

104TH CONGRESS
2D SESSION

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To amend the Commodity Exchange Act to improve the Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 1996

Mr. LUGAR (for himself and Mr. LEAHY) 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 improve the Act, 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 Exchange
5 Amendments Act of 1996”.

6 **SEC. 2. HEDGING.**

7 The fourth sentence of section 3 of the Commodity
8 Exchange Act (7 U.S.C. 5) is amended by striking
9 “through fluctuations in price”.

1 **SEC. 3. DELIVERY POINTS FOR FOREIGN FUTURES CON-**
 2 **TRACTS.**

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

5 (1) in the third sentence—

6 (A) by striking “(1)” and “(2)” and in-
 7 serting “(A)” and “(B)”, respectively; and

8 (B) by striking “No rule” and inserting
 9 “Except as provided in paragraph (2), no rule”;

10 (2) by inserting “(1)” after “(b)”; and

11 (3) by adding at the end the following:

12 “(2)(A) The Commission shall consult with a foreign
 13 government, foreign futures authority, or department,
 14 agency, governmental body, or regulatory organization em-
 15 powered by a foreign government to regulate a board of
 16 trade, exchange, or market located outside the United
 17 States, or a territory or possession of the United States,
 18 that has 1 or more established delivery points in the Unit-
 19 ed States, or a territory or possession of the United
 20 States, for a contract of sale of a commodity for future
 21 delivery that is made or will be made on or subject to the
 22 rules of the board of trade, exchange, or market.

23 “(B) In the consultations, the Commission shall en-
 24 deavor to secure adequate assurances, through memo-
 25 randa of understanding or any other means the Commis-
 26 sion considers appropriate, that the presence of the deliv-

1 ery points will not create the potential for manipulation
 2 of the price, or any other disruption in trading, of a con-
 3 tract of sale of a commodity for future delivery traded on
 4 or subject to the rules of a contract market, or a commod-
 5 ity, in interstate commerce.

6 “(C) Any warehouse or other facility housing an es-
 7 tablished delivery point in the United States, or a territory
 8 or possession of the United States, described in subpara-
 9 graph (A) shall—

10 “(i) keep books, records, and other information
 11 specified by the Commission pertaining to all trans-
 12 actions and positions in all contracts made or car-
 13 ried on the foreign board of trade, exchange, or mar-
 14 ket in such form and manner and for such period as
 15 may be required by the Commission;

16 “(ii) file such reports regarding the transactions
 17 and positions with the Commission as the Commis-
 18 sion may specify; and

19 “(iii) keep the books and records open to in-
 20 spection by a representative of the Commission or
 21 the United States Department of Justice.”.

22 **SEC. 4. EXEMPTION AUTHORITY AND SWAP EXEMPTION.**

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

1 “(6)(A) An agreement, contract, or transaction (or
2 class thereof) that is otherwise subject to this Act shall
3 be exempt from all provisions of this Act and any person
4 or class of persons offering, entering into, rendering ad-
5 vice, or rendering other services with respect to the agree-
6 ment, contract, or transaction (or class thereof) shall be
7 exempt for the activity from all provisions of this Act (ex-
8 cept in each case the provisions of sections 2(a)(1)(B), 4b,
9 and 4o, any antifraud provision adopted by the Commis-
10 sion pursuant to section 4c(b), and the provisions of sec-
11 tion 6(c) and 9(a)(2) to the extent the provisions prohibit
12 manipulation of the market price of any commodity in
13 interstate commerce or for future delivery on or subject
14 to the rules of any contract market): *Provided*, That prior
15 to, on, or after the date of enactment of this paragraph,
16 the agreement, contract, or transaction (or class thereof)
17 satisfies the eligibility conditions for an exemption under
18 the regulations of the Commission published in the Fed-
19 eral Register on January 22, 1993, and codified in sec-
20 tions 35.1(b)(2) and 35.2 of part 35 of title 17, Code of
21 Federal Regulations.

22 “(B) This paragraph shall not restrict the authority
23 of the Commission to grant exemptions under this sub-
24 section that are in addition to or independent of the ex-
25 emption provided in this paragraph. No such exemption

1 shall be applied in a manner that restricts an exemption
2 provided under this paragraph.

