

109TH CONGRESS  
1ST SESSION

# S. 509

To improve the operation of energy markets.

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IN THE SENATE OF THE UNITED STATES

MARCH 3, 2005

Mrs. FEINSTEIN (for herself, Mr. LEVIN, Mr. WYDEN, Mr. HARKIN, and Ms. CANTWELL) 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 improve the operation of energy markets.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Energy Markets Improvement Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

### TITLE I—TRANSPARENCY IN WHOLESALE ELECTRICITY MARKETS

Sec. 101. Market transparency.

Sec. 102. Round trip trading.

Sec. 103. Enforcement.

Sec. 104. Refund effective date.

Sec. 105. Discovery and evidentiary hearings under the Federal Power Act.

## TITLE II—MARKET MANIPULATION

Sec. 201. Prohibition of market manipulation.

## TITLE III—ENERGY MARKET OVERSIGHT

Sec. 301. Over-the-counter transactions in energy commodities.

Sec. 302. Electronic trading facilities for energy commodities.

Sec. 303. No effect on other authority.

Sec. 304. Prohibition of fraudulent transactions.

Sec. 305. Criminal and civil penalties.

Sec. 306. Conforming amendments.

# 1 **TITLE I—TRANSPARENCY IN** 2 **WHOLESALE ELECTRICITY** 3 **MARKETS**

## 4 **SEC. 101. MARKET TRANSPARENCY.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et  
6 seq.) is amended by adding at the end the following:

### 7 **“SEC. 215. MARKET TRANSPARENCY.**

8 “(a) IN GENERAL.—Not later than 180 days after  
9 the date of enactment of this section, the Commission  
10 shall promulgate regulations establishing an electronic in-  
11 formation system to provide the Commission and the pub-  
12 lic with access to such information as is appropriate to  
13 facilitate price transparency and participation in markets  
14 subject to the jurisdiction of the Commission.

15 “(b) INFORMATION TO BE MADE AVAILABLE.—

16 “(1) IN GENERAL.—The system under sub-  
17 section (a) shall provide information about the avail-  
18 ability and market price of wholesale electric energy  
19 and transmission services to the Commission, State

1 commissions, buyers and sellers of wholesale electric  
2 energy, users of transmission services, and the pub-  
3 lic.

4 “(2) PROTECTION OF CONSUMERS AND COM-  
5 PETITIVE MARKETS.—In determining the informa-  
6 tion to be made available under the system and the  
7 time at which to make such information available,  
8 the Commission shall seek to ensure that consumers  
9 and competitive markets are protected from false or  
10 misleading information and from the adverse effects  
11 of potential collusion or other anticompetitive behav-  
12 iors that can be facilitated by untimely public disclo-  
13 sure of transaction-specific information.

14 “(c) AUTHORITY TO OBTAIN INFORMATION.—The  
15 Commission shall have authority to obtain information de-  
16 scribed in subsections (a) and (b) from any electric utility  
17 or transmitting utility (including any entity described in  
18 section 201(f)).

19 “(d) EXEMPTION.—The Commission shall exempt  
20 from disclosure information that the Commission deter-  
21 mines would, if disclosed—

22 “(1) be detrimental to the operation of an effec-  
23 tive market; or

24 “(2) jeopardize system security.

1       “(e) APPLICABILITY.—The system under subsection  
 2 (a) shall not apply to an entity described in section  
 3 212(k)(2)(B) with respect to transactions for the purchase  
 4 or sale of wholesale electric energy and transmission serv-  
 5 ices within the area described in section 212(k)(2)(A).”.

6 **SEC. 102. ROUND TRIP TRADING.**

7       Part II of the Federal Power Act (16 U.S.C. 824 et  
 8 seq.) (as amended by section 101) is amended by adding  
 9 at the end the following:

10 **“SEC. 216. ROUND TRIP TRADING.**

11       “(a) PROHIBITION.—It shall be unlawful for any per-  
 12 son or entity (including an entity described in section  
 13 201(f)) knowingly to enter into any contract or other ar-  
 14 rangement to execute a round trip trade.

