

110TH CONGRESS
2D SESSION

H. R. 5768

To amend the Commodity Exchange Act to provide the Commodity Futures Trading Commission authority over off-exchange retail foreign currency transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2008

Mr. FRELINGHUYSEN introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Commodity Exchange Act to provide the Commodity Futures Trading Commission authority over off-exchange retail foreign currency transactions, 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 title may be cited as the “CFTC Improvement
5 Act of 2008”.

1 **TITLE I—GENERAL PROVISIONS**

2 **SEC. 101. CFTC AUTHORITY OVER OFF-EXCHANGE RETAIL**
3 **FOREIGN CURRENCY TRANSACTIONS.**

4 (a) IN GENERAL.—Section 2(c)(2) of the Commodity
5 Exchange Act (7 U.S.C. 2(c)(2)) is amended by striking
6 subparagraphs (B) and (C) and inserting the following:

7 “(B) AGREEMENTS, CONTRACTS, AND
8 TRANSACTIONS IN RETAIL FOREIGN CUR-
9 RENCY.—

10 “(i) This Act applies to, and the Com-
11 mission shall have jurisdiction over, an
12 agreement, contract, or transaction in for-
13 eign currency that—

14 “(I) is a contract of sale of a
15 commodity for future delivery (or an
16 option on such a contract) or an op-
17 tion (other than an option executed or
18 traded on a national securities ex-
19 change registered pursuant to section
20 6(a) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78f(a))); and

22 “(II) is offered to, or entered
23 into with, a person that is not an eli-
24 gible contract participant, unless the
25 counterparty, or the person offering to

1 be the counterparty, of the person
2 is—

3 “(aa) a financial institution;

4 “(bb)(AA) a broker or deal-
5 er registered under section 15(b)
6 (except paragraph (11) thereof)
7 or 15C of the Securities Ex-
8 change Act of 1934 (15 U.S.C.
9 78o(b), 78o–5); or

10 “(BB) an associated person
11 of a broker or dealer registered
12 under section 15(b) (except para-
13 graph (11) thereof) or 15C of the
14 Securities Exchange Act of 1934
15 (15 U.S.C. 78o(b), 78o–5) con-
16 cerning the financial or securities
17 activities of which the broker or
18 dealer makes and keeps records
19 under section 15C(b) or 17(h) of
20 the Securities Exchange Act of
21 1934 (15 U.S.C. 78o–5(b),
22 78q(h));

23 “(cc) a futures commission
24 merchant registered under this
25 Act (that is not also a person de-

1 scribed in item (bb)), or an affili-
2 ated person of such a futures
3 commission merchant (that is not
4 also a person described in item
5 (bb)) if the futures commission
6 merchant makes and keeps
7 records under section 4f(c)(2)(B)
8 of this Act concerning the futures
9 and other financial activities of
10 the affiliated person;

11 “(dd) an insurance company
12 described in section 1a(12)(A)(ii)
13 of this Act, or a regulated sub-
14 subsidiary or affiliate of such an in-
15 surance company;

16 “(ee) a financial holding
17 company (as defined in section 2
18 of the Bank Holding Company
19 Act of 1956); or

20 “(ff) an investment bank
21 holding company (as defined in
22 section 17(i) of the Securities
23 Exchange Act of 1934 (15
24 U.S.C. 78q(i))).

1 “(ii) Notwithstanding item (cc) of
2 clause (i)(II) of this subparagraph, agree-
3 ments, contracts, or transactions described
4 in clause (i) of this subparagraph shall be
5 subject to subsection (a)(1)(B) of this sec-
6 tion and sections 4(b), 4b, 4c(b), 4o, 6(c)
7 and 6(d) (except to the extent that sections
8 6(c) and 6(d) prohibit manipulation of the
9 market price of any commodity in inter-
10 state commerce, or for future delivery on
11 or subject to the rules of any market), 6c,
12 6d, 8(a), 13(a), and 13(b) if the agree-
13 ments, contracts, or transactions are of-
14 fered, or entered into, by a person that is
15 registered as a futures commission mer-
16 chant or an affiliated person of a futures
17 commission merchant registered under this
18 Act that is not also a person described in
19 any of items (aa), (bb), (dd), (ee), or (ff)
20 of clause (i)(II) of this subparagraph.

21 “(iii)(I) Notwithstanding item (cc) of
22 clause (i)(II), a person shall not participate
23 in the solicitation or recommendation of
24 any agreement, contract, or transaction de-
25 scribed in clause (i) entered into with or to

1 be entered into with a person described in
2 such item, unless the person—

3 “(aa) is registered in such capac-
4 ity as the Commission by rule, regula-
5 tion, or order shall determine; and

6 “(bb) is a member of a futures
7 association registered under section
8 17.

9 “(II) Subclause (I) shall not
10 apply to—

11 “(aa) any person described
12 in any of items (aa), (bb), (dd),
13 (ee), or (ff) of subparagraph
14 (B)(i)(II); or

15 “(bb) any such person’s as-
16 sociated persons.

17 “(C)(i)(I) This subparagraph shall apply to
18 any agreement, contract, or transaction in for-
19 eign currency that is—

20 “(aa) offered to, or entered into with,
21 a person that is not an eligible contract
22 participant (except that this subparagraph
23 shall not apply if the counterparty, or the
24 person offering to be the counterparty, of
25 the person that is not an eligible contract

1 participant is a person described in any of
2 items (aa), (bb), (dd), (ee), or (ff) of sub-
3 paragraph (B)(i)(II)); and

4 “(bb) offered, or entered into, on a le-
5 veraged or margined basis, or financed by
6 the offeror, the counterparty, or a person
7 acting in concert with the offeror or
8 counterparty on a similar basis.