3 “(7)(A) The Commission may exempt an agreement,
4 contract, or transaction (or class thereof) under this sub-
5 section to the extent that the agreement, contract, or
6 transaction (or class thereof) may be subject to this Act.

7 “(B) An exemption under this subsection shall not
8 create a presumption that the exempted agreement, con-
9 tract, or transaction (or class thereof) is subject to this
10 Act.”.

11 (b) REVIEW.—Not later than 1 year after the date
12 of enactment of this Act, the Commodity Futures Trading
13 Commission shall complete a reconsideration of the regula-
14 tions contained in part 36 of title 17, Code of Federal
15 Regulations, with the goal of establishing exemptive provi-
16 sions that are consistent with subsection (c).

17 (c) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that—

19 (1) the exemption provided under section 4(c)
20 of the Commodity Exchange Act (7 U.S.C. 6(c)),
21 and codified in part 36 of title 17, Code of Federal
22 Regulations, does not yet sufficiently promote fair
23 competition by affording exchange-traded instru-
24 ments fair and even-handed treatment with similar

1 products traded over-the-counter among institutions
 2 and professionals; and

3 (2) the Commodity Futures Trading Commis-
 4 sion should provide for such fair competition by
 5 granting instruments traded on or subject to the fa-
 6 cilities of exchanges, exemptive flexibility that is eq-
 7 uitable in comparison to the exemptive flexibility the
 8 Commission has granted to over-the-counter trans-
 9 actions, while ensuring the protection of market par-
 10 ticipants and financial and market integrity.

11 (d) REPORT.—On completion of the review required
 12 by subsection (b), the Commodity Futures Trading Com-
 13 mission shall report on the results of the review to the
 14 Committee on Agriculture of the House of Representatives
 15 and the Committee on Agriculture, Nutrition, and For-
 16 estry of the Senate.

17 **SEC. 5. CONTRACT DESIGNATION.**

18 (a) IN GENERAL.—Section 5 of the Commodity Ex-
 19 change Act (7 U.S.C. 7) is amended—

20 (1) by striking the matter preceding paragraph
 21 (1) and inserting the following:

22 **“SEC. 5. DESIGNATION OF A BOARD OF TRADE AS A CON-**
 23 **TRACT MARKET.**

24 **“(a) IN GENERAL.—**The Commission shall designate
 25 a board of trade as a contract market if the board of trade

1 complies with and carries out the following conditions and
 2 requirements:”;

3 (2) by striking paragraph (7);

4 (3) by redesignating paragraph (8) as para-
 5 graph (7); and

6 (4) by adding at the end the following:

7 “(b) EXISTING AND FUTURE DESIGNATIONS.—

8 “(1) IN GENERAL.—If a board of trade is des-
 9 ignated as a contract market by the Commission
 10 under subsection (a) and section 6, the board of
 11 trade shall retain the designation for all existing or
 12 future contracts, unless the Commission suspends or
 13 revokes the designation or the board of trade relin-
 14 quishes the designation.

15 “(2) EXISTING DESIGNATIONS.—A board of
 16 trade that has been designated as a contract market
 17 as of the date of enactment of this subsection shall
 18 retain the designation unless the Commission finds
 19 that a violation of this Act or a rule, regulation, or
 20 order of the Commission by the contract market jus-
 21 tifies suspension or revocation of the designation
 22 under section 6(b), or the board of trade relin-
 23 quishes the designation.

24 “(c) NEW CONTRACT SUBMISSIONS.—Except as pro-
 25 vided in subsection (e), a board of trade that has been

1 designated as a contract market under subsection (a) shall
 2 submit to the Commission all rules that establish the
 3 terms and conditions of a new contract of sale in accord-
 4 ance with subsection (d) (referred to in this section as a
 5 ‘new contract’), other than a rule relating to the setting
 6 of levels of margin and other rules that the Commission
 7 may specify by regulation.

8 “(d) PROCEDURES FOR NEW CONTRACTS.—

9 “(1) REQUIRED SUBMISSION TO COMMISSION.—

10 Except as provided in subsection (e), a contract
 11 market shall submit new contracts to the Commis-
 12 sion in accordance with subsection (c).

13 “(2) EFFECTIVENESS OF NEW CONTRACTS.—A
 14 contract market may make effective a new contract
 15 and may implement trading in the new contract—

16 “(A) not earlier than 10 business days
 17 after the receipt of the new contract by the
 18 Commission; or

19 “(B) earlier if authorized by the Commis-
 20 sion by rule, regulation, order, or written no-
 21 tice.

22 “(3) NOTICE TO CONTRACT MARKET.—The new
 23 contract shall become effective and may be traded on
 24 the contract market, unless, within the 10-business-
 25 day period beginning on the date of the receipt of

1 the new contract by the Commission, the Commis-
2 sion notifies the contract market in writing—

3 “(A) of the determination of the Commis-
4 sion that the proposed new contract appears
5 to—

6 “(i) violate a specific provision of this
7 Act (including paragraphs (1) through (7)
8 of section 5(a)) or a rule, regulation, or
9 order of the Commission; or

10 “(ii) be contrary to the public interest;
11 and

12 “(B) that the Commission intends to re-
13 view the new contract.

14 “(4) NOTICE IN THE FEDERAL REGISTER.—
15 Notwithstanding the determination of the Commis-
16 sion to review a new contract under paragraph (3)
17 and except as provided in subsection (e), the con-
18 tract market may make the new contract effective,
19 and may implement trading in the new contract, on
20 a date that is not earlier than 15 business days after
21 the determination of the Commission to review the
22 new contract unless within the period of 15 business
23 days the Commission institutes proceedings to dis-
24 approve the new contract by providing notice in the

1 Federal Register of the information required under
2 paragraph (5)(A).

3 “(5) DISAPPROVAL PROCEEDINGS.—

4 “(A) NOTICE OF PROPOSED VIOLATIONS.—

5 If the Commission institutes proceedings to de-
6 termine whether to disapprove a new contract
7 under this subsection, the Commission shall
8 provide the contract market with written notice,
9 including an explanation and analysis of the
10 substantive basis for the proposed grounds for
11 disapproval, of what the Commission has reason
12 to believe are the grounds for disapproval, in-
13 cluding, as applicable—

14 “(i) the 1 or more specific provisions
15 of this Act or a rule, regulation, or order
16 of the Commission that the Commission
17 has reason to believe the new contract vio-
18 lates or, if the new contract became effec-
19 tive, would violate; or

20 “(ii) the 1 or more specific public in-
21 terests to which the Commission has rea-
22 son to believe the new contract is contrary,
23 or if the new contract became effective
24 would be contrary.

1 “(B) DISAPPROVAL PROCEEDINGS AND DE-
2 TERMINATION.—

3 “(i) OPPORTUNITY TO PARTICIPATE;
4 HEARING.—Before deciding to disapprove
5 a new contract, the Commission shall give
6 interested persons (including the board of
7 trade) an opportunity to participate in the
8 disapproval proceedings through the sub-
9 mission of written data, views, or argu-
10 ments following appropriate notice and an
11 opportunity for a hearing on the record be-
12 fore the Commission.

13 “(ii) DETERMINATION OF DIS-
14 APPROVAL.—At the conclusion of the dis-
15 approval proceeding, the Commission shall
16 determine whether to disapprove the new
17 contract.

18 “(iii) GROUNDS FOR DISAPPROVAL.—
19 The Commission shall disapprove the new
20 contract if the Commission determines that
21 the new contract—

22 “(I) violates this Act or a rule,
23 regulation, or order of the Commis-
24 sion; or

1 “(II) is contrary to public inter-
2 est.

3 “(iv) SPECIFICATIONS FOR DIS-
4 APPROVAL.—Each disapproval determina-
5 tion shall specify, as applicable—

6 “(I) the 1 or more specific provi-
7 sions of this Act or a rule, regulation,
8 or order of the Commission, that the
9 Commission determines the new con-
10 tract violates or, if the new contract
11 became effective, would violate; or

12 “(II) the 1 or more specific pub-
13 lic interests to which the Commission
14 determines the new contract is con-
15 trary, or if the new contract became
16 effective would be contrary.

17 “(C) FAILURE TO TIMELY COMPLETE DIS-
18 APPROVAL DETERMINATION.—If the Commis-
19 sion does not conclude a disapproval proceeding
20 as provided in subparagraph (B) for a new con-
21 tract by the date that is 120 calendar days
22 after the Commission institutes the proceeding,
23 the new contract may be made effective, and
24 trading in the new contract may be imple-
25 mented, by the contract market until such time

1 as the Commission disapproves the new con-
 2 tract in accordance with this paragraph.

3 “(D) APPEALS.—A board of trade that has
 4 been subject to disapproval of a new contract by
 5 the Commission under this subsection shall
 6 have the right to an appeal of the disapproval
 7 to the court of appeals as provided in section
 8 6(b).

9 “(6) CONTRACT MARKET DEEMED DES-
 10 IGNATED.—A board of trade shall be deemed to be
 11 designated a contract market for a new contract of
 12 sale for future delivery when the new contract be-
 13 comes effective and trading in the new contract be-
 14 gins.

15 “(e) REQUIRED INTERAGENCY REVIEW.—Notwith-
 16 standing subsection (d), no board of trade may make ef-
 17 fective a new contract (or option on the contract) that is
 18 subject to the requirements and procedures of clauses (ii)
 19 through (v) of paragraph (1)(B), and paragraph
 20 (8)(B)(ii), of section 2(a) until the requirements and pro-
 21 cedures are satisfied and carried out.”.

22 (b) CONFORMING AMENDMENT.—The first sentence
 23 of section 6(a) of the Commodity Exchange Act (7 U.S.C.
 24 8(a)) is amended by striking “Any board of trade desir-
 25 ing” and inserting “A board of trade that has not obtained

1 any designation as a contract market for a contract of sale
 2 for a commodity under section 5 that desires”.

3 **SEC. 6. DELIVERY BY FEDERALLY LICENSED WAREHOUSES.**

4 Section 5a(a) of the Commodity Exchange Act (7
 5 U.S.C. 7a(a)) is amended by striking paragraph (7) and
 6 inserting the following:

7 “(7) Repealed;”.

8 **SEC. 7. SUBMISSION OF RULES TO COMMISSION.**

9 Section 5a(a) of the Commodity Exchange Act (7
 10 U.S.C. 7a(a)(12)) is amended by striking paragraph (12)
 11 and inserting the following:

12 “(12)(A)(i) except as otherwise provided in this
 13 paragraph, submit to the Commission all bylaws,
 14 rules, regulations, and resolutions (collectively re-
 15 ferred to in this subparagraph as ‘rules’) made or is-
 16 sued by the contract market, or by the governing
 17 board or committee of the contract market (except
 18 those relating to the setting of levels of margin,
 19 those submitted pursuant to section 5 or 6(a), and
 20 those the Commission may specify by regulation)
 21 and may make a rule effective not earlier than 10
 22 business days after the receipt of the submission by
 23 the Commission or earlier, if approved by the Com-
 24 mission by rule, regulation, order, or written notice,
 25 unless, within the 10-business-day period, the Com-

1 mission notifies the contract market in writing of its
2 determination to review such rules for disapproval
3 and of the specific sections of this Act or the regula-
4 tions of the Commission that the Commission deter-
5 mines the rule would violate. The determination to
6 review such rules for disapproval shall not be dele-
7 gable to any employee of the Commission. Not later
8 than 45 calendar days before disapproving a rule of
9 major economic significance (as determined by the
10 Commission), the Commission shall publish a notice
11 of the rule in the Federal Register. The Commission
12 shall give interested persons an opportunity to par-
13 ticipate in the disapproval process through the sub-
14 mission of written data, views, or arguments. The
15 determination by the Commission whether a rule is
16 of major economic significance shall be final and not
17 subject to judicial review. The Commission shall dis-
18 approve, after appropriate notice and opportunity
19 for hearing (including an opportunity for the con-
20 tract market to have a hearing on the record before
21 the Commission), a rule only if the Commission de-
22 termines the rule at any time to be in violation of
23 this Act or a regulation of the Commission. If the
24 Commission institutes proceedings to determine
25 whether a rule should be disapproved pursuant to