15       “(b) DEFINITION OF ROUND TRIP TRADE.—In this  
 16 section, the term ‘round trip trade’ means a transaction  
 17 (or combination of transactions) in which a person or enti-  
 18 ty, with the intent to affect reported revenues, trading vol-  
 19 umes, or prices—

20               “(1) enters into a contract or other arrange-  
 21 ment to purchase from, or sell to, any other person  
 22 or entity electric energy at wholesale; and

23               “(2) simultaneously with entering into the con-  
 24 tract or arrangement described in paragraph (1), ar-  
 25 ranges a financially offsetting trade with the other

1 person or entity for the same electric energy at sub-  
2 stantially the same location, price, quantity, and  
3 terms so that, collectively, the purchase and sale  
4 transactions in themselves result in a de minimis or  
5 no financial gain or loss.”.

6 **SEC. 103. ENFORCEMENT.**

7 (a) COMPLAINTS.—Section 306 of the Federal Power  
8 Act (16 U.S.C. 825e) is amended—

9 (1) in the first sentence—

10 (A) by inserting “(including an electric  
11 utility)” after “Any person”; and

12 (B) by inserting “, transmitting utility,”  
13 after “licensee”; and

14 (2) in the second sentence, by inserting “,  
15 transmitting utility,” after “licensee”.

16 (b) INVESTIGATIONS.—Section 307(a) of the Federal  
17 Power Act (16 U.S.C. 825f(a)) is amended in the first  
18 sentence by inserting “(including a transmitting utility)”  
19 after “any person”.

20 (c) REVIEW OF COMMISSION ORDERS.—Section  
21 313(a) of the Federal Power Act (16 U.S.C. 825l) is  
22 amended in the first sentence by inserting “(including an  
23 electric utility)” after “Any person”.

24 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-  
25 eral Power Act (16 U.S.C. 825o) is amended—

1 (1) in subsection (a)—

2 (A) by striking “\$5,000” and inserting  
3 “\$1,000,000”; and

4 (B) by striking “two years” and inserting  
5 “5 years”;

6 (2) in subsection (b), by striking “\$500” and  
7 inserting “\$25,000”; and

8 (3) by striking subsection (c).

9 (e) CIVIL PENALTIES.—Section 316A of the Federal  
10 Power Act (16 U.S.C. 825o–1) is amended—

11 (1) in subsections (a) and (b), by striking “sec-  
12 tion 211, 212, 213, or 214” each place it appears  
13 and inserting “part II”; and

14 (2) in subsection (b), by striking “\$10,000”  
15 and inserting “\$1,000,000”.

16 (f) GENERAL PENALTIES.—Section 21 of the Natural  
17 Gas Act (15 U.S.C. 717t) is amended—

18 (1) in subsection (a), by striking “\$5,000” and  
19 inserting “\$1,000,000”, and by striking “two years”  
20 and inserting “5 years”; and

21 (2) in subsection (b), by striking “\$500” and  
22 inserting “\$50,000”.

23 **SEC. 104. REFUND EFFECTIVE DATE.**

24 Section 206(b) of the Federal Power Act (16 U.S.C.  
25 824e(b)) is amended—

1           (1) in the second sentence, by striking “the  
 2           date 60 days after the filing of such complaint nor  
 3           later than 5 months after the expiration of such 60-  
 4           day period” and inserting “the date of the filing of  
 5           the complaint nor later than 5 months after the fil-  
 6           ing of the complaint”;

7           (2) in the third sentence—

8                   (A) by striking “60 days after the” and in-  
 9                   serting “of”; and

10                   (B) by striking “expiration of such 60-day  
 11                   period” and inserting “publication date”; and

12           (3) by striking the fifth sentence and inserting  
 13           the following: “If no final decision is rendered by the  
 14           conclusion of the 180-day period that begins on the  
 15           date of institution of a proceeding under this sec-  
 16           tion, the Commission shall state the reasons why the  
 17           Commission has failed to do so and shall state its  
 18           best estimate as to when the Commission reasonably  
 19           expects to render a final decision.”.

