voinovich substitute amendment which is at the desk be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table with no intervening action or debate, and that any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 5072) was agreed to, as follows:

(Purpose: To modify pay provisions relating to certain senior-level positions in the Federal Government, and for other purposes)

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Senior Professional Performance Act of 2008”.

#### SEC. 2. PAY PROVISIONS RELATING TO CERTAIN SENIOR-LEVEL POSITIONS.

(a) LOCALITY PAY.—Section 5304 of title 5, United States Code, is amended—

(1) in subsection (g), by amending paragraph (2) to read as follows: