

107TH CONGRESS  
2D SESSION

# S. 2724

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

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## IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 10), 2002

Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGER, Ms. CANTWELL, Mr. WYDEN, Mr. CORZINE, Mr. LEAHY, Mrs. BOXER, Mr. DURBIN, and Mr. NELSON of Nebraska) 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 metals 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 AND METALS TRADING MAR-**  
6                       **KETS.**

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

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

6           (b) EXEMPT TRANSACTIONS.—Section 2 of the Com-  
 7   modity Exchange Act (7 U.S.C. 2) is amended—

8                   (1) in subsection (h), by adding at the end the  
 9                   following:

10                   “(7) APPLICABILITY.—This subsection does not  
 11                   apply to an agreement, contract, or transaction in  
 12                   an exempt energy commodity or an exempt metal  
 13                   commodity described in section 2(j)(1).”; and

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

15           “(j) EXEMPT TRANSACTIONS.—

16                   “(1) TRANSACTIONS IN EXEMPT ENERGY COM-  
 17                   MODITIES AND EXEMPT METALS COMMODITIES.—An  
 18                   agreement, contract, or transaction (including a  
 19                   transaction described in section 2(g)) in an exempt  
 20                   energy commodity or exempt metal commodity shall  
 21                   be subject to—

22                   “(A) sections 4b, 4c(a), 4c(b), 4o, and 5b;

23                   “(B) subsections (c) and (d) of section 6  
 24                   and sections 6c, 6d, and 8a, to the extent that  
 25                   those provisions—

1 “(i) provide for the enforcement of the  
 2 requirements specified in this subsection;  
 3 and

4 “(ii) prohibit the manipulation of the  
 5 market price of any commodity in inter-  
 6 state commerce or for future delivery on or  
 7 subject to the rules of any contract mar-  
 8 ket;

9 “(C) sections 6c, 6d, 8a, and 9(a)(2), to  
 10 the extent that those provisions prohibit the  
 11 manipulation of the market price of any com-  
 12 modity in interstate commerce or for future de-  
 13 livery on or subject to the rules of any contract  
 14 market;

15 “(D) section 12(e)(2); and

16 “(E) section 22(a)(4).

17 “(2) BILATERAL DEALER MARKETS.—

18 “(A) IN GENERAL.—Except as provided in  
 19 paragraph (6), a person or group of persons  
 20 that constitutes, maintains, administers, or pro-  
 21 vides a physical or electronic facility or system  
 22 in which a person has the ability to offer, exe-  
 23 cute, trade, or confirm the execution of an  
 24 agreement, contract, or transaction (including a  
 25 transaction described in section 2(g)) (other

1 than an agreement, contract, or transaction in  
 2 an excluded commodity) by making or accepting  
 3 the bids and offers of 1 or more participants on  
 4 the facility or system (including facilities or sys-  
 5 tems described in clauses (i) and (iii) of section  
 6 1a(33)(B)), the person or group of persons, and  
 7 the facility or system (referred to in this sub-  
 8 section as a ‘bilateral dealer market’) may offer  
 9 to enter into, enter into, or confirm the execu-  
 10 tion of any agreement, contract, or transaction  
 11 under paragraph (1) (other than an agreement,  
 12 contract, or transaction in an excluded com-  
 13 modity) if the bilateral dealer market meets the  
 14 requirement of subparagraph (B).

15 “(B) REQUIREMENT.—The requirement of  
 16 this subparagraph is that a bilateral dealer  
 17 market shall—

18 “(i) provide notice to the Commission  
 19 in such form as the Commission may speci-  
 20 fy by rule or regulation;

21 “(ii) file with the Commission any re-  
 22 ports (including large trader position re-  
 23 ports) that the Commission requires by  
 24 rule or regulation;

1 “(iii)(I) consistent with section 4i,  
2 maintain books and records relating to  
3 each transaction in such form as the Com-  
4 mission may specify for a period of 5 years  
5 after the date of the transaction; and

6 “(II) make those books and records  
7 available to representatives of the Commis-  
8 sion and the Department of Justice for in-  
9 spection for a period of 5 years after the  
10 date of each transaction; and

11 “(iv) make available to the public on  
12 a daily basis such information as total vol-  
13 ume by commodity, settlement price, open  
14 interest, opening and closing ranges, and  
15 any other information that the Commission  
16 determines to be appropriate for public dis-  
17 closure, except that the Commission may  
18 not—

19 “(I) require the real time publi-  
20 cation of proprietary information; or

21 “(II) prohibit the commercial  
22 sale of real time proprietary informa-  
23 tion.

24 “(3) REPORTING REQUIREMENTS.—On request  
25 of the Commission, an eligible contract participant

1 that trades on a bilateral dealer market shall provide  
2 to the Commission, within the time period specified  
3 in the request and in such form and manner as the  
4 Commission may specify, any information relating to  
5 the transactions of the eligible contract participant  
6 on the bilateral dealer market within 5 years after  
7 the date of any transaction that the Commission de-  
8 termines to be appropriate.

9 “(4) CAPITAL REQUIREMENTS.—

10 “(A) IN GENERAL.—Except as provided in  
11 subparagraph (B), a bilateral dealer market  
12 shall adopt a value-at-risk model approved by  
13 the Commission.