1 this paragraph, the Commission shall provide the
2 contract market with written notice of the proposed
3 grounds for disapproval, including the specific sec-
4 tions of this Act or the regulations of the Commis-
5 sion that would be violated. At the conclusion of the
6 proceedings, the Commission shall determine wheth-
7 er to disapprove the rule. Any disapproval shall
8 specify the sections of this Act or the regulations of
9 the Commission that the Commission determines the
10 rule has violated or, if effective, would violate. If the
11 Commission does not institute disapproval proceed-
12 ings with respect to a rule within 45 calendar days
13 after receipt of the rule by the Commission, or if the
14 Commission does not conclude a disapproval pro-
15 ceeding with respect to a rule within 120 calendar
16 days after receipt of the rule by the Commission, the
17 rule may be made effective by the contract market
18 until such time as the Commission disapproves the
19 rule in accordance with this paragraph.

20 “(B)(i) The Commission shall issue regulations
21 to specify the terms and conditions under which, in
22 an emergency as defined by the Commission, a con-
23 tract market may, by a two-thirds vote of the gov-
24 erning board of the contract market, make a rule
25 (referred to in this subparagraph as an ‘emergency

1 rule’) immediately effective without compliance with
2 the 10-day notice requirement under subparagraph
3 (A), if the contract market makes every effort prac-
4 ticable to notify the Commission of the emergency
5 rule, and provide a complete explanation of the
6 emergency involved, prior to making the emergency
7 rule effective.

8 “(ii) If the contract market does not provide
9 the Commission with the requisite notification and
10 explanation before making the emergency rule effec-
11 tive, the contract market shall provide the Commis-
12 sion with the notification and explanation at the ear-
13 liest practicable date.

14 “(iii) The Commission may delegate the power
15 to receive the notification and explanation to such
16 individuals as the Commission determines necessary
17 and appropriate.

18 “(iv) Not later than 10 days after the receipt
19 from a contract market of notification of such an
20 emergency rule and an explanation of the emergency
21 involved, or as soon as practicable, the Commission
22 shall determine whether to suspend the effect of the
23 rule pending review by the Commission under the
24 procedures of subparagraph (A).

1 “(v)(I) The Commission shall submit a report
 2 on the determination of the Commission on the
 3 emergency rule under clause (iv), and the basis for
 4 the determination, to the affected contract market,
 5 the Committee on Agriculture of the House of Rep-
 6 resentatives, and the Committee on Agriculture, Nu-
 7 trition, and Forestry of the Senate.

8 “(II) If the report is submitted more than 10
 9 days after the Commission’s receipt of notification of
 10 the emergency rule from a contract market, the re-
 11 port shall explain why submission within the 10-day
 12 period was not practicable.

13 “(III) A determination by the Commission to
 14 suspend the effect of a rule under this subparagraph
 15 shall be subject to judicial review on the same basis
 16 as an emergency determination under section 8a(9).

17 “(IV) Nothing in this paragraph limits the au-
 18 thority of the Commission under section 8a(9);”.

19 **SEC. 8. AUDIT TRAIL.**

20 Section 5a(b) of the Commodity Exchange Act (7
 21 U.S.C. 7a(b)) is amended—

22 (1) in paragraph (3), by inserting “selected by
 23 the contract market” after “means” each place it
 24 appears; and

25 (2) by adding at the end the following:

1 “(7) The requirements of this subsection establish
 2 performance standards and do not mandate the use of a
 3 specific technology to satisfy the requirements.”.

4 **SEC. 9. MISCELLANEOUS TECHNICAL AMENDMENTS.**

5 Section 8a of the Commodity Exchange Act (7 U.S.C.
 6 12a) is amended—

7 (1) in paragraph (2)—

8 (A) in subparagraph (B), by inserting
 9 “this paragraph or” after “the provisions of”;
 10 and

11 (B) in subparagraph (D), by inserting
 12 “pleaded guilty to or” after “such person has”;
 13 and

14 (2) in paragraph (3)(H), by striking “or has
 15 been convicted in a State court,” and inserting “or
 16 has pleaded guilty to, or has been convicted, in a
 17 State court,”.

