

107TH CONGRESS  
2D SESSION

# S. 1951

To provide regulatory oversight over energy trading markets, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2002

Mrs. FEINSTEIN (for herself, Ms. CANTWELL, Mr. WYDEN, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To provide regulatory oversight over energy trading markets, 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. JURISDICTION OF THE COMMODITY FUTURES**

4 **TRADING COMMISSION OVER ENERGY TRAD-**  
5 **ING MARKETS.**

6 (a) REPEAL OF DEFINITION OF EXEMPT COM-  
7 MODITY.—Section 1a of the Commodity Exchange Act (7  
8 U.S.C. 1a) is amended by striking paragraph (14) and in-  
9 serting the following:

10 “(14) **【Repealed.】**”.

1 (b) FERC LIAISON.—Section 2(a)(8) of the Com-  
2 modity Exchange Act (7 U.S.C. 2(a)(8)) is amended by  
3 adding at the end the following:

4 “(C) FERC LIAISON.—The Commission  
5 shall, in cooperation with the Federal Energy  
6 Regulatory Commission, maintain a liaison be-  
7 tween the Commission and the Federal Energy  
8 Regulatory Commission.”.

9 (c) EXEMPT TRANSACTIONS.—Section 2 of the Com-  
10 modity Exchange Act (7 U.S.C. 2) is amended by striking  
11 subsection (g) and inserting the following:

12 “(g) EXEMPT TRANSACTIONS.—

13 “(1) APPLICABILITY.—

14 “(A) IN GENERAL.—Except as provided in  
15 subparagraph (B), this Act shall not apply to  
16 any agreement, contract, or transaction in a  
17 commodity other than an agricultural com-  
18 modity if the agreement, contract, or  
19 transaction—

20 “(i) is between persons that are eligi-  
21 ble contract participants at the time at  
22 which the agreement, contract, or trans-  
23 action is entered into;

1           “(ii) is subject to individual negotia-  
2           tion by the parties to the agreement, con-  
3           tract, or transaction; and

4           “(iii) is not executed or traded on a  
5           trading facility.

6           “(B) EXCEPTIONS.—An agreement, con-  
7           tract, or transaction described in subparagraph  
8           (A) shall be subject to—

9           “(i) sections 4b, 4c(b), 4o, and 5b;

10          “(ii) subsections (c) and (d) of section  
11          6, 6c, 6d, and 8a, to the extent that those  
12          provisions—

13                 “(I) provide for the enforcement  
14                 of the requirements specified in this  
15                 paragraph and paragraphs (2), (3),  
16                 and (4); and

17                 “(II) prohibit the manipulation of  
18                 the market price of any commodity in  
19                 interstate commerce or for future de-  
20                 livery on or subject to the rules of any  
21                 contract market;

22                 “(iii) sections 6c, 6d, 8a, and 9(a)(2),  
23                 to the extent that those provisions prohibit  
24                 the manipulation of the market price of  
25                 any commodity in interstate commerce or

1 for future delivery on or subject to the  
2 rules of any contract market;

3 “(iv) section 12(e)(2); and

4 “(v) section 22(a)(4).

5 “(2) ELIGIBLE TRADING FACILITIES AND SYS-  
6 TEMS.—

7 “(A) IN GENERAL.—A person or group of  
8 persons that constitutes, maintains, admin-  
9 isters, or provides a physical or electronic facil-  
10 ity or system in which a person has the ability  
11 to offer, execute, trade, or confirm the execu-  
12 tion of an agreement, contract, or transaction  
13 by making or accepting the bids and offers of  
14 all other participants on the facility or system  
15 (including facilities or systems described in  
16 clauses (i) and (iii) of section 1a(33)(B)), may  
17 offer to enter into, enter into, or confirm the  
18 execution of any agreement, contract, or trans-  
19 action under paragraph (1) if the person or  
20 group of persons meets the requirement of sub-  
21 paragraph (B).