20   **SEC. 105. DISCOVERY AND EVIDENTIARY HEARINGS UNDER**  
 21                   **THE FEDERAL POWER ACT.**

22           The Federal Power Act is amended—

23                   (1) in section 206 (16 U.S.C. 824e), by adding  
 24                   at the end the following:

1 “(e) DISCOVERY AND EVIDENTIARY HEARINGS.—On  
 2 receipt of a complaint by a State or a State Commission  
 3 under subsection (a), the Commission shall provide—

4 “(1) an opportunity for the State or the State  
 5 Commission to conduct reasonable discovery; and

6 “(2) on request of the State or the State Com-  
 7 mission and a showing of a dispute as to material  
 8 facts, an evidentiary hearing.”; and

9 (2) in section 306 (16 U.S.C. 825e)—

10 (A) by inserting “(a) IN GENERAL.—” be-  
 11 fore “Any person”; and

12 (B) by adding at the end the following:

13 “(b) DISCOVERY AND EVIDENTIARY HEARINGS.—On  
 14 receipt of a complaint by a State or State Commission  
 15 under this section, the Commission shall provide—

16 “(1) an opportunity for the State or the State  
 17 Commission to conduct reasonable discovery; and

18 “(2) on request of the State or the State Com-  
 19 mission and a showing of dispute as to material  
 20 facts, an evidentiary hearing.”.



## **TITLE II—MARKET MANIPULATION**

### **SEC. 201. PROHIBITION OF MARKET MANIPULATION.**

(a) IN GENERAL.—Part II of the Federal Power Act (as amended by section 102) is amended by adding at the end the following:

#### **“SEC. 217. PROHIBITION OF MARKET MANIPULATION.**

“(a) IN GENERAL.—It shall be unlawful for any person, directly or indirectly, to knowingly use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance to affect the price, availability, or reliability of the electric energy or transmission services.

“(b) REGULATIONS.—The Commission may promulgate regulations as appropriate in the public interest or for the protection of electric ratepayers to enforce this section.”.

(b) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

“(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance

1 in violation of this Act (including a regulation promul-  
 2 gated under this Act), the Commission may, in addition  
 3 to any other remedy available under this Act, revoke the  
 4 authority of the public utility to charge market-based  
 5 rates.”.

## 6 **TITLE III—ENERGY MARKET** 7 **OVERSIGHT**

### 8 **SEC. 301. OVER-THE-COUNTER TRANSACTIONS IN ENERGY** 9 **COMMODITIES.**

10 (a) DEFINITIONS.—Section 1a of the Commodity Ex-  
 11 change Act (7 U.S.C. 1a) is amended by adding at the  
 12 end the following:

13 “(34) INCLUDED ENERGY TRANSACTION.—The  
 14 term ‘included energy transaction’ means a contract,  
 15 agreement, or transaction in an energy commodity  
 16 that is—

17 “(A)(i) executed or traded on an electronic  
 18 trading facility; and

19 “(ii) entered into on a principal-to-prin-  
 20 cipal basis solely between persons that are eligi-  
 21 ble commercial entities at the time the persons  
 22 enter into the agreement, contract, or trans-  
 23 action; or

24 “(B)(i) executed or traded not on or  
 25 through a trading facility; and

1           “(ii) entered into solely between persons  
 2           that are eligible contract participants at the  
 3           time the persons enter into the agreement, con-  
 4           tract, or transaction, regardless of the means of  
 5           execution of the agreement, contract, or trans-  
 6           action.

7           “(35) ENERGY COMMODITY.—

8           “(A) IN GENERAL.—The term ‘energy  
 9           commodity’ means a commodity (other than an  
 10          excluded commodity, a metal, or an agricultural  
 11          commodity) that is used as a source of energy.

12          “(B) INCLUSIONS.—The term ‘energy com-  
 13          modity’ includes—

14               “(i) coal;

15               “(ii) crude oil, gasoline, heating oil,  
 16               and propane;

17               “(iii) electricity; and

18               “(iv) natural gas.

19          “(36) ELECTRONIC ENERGY TRADING FACIL-  
 20          ITY.—The term ‘electronic energy trading facility’  
 21          means an electronic trading facility on or through  
 22          which included energy transactions are traded or ex-  
 23          ecuted.”.

1 (b) OFF-EXCHANGE TRANSACTIONS IN ENERGY  
 2 COMMODITIES.—Section 2(g) of the Commodity Exchange  
 3 Act (7 U.S.C. 2(g)) is amended—

4 (1) by inserting “or an energy commodity”  
 5 after “agricultural commodity”;

6 (2) by redesignating paragraphs (1) through  
 7 (3) as subparagraphs (A) through (C), respectively;

8 (3) by striking “No provision” and inserting  
 9 the following:

10 “(1) IN GENERAL.—No provision”; and

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

12 “(2) TRANSACTIONS IN ENERGY COMMOD-  
 13 ITIES.—

14 “(A) IN GENERAL.—Except as provided in  
 15 subparagraphs (B) and (C) and subsection  
 16 (h)(7), nothing in this Act applies to an in-  
 17 cluded energy transaction.