14 “(B) CAPITAL COMMENSURATE WITH  
15 RISK.—If there is an interaction of multiple  
16 bids and multiple offers on the bilateral dealer  
17 market in a predetermined, nondiscretionary  
18 automated trade matching and trade execution  
19 algorithm or bids and offers and acceptances of  
20 bids and offers made on the bilateral dealer  
21 market are binding, a bilateral dealer market  
22 shall maintain sufficient capital commensurate  
23 with the risk associated with transactions on  
24 the bilateral dealer market, as determined by  
25 the Commission.

1           “(5) TRANSACTIONS EXEMPTED BY COMMIS-  
 2           SION ACTION.—Any agreement, contract, or trans-  
 3           action on a bilateral dealer market (other than an  
 4           agreement, contract, or transaction in an excluded  
 5           commodity) that would otherwise be exempted by the  
 6           Commission under section 4(c) shall be subject to—

7                   “(A) sections 4b, 4c(a), 4c(b), 4o, and 5b;  
 8                   and

9                   “(B) subsections (c) and (d) of section 6  
 10                  and sections 6c, 6d, 8a, and 9(a)(2), to the ex-  
 11                  tent that those provisions prohibit the manipu-  
 12                  lation of the market price of any commodity in  
 13                  interstate commerce or for future delivery on or  
 14                  subject to the rules of any contract market.

15           “(6) NO EFFECT ON OTHER FERC AUTHOR-  
 16           ITY.—This subsection does not affect the authority  
 17           of the Federal Energy Regulatory Commission to  
 18           regulate transactions under the Federal Power Act  
 19           (16 U.S.C. 791a et seq.) or the Natural Gas Act (15  
 20           U.S.C 717 et seq.).

21           “(7) APPLICABILITY.—This subsection does not  
 22           apply to—

23                   “(A) a designated contract market regu-  
 24                  lated under section 5; or

1                   “(B) a registered derivatives transaction  
2                   execution facility regulated under section 5a.”.

3           (c) 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 for any  
8 member of a registered entity, or for any correspondent,  
9 agent, or employee of any member, in or in connection  
10 with any order to make, or the making of, any contract  
11 of sale of any commodity in interstate commerce, made,  
12 or to be made on or subject to the rules of any registered  
13 entity, or for any person, in or in connection with any  
14 order to make, or the making of, any agreement, trans-  
15 action, or contract in a commodity subject to this Act—

16                   “(1) to cheat or defraud or attempt to cheat or  
17 defraud any person;

18                   “(2) willfully to make or cause to be made to  
19 any person any false report or statement, or willfully  
20 to enter or cause to be entered any false record;

21                   “(3) willfully to deceive or attempt to deceive  
22 any person by any means; or

23                   “(4) to bucket the order, or to fill the order by  
24 offset against the order of any person, or willfully,  
25 knowingly, and without the prior consent of any per-



1 son to become the buyer in respect to any selling  
 2 order of any person, or to become the seller in re-  
 3 spect to any buying order of any person.”

4 (d) CONFORMING AMENDMENTS.—The Commodity  
 5 Exchange Act is amended—

6 (1) in section 2 (7 U.S.C. 2)—

7 (A) in subsection (h)—

8 (i) in paragraph (1), by striking  
 9 “paragraph (2)” and inserting “para-  
 10 graphs (2) and (7)”; and

11 (ii) in paragraph (3), by striking  
 12 “paragraph (4)” and inserting “para-  
 13 graphs (4) and (7)”; and

14 (B) in subsection (i)(1)(A), by striking  
 15 “section 2(h) or 4(c)” and inserting “subsection  
 16 (h) or (j) or section 4(c)”;

17 (2) in section 4i (7 U.S.C. 6i)—

18 (A) by striking “any contract market or”  
 19 and inserting “any contract market,”; and

20 (B) by inserting “, or pursuant to an ex-  
 21emption under section 4(c)” after “transaction  
 22 execution facility”;

23 (3) in section 5a(g)(1) (7 U.S.C. 7a(g)(1)), by  
 24 striking “section 2(h)” and inserting “subsection (h)  
 25 or (j) of section 2”;

1 (4) in section 5b (7 U.S.C. 7a-1)—

2 (A) in subsection (a)(1), by striking “2(h)  
3 or” and inserting “2(h), 2(j), or”; and

4 (B) in subsection (b), by striking “2(h) or”  
5 and inserting “2(h), 2(j), or”; and

6 (5) in section 12(e)(2)(B) (7 U.S.C.  
7 16(e)(2)(B)), by striking “section 2(h) or 4(c)” and  
8 inserting “subsection (h) or (j) of section 2 or sec-  
9 tion 4(c)”.

10 **SEC. 2. 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) **IN GENERAL.**—To the extent that the  
19 Commission determines that any contract that  
20 comes before the Commission is not under the juris-  
21 diction of the Commission, the Commission shall  
22 refer the contract to the appropriate Federal agency.

23 “(2) **MEETINGS.**—A designee of the Commis-  
24 sion shall meet quarterly with a designee of the  
25 Commodity Futures Trading Commission, the Secu-

1       rities Exchange Commission, the Federal Trade  
2       Commission, and the Federal Reserve Board to  
3       discuss—

4               “(A) conditions and events in energy trad-  
5       ing markets; and

6               “(B) any changes in Federal law (includ-  
7       ing regulations) that may be appropriate to reg-  
8       ulate energy trading markets.

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

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