22 “(B) REQUIREMENT.—The requirement of  
23 this subparagraph is that a person or group of  
24 persons described in subparagraph (A) shall—

1 “(i) register with the Commission in  
2 any capacity that the Commission requires  
3 by rule, regulation, or order;

4 “(ii) file with the Commission any re-  
5 ports (including large trader position re-  
6 ports) that the Commission requires by  
7 rule, regulation, or order;

8 “(iii) maintain sufficient net capital,  
9 as determined by the Commission; and

10 “(iv)(I) maintain books and records  
11 consistent with section 4i; and

12 “(II) make those books and records  
13 available to representatives of the Commis-  
14 sion and the Department of Justice for in-  
15 spection at all times.

16 “(3) REPORTING REQUIREMENTS.—An eligible  
17 contract participant that enters into an agreement,  
18 contract, or transaction exempt under paragraph (1)  
19 shall—

20 “(A) file with the Commission any reports  
21 that the Commission may require by rule, regu-  
22 lation, or order; and

23 “(B)(i) maintain books and records con-  
24 sistent with section 4i; and

1           “(ii) make those books and records avail-  
 2           able to representatives of the Commission and  
 3           the Department of Justice for inspection at all  
 4           times.

5           “(4) TRANSACTIONS EXEMPTED BY COMMIS-  
 6           SION ACTION.—Any agreement, contract, or trans-  
 7           action under paragraph (1) that would otherwise be  
 8           exempted by the Commission under section 4(c)  
 9           shall be subject to—

10                   “(A) sections 4b, 4c(b), and 4o; and

11                   “(B) subsections (c) and (d) of section 6,  
 12                   6c, 6d, 8a, and 9(a)(2), to the extent that those  
 13                   provisions prohibit the manipulation of the mar-  
 14                   ket price of any commodity in interstate com-  
 15                   merce or for future delivery on or subject to the  
 16                   rules of any contract market.

17           “(5) EFFECT.—This subsection does not affect  
 18           the power of the Federal Energy Regulatory Com-  
 19           mission to regulate transactions described in para-  
 20           graph (1) under the Federal Power Act (16 U.S.C.  
 21           791a et seq.).”.

22           (d) REPEAL OF GUIDELINES FOR TRANSACTIONS IN  
 23           EXEMPT COMMODITIES.—Section 2 of the Commodity Ex-  
 24           change Act (7 U.S.C. 2) is amended—

25                   (1) by striking subsection (h); and

1           (2) by redesignating subsection (i) as subsection  
2           (i).

3           (e) CONTRACTS DESIGNED TO DEFRAUD OR MIS-  
4 LEAD.—Section 4b of the Commodity Exchange Act (7  
5 U.S.C. 6b) is amended by striking subsection (a) and in-  
6 serting the following:

7           “(a) PROHIBITION.—It shall be unlawful—

8           “(1) for any member of a contract market, or  
9           for any correspondent, agent, or employee of any  
10          member, in or in connection with any order to make,  
11          or the making of, any contract of sale commodity in  
12          interstate commerce, made, or to be made on or sub-  
13          ject to the rules of any contract market; or

14          “(2) for any person, in or in connection with  
15          any order to make, or the making of, any agree-  
16          ment, transaction, or contract in a commodity sub-  
17          ject to the provisions of this Act—

18                  “(A) to cheat or defraud or attempt to  
19                  cheat or defraud the other person;

20                  “(B) willfully to make or cause to be made  
21                  to the other person any false report or state-  
22                  ment, or willfully to enter or cause to be en-  
23                  tered for the other person any false record;

24                  “(C) willfully to deceive or attempt to de-  
25                  ceive the other person by any means in regard

1 to any order or contract or the disposition or  
 2 execution of the order or contract, or in regard  
 3 to any act of agency performed with respect to  
 4 the order or contract for the other person; or

5 “(D) to bucket the order, or to fill the  
 6 order by offset against the order of any other  
 7 person, or willfully, knowingly, and without the  
 8 prior consent of the other person to become the  
 9 buyer in respect to any selling order of the  
 10 other person, or to become the seller in respect  
 11 to any buying order of the other person.”.