18 “(B) PROHIBITED CONDUCT.—

19 “(i) IN GENERAL.—An included en-  
 20 ergy transaction shall be subject to—

21 “(I) sections 5b, 12(e)(2)(B),  
 22 and 22(a)(4); and

23 “(II) the prohibitions in sections  
 24 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6e, 6d,  
 25 8a, and 9(a)(2).

1                   “(ii) TRANSACTIONS EXEMPTED BY  
2                   COMMISSION ACTION.—Notwithstanding  
3                   any exemption by the Commission under  
4                   section 4(e), an included energy trans-  
5                   action shall be subject to the sections spec-  
6                   ified in clause (i) of this subparagraph,  
7                   subparagraph (C), and subsection (h)(7).

8                   “(C) REPORTING AND RECORDKEEPING  
9                   REQUIREMENTS.—

10                   “(i) IN GENERAL.—An eligible con-  
11                   tract participant that enters into or exe-  
12                   cutes an included energy transaction that  
13                   performs, or together with other such  
14                   transactions performs, a significant price  
15                   discovery function in the cash market for  
16                   an energy commodity or in any other mar-  
17                   ket for agreements, contracts, or trans-  
18                   actions relating to an energy commodity,  
19                   or an eligible commercial entity that enters  
20                   into or executes an included energy trans-  
21                   action described in section 1a(34)(A)  
22                   shall—

23                   “(I) provide to the Commission  
24                   on a timely basis the information re-  
25                   quired under clause (ii); and

1 “(II)(aa) consistent with section  
2 4i, maintain books and records relat-  
3 ing to each included energy trans-  
4 action, for a period of at least 5 years  
5 after the date of the transaction, in  
6 such form as the Commission shall re-  
7 quire; and

8 “(bb) keep the books and records  
9 open to inspection by any representa-  
10 tive of the Commission or the Attor-  
11 ney General.

12 “(ii) REQUIRED INFORMATION.—

13 “(I) IN GENERAL.—The Commis-  
14 sion shall require that such informa-  
15 tion regarding included energy trans-  
16 actions be provided to the Commission  
17 as the Commission considers nec-  
18 essary to assist in detecting and pre-  
19 venting price manipulation.

20 “(II) INFORMATION TO BE IN-  
21 CLUDED.—Such information shall in-  
22 clude information regarding large  
23 trading positions obtained through 1  
24 or more included energy transactions  
25 that involve—

1 “(aa) substantial quantities  
2 of the commodity in the cash  
3 market; or

4 “(bb) substantial positions,  
5 investments, or trades in agree-  
6 ments or contracts related to en-  
7 ergy commodities.

8 “(III) MANNER OF COMPLI-  
9 ANCE.—The Commission shall specify  
10 when and how such information shall  
11 be provided and maintained by eligible  
12 contract participants and eligible com-  
13 mercial entities.

14 “(IV) PRICE DISCOVERY TRANS-  
15 ACTIONS.—

16 “(aa) IN GENERAL.—In  
17 specifying the information to be  
18 provided under this paragraph,  
19 the Commission shall identify the  
20 transactions or class of trans-  
21 actions that the Commission con-  
22 siders to perform a significant  
23 price discovery function.

24 “(bb) CONSIDERATIONS.—In  
25 determining which included en-

1 energy transactions perform a sig-  
2 nificant price discovery function,  
3 the Commission shall consider  
4 the extent to which—

5 “(AA) standardized  
6 agreements are used to exe-  
7 cute the transactions;

8 “(BB) the transactions  
9 involve standardized types or  
10 measures of a commodity;

11 “(CC) the prices of the  
12 transactions are reported to  
13 third parties, published, or  
14 disseminated;

15 “(DD) the prices of the  
16 transactions are referenced  
17 in other transactions; and

18 “(EE) other factors  
19 considered appropriate by  
20 the Commission.