18 **SEC. 10. CONSIDERATION OF EFFICIENCY, COMPETITION,**
 19 **RISK MANAGEMENT, AND ANTITRUST LAWS.**

20 Section 15 of the Commodity Exchange Act (7 U.S.C.
 21 19) is amended—

22 (1) by striking “SEC. 15. The Commission” and
 23 inserting the following:

24 “SEC. 15. (a)(1) Prior to adopting a rule or regula-
 25 tion authorized by this Act or adopting an order (except

1 as provided in subsection (b)), the Commission shall con-
 2 sider the costs and benefits of the action of the Commis-
 3 sion.

4 “(2) The costs and benefits of the proposed Commis-
 5 sion action shall be evaluated in light of considerations of
 6 protection of market participants, the efficiency, competi-
 7 tiveness, and financial integrity of futures markets, price
 8 discovery, sound risk management practices, and other ap-
 9 propriate factors, as determined by the Commission.

10 “(b) Subsection (a) shall not apply to the following
 11 actions of the Commission:

12 “(1) An order that initiates, is part of, or is the
 13 result of an adjudicatory or investigative process of
 14 the Commission.

15 “(2) An emergency action.

16 “(3) A finding of fact regarding compliance
 17 with a requirement of the Commission.

18 “(c) The Commission”; and

19 (2) by striking “requiring or approving” and in-
 20 serting “requiring, reviewing, or disapproving”.

21 **SEC. 11. DISCIPLINARY AND ENFORCEMENT ACTIVITIES.**

22 (a) IN GENERAL.—It is the sense of Congress that
 23 the Commodity Futures Trading Commission should—

24 (1) to the extent practicable, avoid unnecessary
 25 duplication of effort in pursuing disciplinary and en-

1 enforcement actions if adequate self-regulatory actions
2 have been taken by contract markets and registered
3 futures associations; and

4 (2) retain an oversight and disciplinary role
5 over the self-regulatory activities by contract mar-
6 kets and registered futures associations in a manner
7 that is sufficient to safeguard financial and market
8 integrity and the public interest.

9 (b) REPORT.—Not later than 1 year after the date
10 of enactment of this Act, the Commission shall submit a
11 report to the Committee on Agriculture of the House of
12 Representatives and the Committee on Agriculture, Nutri-
13 tion, and Forestry of the Senate that evaluates the effec-
14 tiveness of the enforcement activities of the Commission,
15 including an evaluation of the experience of the Commis-
16 sion in preventing, deterring, and disciplining violations
17 of the Commodity Exchange Act (7 U.S.C. 1 et seq.) and
18 Commission regulations involving fraud against the public
19 through the bucketing of orders and similar abuses.

20 **SEC. 12. DELEGATION OF FUNCTIONS BY THE COMMISSION.**

21 (a) IN GENERAL.—It is the sense of Congress that
22 the Commodity Futures Trading Commission should—

23 (1) review its rules and regulations that dele-
24 gate any of its duties or authorities under the Com-

1 modity Exchange Act (7 U.S.C. 1 et seq.) to con-
2 tract markets or registered futures associations;

3 (2) consistent with the public interest and law,
4 determine which additional functions, if any, per-
5 formed by the Commission should be delegated to
6 contract markets or registered futures associations;
7 and

8 (3) establish procedures (such as spot checks,
9 random audits, reporting requirements, pilot
10 projects, or other means) to ensure adequate per-
11 formance of the additional functions that are dele-
12 gated to contract markets or registered futures asso-
13 ciations.

14 (b) REPORT.—Not later than 1 year after the date
15 of enactment of this Act, the Commission shall report the
16 results of its review and actions under subsection (a) to
17 the Committee on Agriculture of the House of Representa-
18 tives and the Committee on Agriculture, Nutrition, and
19 Forestry of the Senate.

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