12 (f) CONFORMING AMENDMENTS.—The Commodity  
 13 Exchange Act is amended—

14 (1) in section 2(e) (7 U.S.C. 2(e))—

15 (A) in paragraph (1), by striking “, 2(g),  
 16 or 2(h)(3)”;

17 (B) in paragraph (2), by striking “, or op-  
 18 erating as an exempt board of trade”;

19 (C) by striking paragraph (3); and

20 (D) by redesignating paragraph (4) as  
 21 paragraph (3);

22 (2) in section 2(h) (7 U.S.C. 2(h)) (as redesign-  
 23 dated by subsection (d)), by striking “2(h) or”;

24 (3) in section 4i (7 U.S.C. 6i)—

1 (A) by striking “any contract market or”  
2 and inserting “any contract market,”; and

3 (B) by inserting “, or pursuant to an ex-  
4emption under section 4(e)” after “transaction  
5 execution facility”;

6 (4) in section 5a(g)(1) (7 U.S.C. 7a(g)(1)), by  
7 striking “, or exempt under section 2(h) of this  
8 Act”;

9 (5) in section 5b (7 U.S.C. 7a-1)—

10 (A) in subsection (a)(1), by striking “2(h)  
11 or”;

12 (B) in subsection (b), by striking “2(h)  
13 or”;

14 (6) in section 12(e)(2)(B) (7 U.S.C.  
15 16(e)(2)(B)), by striking “2(h) or”.

16 **SEC. 2. RECRUITMENT AND RETENTION OF QUALIFIED**  
17 **PERSONNEL AT THE FEDERAL ENERGY REG-**  
18 **ULATORY COMMISSION.**

19 Section 401(c) of the Department of Energy Organi-  
20 zation Act (42 U.S.C. 7171(c)) is amended—

21 (1) by striking paragraph (2);

22 (2) by redesignating paragraphs (1), (3), (4),  
23 and (5) as subparagraphs (A), (B), (C), and (D), re-  
24 spectively;

1           (3) by striking “(c) The Chairman” and insert-  
2           ing the following:

3           “(c) ADMINISTRATION.—

4                 “(1) IN GENERAL.—The Chairman”; and

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

6                 “(2) PERSONNEL MATTERS.—

7                         “(A) IN GENERAL.—The Chairman may—

8                                 “(i) appoint, prescribe the duties, and  
9                                 fix the salaries of an executive director, a  
10                                 secretary, a chief engineer, a general coun-  
11                                 sel, a solicitor, and a chief accountant; and

12                                 “(ii) subject to the civil service laws—

13   “(I) appoint any other officers  
14   and employees that are necessary in  
15   the execution of the duties of the  
16   Commission; and

17   “(II) fix the salaries of any offi-  
18   cer or employee appointed under sub-  
19   clause (I).

20                 “(B) COMPENSATION.—

21                         “(i) IN GENERAL.—Rates of basic pay  
22                         for all employees of the Commission may  
23                         be set and adjusted by the Chairman with-  
24                         out regard to the provisions of chapter 51

1 or subchapter III of chapter 53 of title 5,  
2 United States Code.

3 “(ii) ADDITIONAL COMPENSATION.—  
4 The Chairman may provide additional  
5 compensation and benefits to employees of  
6 the Commission if the same type and  
7 amounts of compensation or benefits are or  
8 are authorized to be provided by any other  
9 Federal agency under applicable provisions  
10 of law (including regulations).

11 “(iii) COMPARABILITY.—In setting  
12 and adjusting the total amount of com-  
13 pensation and benefits for employees under  
14 this paragraph, the Chairman shall consult  
15 with, and seek to maintain comparability  
16 with, other Federal agencies.

17 “(C) EARLY RETIREMENT.—The Chair-  
18 man may offer early out retirement and vol-  
19 untary separation incentive payments, as appro-  
20 priate.

21 “(D) RECRUITMENT.—The Chairman may  
22 use modified hiring delegation authorities to re-  
23 cruit for positions at all grade levels that are  
24 difficult to fill, including economists, engineers,

1 accountants, auditors, and energy, market, and  
2 financial analysts.

3 “(E) MERIT SYSTEM PRINCIPLES.—This  
4 paragraph shall be administered consistent with  
5 merit system principles.