21 “(V) PERSONS FILING.—

22 “(aa) IN GENERAL.—The  
23 Commission, in its discretion,  
24 may allow large trader position  
25 reports required to be provided



1 by an eligible commercial entity  
2 to be provided by an electronic  
3 energy trading facility if the eli-  
4 gible commercial entity author-  
5 izes the facility to provide such  
6 information on its behalf.

7 “(bb) INFORMATION AND  
8 ENFORCEMENT.—Nothing in an  
9 authorization under item (aa)  
10 shall impair the ability of the  
11 Commission to obtain informa-  
12 tion from an eligible commercial  
13 entity or otherwise enforce this  
14 Act.

15 “(VI) REGULATIONS.—Not later  
16 than 180 days after the date of enact-  
17 ment of this paragraph, the Commis-  
18 sion shall issue a notice of proposed  
19 rulemaking, and not later than 1 year  
20 after the date of enactment of this  
21 paragraph, the Commission shall pro-  
22 mulgate final regulations, specifying  
23 the information to be provided and  
24 maintained under this subpara-  
25 graph.”.

1 **SEC. 302. ELECTRONIC TRADING FACILITIES FOR ENERGY**  
 2 **COMMODITIES.**

3 Section 2(h) of the Commodity Exchange Act (7  
 4 U.S.C. 2(h)) is amended—

5 (1) in paragraph (1), by inserting after “an ex-  
 6 empt commodity” the following: “other than an en-  
 7 ergy commodity”;

8 (2) in paragraph (3), by inserting after “an ex-  
 9 empt commodity” the following: “other than an en-  
 10 ergy commodity”; and

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

12 “(7) ENERGY TRANSACTIONS.—

13 “(A) IN GENERAL.—To the extent that the  
 14 Commission determines to be appropriate under  
 15 subparagraph (C), an electronic energy trading  
 16 facility shall—

17 “(i) be subject to the requirements of  
 18 section 5a, to the extent provided in sec-  
 19 tions 5a(g) and 5d;

20 “(ii)(I) consistent with section 4i,  
 21 maintain books and records relating to the  
 22 business of the electronic energy trading  
 23 facility, including books and records relat-  
 24 ing to each transaction in such form as the  
 25 Commission may require; and

1 “(II) make the books and records re-  
 2 quired under this section available to rep-  
 3 resentatives of the Commission and the At-  
 4 torney General for inspection for a period  
 5 of at least 5 years after the date of each  
 6 included energy transaction;

7 “(iii) make available to the public in-  
 8 formation on trading volumes, settlement  
 9 prices, open interest (where applicable),  
 10 and opening and closing ranges (or daily  
 11 highs and lows, as appropriate) for in-  
 12 cluded energy transactions; and

13 “(iv) provide the information to the  
 14 Commission in such form and at such  
 15 times as the Commission may require.

16 “(B) APPLICABILITY OF OTHER PROVI-  
 17 SIONS.—

18 “(i) PARAGRAPH 5.—An electronic en-  
 19 ergy trading facility shall comply with  
 20 paragraph (5).

21 “(ii) PARAGRAPH 6.—Paragraph (6)  
 22 shall apply with respect to a subpoena  
 23 issued to any foreign person that the Com-  
 24 mission believes is conducting or has con-

ducted transactions on or through an electronic energy trading facility.

“(C) REGULATIONS.—Not later than 180 days after the date of enactment of this paragraph, the Commission shall issue a notice of proposed rulemaking, and not later than 1 year after the date of enactment of this paragraph, the Commission shall promulgate final regulations, specifying the information to be provided, maintained, or made available to the public under subparagraphs (A) and (B).

“(8) NONDISCLOSURE OF PROPRIETARY INFORMATION.—In carrying out paragraph (7) and subsection (g)(2), the Commission shall not—

“(A) require the real-time publication of proprietary information;

“(B) prohibit the commercial sale or licensing of real-time proprietary information; or

“(C) publicly disclose information regarding market positions, business transactions, trade secrets, or names of customers, except as provided in section 8.”.

**SEC. 303. NO EFFECT ON OTHER AUTHORITY.**

(a) NO EFFECT ON FERC AUTHORITY.—Nothing contained in this title shall affect the jurisdiction of the

1 Federal Energy Regulatory Commission with respect to  
 2 the authority of the Federal Energy Regulatory Commis-  
 3 sion under the Federal Power Act (16 U.S.C. 791a et  
 4 seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or  
 5 other law to obtain information or otherwise carry out the  
 6 responsibilities of the Federal Energy Regulatory Commis-  
 7 sion.