6 “(F) CONSULTATION WITH OPM.—In car-  
7 rying out this paragraph, the Chairman shall  
8 consult with the Director of the Office of Per-  
9 sonnel Management.”.

10 **SEC. 3. JURISDICTION OF THE FEDERAL ENERGY REGU-**  
11 **LATORY COMMISSION OVER ENERGY TRAD-**  
12 **ING MARKETS.**

13 Section 402 of the Department of Energy Organiza-  
14 tion Act (42 U.S.C. 7172) is amended by adding at the  
15 end the following:

16 “(i) JURISDICTION OVER DERIVATIVES TRANS-  
17 ACTIONS.—

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

19 “(A) DERIVATIVES TRANSACTION.—

20 “(i) IN GENERAL.—The term ‘deriva-  
21 tives transaction’ means a transaction  
22 based on, or reflecting prices of or for,  
23 electric energy or natural gas.

24 “(ii) INCLUSIONS.—The term ‘deriva-  
25 tives transaction’ includes—

1 “(I) futures;

2 “(II) options;

3 “(III) forwards; and

4 “(IV) swaps.

5 “(iii) EXCLUSIONS.—The term ‘de-  
6 rivatives transaction’ does not include a de-  
7 rivatives transaction that is—

8 “(I) under the exclusive jurisdic-  
9 tion of the Commodity Futures Trad-  
10 ing Commission; or

11 “(II) concerns a retail sale of  
12 electric energy or natural gas and is  
13 under the exclusive jurisdiction of a  
14 State.

15 “(B) PERSON.—The term ‘person’ has the  
16 meaning given the term in section 1a of the  
17 Commodity Exchange Act (7 U.S.C. 1a).

18 “(2) JURISDICTION.—The Commission shall  
19 have jurisdiction over—

20 “(A) derivatives transactions;

21 “(B) any person that makes a derivatives  
22 transaction; and

23 “(C) any entity that operates an electronic  
24 forum in which persons make derivatives trans-  
25 actions.

1 “(3) AUTHORITIES AND DUTIES.—

2 “(A) IN GENERAL.—The authorities and  
3 duties of the Commission under this subsection  
4 with respect to derivatives transactions shall be  
5 the same as the authorities and duties of the  
6 Commission under—

7 “(i) sections 205 and 206 and part  
8 III of the Federal Power Act (16 U.S.C.  
9 824d, 824e, 825 et seq.); and

10 “(ii) sections 4 and 5 of the Natural  
11 Gas Act (15 U.S.C. 717e, 717d).

12 “(B) MEETINGS.—The Commission shall  
13 meet quarterly with the Commodity Futures  
14 Trading Commission, the Securities Exchange  
15 Commission, the Federal Trade Commission,  
16 and the Federal Reserve Board to discuss—

17 “(i) conditions and events in energy  
18 trading markets; and

19 “(ii) any changes in Federal law (in-  
20 cluding regulations) that may be appro-  
21 priate to regulate energy trading markets.

22 “(C) REPORT.—Not later than the date  
23 that is 1 year after the date of enactment of  
24 this subsection and annually thereafter, the  
25 Commission shall submit to Congress a report

1           that describes the activities of the Commission  
2           relating to the regulation of derivatives under  
3           this subsection during the preceding year.

4           “(4) RIGHTS AND OBLIGATIONS.—Persons and  
5           entities regulated under this subsection shall have  
6           the same rights and obligations as persons regulated  
7           by the Commission under sections 205 and 206 and  
8           part III of the Federal Power Act (16 U.S.C. 824d,  
9           824e, 825 et seq.).

10           “(5) LIAISON.—The Commission shall, in co-  
11           operation with the Commodity Futures Trading  
12           Commission, maintain a liaison between the Com-  
13           mission and the Commodity Futures Trading Com-  
14           mission.

15           “(6) RATES.—It shall be unlawful to make, de-  
16           mand, or receive rates and charges for or in connec-  
17           tion with derivatives transactions that are unjust,  
18           unreasonable, discriminatory, or preferential.”.

○