8 (b) NO EFFECT ON EXCLUDED COMMODITIES.—The  
 9 amendments made by this title have no effect on the regu-  
 10 lation of excluded commodities under the Commodity Ex-  
 11 change Act (7 U.S.C. 1a et seq.).

12 (c) NO EFFECT ON METALS.—The amendments  
 13 made by this title have no effect on the regulation of met-  
 14 als under the Commodity Exchange Act (7 U.S.C. 1a et  
 15 seq.).

16 **SEC. 304. PROHIBITION OF FRAUDULENT TRANSACTIONS.**

17 Section 4b of the Commodity Exchange Act (7 U.S.C.  
 18 6b) is amended by striking subsection (a) and inserting  
 19 the following:

20 “(a) PROHIBITIONS.—

21 “(1) IN GENERAL.—It shall be unlawful (A) for  
 22 any person, in or in connection with any order to  
 23 make, or the making of, any contract of sale of any  
 24 commodity for future delivery or in interstate com-  
 25 merce, that is made, or to be made, on or subject

1 to the rules of a designated contract market, for or  
 2 on behalf of any other person, or (B) for any person,  
 3 in or in connection with any order to make, or the  
 4 making of, any contract of sale of any commodity  
 5 for future delivery or other agreement, contract or  
 6 transaction subject to paragraphs (1) and (2) of sec-  
 7 tion 5a(g), that is made, or to be made, for or on  
 8 behalf of or with, any other person, other than on  
 9 or subject to the rules of a designated contract mar-  
 10 ket—

11 “(i) to cheat or defraud or attempt to  
 12 cheat or defraud the other person;

13 “(ii) willfully to make or cause to be made  
 14 to such other person any false report or state-  
 15 ment or willfully to enter or cause to be entered  
 16 for the other person any false record;

17 “(iii) willfully to deceive or attempt to de-  
 18 ceive the other person by any means whatsoever  
 19 in regard to any order or contract or the dis-  
 20 position or execution of any order or contract,  
 21 or in regard to any act of agency performed,  
 22 with respect to any order or contract for (or, in  
 23 the case of a contract described in subpara-  
 24 graph (B), with the other person); or

1           “(iv)(I) to bucket an order represented by  
 2           the person as an order to be executed, for or on  
 3           behalf of the other person, on an organized ex-  
 4           change; or

5           “(II) to—

6           “(aa) fill an order by offset against  
 7           the order or orders of the other person; or

8           “(bb) willfully and knowingly and  
 9           without the prior consent of the other per-  
 10          son, to—

11           “(AA) become the buyer in re-  
 12           spect to any selling order of the other  
 13           person; or

14           “(BB) become the seller in re-  
 15           spect to any buying order of the other  
 16           person;

17           if the order is to be executed on or subject to  
 18           the rules of a designated contract market.

19           “(2) LIMITATION.—This subsection does not  
 20           obligate any person, in connection with a transaction  
 21           in a contract of sale of a commodity for future deliv-  
 22           ery with another person, to disclose to any other  
 23           person nonpublic information that may be material  
 24           to the market price of the commodity or transaction,  
 25           except as necessary to make any statement made to

1 the other person in connection with the transaction  
 2 not misleading in any material respect.”.

3 **SEC. 305. CRIMINAL AND CIVIL PENALTIES.**

4 (a) ENFORCEMENT POWERS OF COMMISSION.—Sec-  
 5 tion 6(c) of the Commodity Exchange Act (7 U.S.C. 9,  
 6 15) is amended in paragraph (3) of the tenth sentence—

7 (1) by inserting “(A)” after “assess such per-  
 8 son”; and

9 (2) by inserting after “each such violation” the  
 10 following: “, or (B) in any case of manipulation of,  
 11 or attempt to manipulate, the price of any com-  
 12 modity, a civil penalty of not more than the greater  
 13 of \$1,000,000 or triple the monetary gain to such  
 14 person for each such violation,”.

15 (b) MANIPULATIONS AND OTHER VIOLATIONS.—Sec-  
 16 tion 6(d) of the Commodity Exchange Act (7 U.S.C. 13b)  
 17 is amended in the first sentence—

18 (1) by striking “paragraph (a) or (b) of section  
 19 9 of this Act” and inserting “subsection (a), (b), or  
 20 (f) of section 9”; and

21 (2) by striking “said paragraph 9(a) or 9(b)”  
 22 and inserting “subsection (a), (b), or (f) of section  
 23 9”.



1 (c) NONENFORCEMENT OF RULES OF GOVERNMENT  
2 OR OTHER VIOLATIONS.—Section 6b of the Commodity  
3 Exchange Act (7 U.S.C. 13a) is amended—

4 (1) in the first sentence, by inserting before the  
5 period at the end the following: “, or, in any case  
6 of manipulation of, or an attempt to manipulate, the  
7 price of any commodity, a civil penalty of not more  
8 than \$1,000,000 for each such violation”; and

9 (2) in the second sentence, by inserting before  
10 the period at the end the following: “, except that  
11 if the failure or refusal to obey or comply with the  
12 order involved any offense under section 9(f), the  
13 registered entity, director, officer, agent, or employee  
14 shall be guilty of a felony and, on conviction, shall  
15 be subject to penalties under section 9(f)”.

16 (d) ACTION TO ENJOIN OR RESTRAIN VIOLA-  
17 TIONS.—Section 6c(d) of the Commodity Exchange Act (7  
18 U.S.C. 13a–1(d)) is amended by striking “(d)” and all  
19 that follows through the end of paragraph (1) and insert-  
20 ing the following:

21 “(d) CIVIL PENALTIES.—In any action brought  
22 under this section, the Commission may seek and the  
23 court shall have jurisdiction to impose, on a proper show-  
24 ing, on any person found in the action to have committed  
25 any violation—

1 “(1) a civil penalty in the amount of not more  
 2 than the greater of \$100,000 or triple the monetary  
 3 gain to the person for each violation; or

4 “(2) in any case of manipulation of, or an at-  
 5 tempt to manipulate, the price of any commodity, a  
 6 civil penalty in the amount of not more than the  
 7 greater of \$1,000,000 or triple the monetary gain to  
 8 the person for each violation.”.

9 (e) VIOLATIONS GENERALLY.—Section 9(a) of the  
 10 Commodity Exchange Act (7 U.S.C. 13) is amended—

11 (1) by striking “(or \$500,000 in the case of a  
 12 person who is an individual)”;

13 (2) by striking “five years” and inserting “10  
 14 years”; and

15 (3) in paragraph (2), by striking “false or mis-  
 16 leading or knowingly inaccurate reports” and insert-  
 17 ing “knowingly false, misleading, or inaccurate re-  
 18 ports”.

19 **SEC. 306. CONFORMING AMENDMENTS.**

20 (a) Section 2 of the Commodity Exchange Act (7  
 21 U.S.C. 2) is amended—

22 (1) in subsection (d)(1), by striking “section  
 23 5b” and inserting “section 5a(g), 5b,”;

24 (2) in subsection (e)(1), by inserting “(1)” after  
 25 “(g)”; and

1 (3) in subsection (i)—

2 (A) in paragraph (1)—

3 (i) by striking “No provision” and in-  
 4 serting “IN GENERAL.—Subject to sub-  
 5 sections (g)(2) and (h)(7), no provision”;  
 6 and

7 (ii) in subparagraph (A), by inserting  
 8 “(1)” after “2(g)”; and

9 (B) in paragraph (2), by striking “No pro-  
 10 vision” and inserting “IN GENERAL.—Subject  
 11 to subsections (g)(2) and (h)(7), no provision”.

12 (b) Section 4i of the Commodity Exchange Act (7  
 13 U.S.C. 6i) is amended in the first sentence by inserting  
 14 “, or pursuant to an exemption under section 4(c)” after  
 15 “transaction execution facility”.

16 (c) Section 8a(9) of the Commodity Exchange Act (7  
 17 U.S.C. 12a(9)) is amended—

18 (1) by inserting “or an electronic energy trad-  
 19 ing facility” after “direct the contract market”;

20 (2) by inserting after “liquidation of any fu-  
 21 tures contract” the following: “or included energy  
 22 transaction”; and

23 (3) by inserting “or an electronic energy trad-  
 24 ing facility” after “given by a contract market”.

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