9 “(II) Subclause (I) shall not apply to—

10 “(aa) a security that is not a security
11 futures product; or

12 “(bb) a contract of sale that—

13 “(AA) results in actual delivery
14 within 2 days; or

15 “(BB) creates an enforceable ob-
16 ligation to deliver between a seller and
17 buyer that have the ability to deliver
18 and accept delivery, respectively, in
19 connection with their line of business.

20 “(ii)(I) Agreements, contracts, or transactions
21 described in clause (i) of this subparagraph shall be
22 subject to subsection (a)(1)(B) of this section and
23 sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to
24 the extent that sections 6(c) and 6(d) prohibit ma-
25 nipulation of the market price of any commodity in

1 interstate commerce, or for future delivery on or
2 subject to the rules of any market), 6c, 6d, 8(a),
3 13(a), and 13(b).

4 “(II) Subclause (I) of this clause shall not
5 apply to—

6 “(aa) any person described in any of items
7 (aa), (bb), (dd), (ee), or (ff) of subparagraph
8 (B)(i)(II); or

9 “(bb) any such person’s associated per-
10 sons.

11 “(iii)(I) A person shall not participate in the solicita-
12 tion or recommendation of any agreement, contract, or
13 transaction described in clause (i) of this subparagraph
14 unless the person is registered in such capacity as the
15 Commission by rule, regulation, or order shall determine,
16 and is a member of a futures association registered under
17 section 17.

18 “(II) Subclause (I) shall not apply to—

19 “(aa) any person described in any of items (aa),
20 (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II);
21 or

22 “(bb) any such person’s associated persons.

23 “(iv)(I) Sections 4(b) and 4b shall
24 apply to any agreement, contract, or trans-
25 action described in clause (i) of this sub-

1 paragraph as if the agreement, contract, or
2 transaction were a contract of sale of a
3 commodity for future delivery.

4 “(II) The Commission may, after
5 issuing notice and soliciting comment,
6 issue rules proscribing fraud in connection
7 with any agreement, contract, or trans-
8 action described in clause (i) of this sub-
9 paragraph in an exempt commodity or an
10 agricultural commodity. Nothing in this
11 provision shall affect the determination of
12 whether the agreement, contract, or trans-
13 action is a contract for the purchase or
14 sale of a commodity for future delivery for
15 purposes of section 4(a).

16 “(v) This subparagraph shall not be
17 construed to limit any jurisdiction that the
18 Commission may otherwise have under any
19 other provision of this Act over an agree-
20 ment, contract, or transaction that is a
21 contract of sale of a commodity for future
22 delivery.

23 “(vi) This subparagraph shall not be
24 construed to limit any jurisdiction that the
25 Commission or the Securities and Ex-

1 change Commission may otherwise have
2 under any other provision of this Act with
3 respect to security futures products and
4 persons effecting transactions in security
5 futures products.”.

6 (b) EFFECTIVE DATE.—Clause (iii) of section
7 2(c)(2)(B) and clause (iii) of section 2(c)(2)(C) of such
8 Act, as amended by subsection (a) of this section, shall
9 be effective 120 days after the date of the enactment of
10 this Act or such other time as the Commodity Futures
11 Trading Commission shall determine.

12 **SEC. 102. LIAISON WITH DEPARTMENT OF JUSTICE.**

13 Section 2(a)(9) of the Commodity Exchange Act (7
14 U.S.C. 2(a)(9)) is amended by adding at the end the fol-
15 lowing:

16 “(C) LIAISON WITH DEPARTMENT OF JUS-
17 TICE.—

18 “(i) IN GENERAL.—The Commission
19 shall, in cooperation with the Attorney
20 General, maintain a liaison between the
21 Commission and the Department of Jus-
22 tice to coordinate civil and criminal inves-
23 tigation and prosecutions of violations of
24 this Act as appropriate.

1 “(ii) DESIGNATION.—The Attorney
2 General shall designate a person as liaison
3 and take such steps as are necessary to fa-
4 cilitate communications described in clause
5 (i).”.

6 **SEC. 103. ANTI-FRAUD AUTHORITY OVER PRINCIPAL-TO-**
7 **PRINCIPAL TRANSACTIONS.**

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

10 (1) by redesignating subsections (b) and (c) as
11 subsections (c) and (d), respectively; and

12 (2) by striking “SEC.4b.” and all that follows
13 through the end of subsection (a) and inserting the
14 following

15 “(a) UNLAWFUL ACTIONS.—It shall be unlawful—

16 “(1) for any person, in or in connection with
17 any order to make, or the making of, any contract
18 of sale of any commodity in interstate commerce or
19 for future delivery that is made, or to be made, on
20 or subject to the rules of a designated contract mar-
21 ket, for or on behalf of any other person; or

22 “(2) for any person, in or in connection with
23 any order to make, or the making of, any contract
24 of sale of any commodity for future delivery, or
25 other agreement, contract, or transaction subject to

1 paragraphs (1) and (2) of section 5a(g), that is
2 made, or to be made, for or on behalf of, or with,
3 any other person, other than on or subject to the
4 rules of a designated contract market—

5 “(A) to cheat or defraud or attempt to
6 cheat or defraud the other person;

7 “(B) willfully to make or cause to be made
8 to the other person any false report or state-
9 ment or willfully to enter or cause to be entered
10 for the other person any false record;

11 “(C) willfully to deceive or attempt to de-
12 ceive the other person by any means whatsoever
13 in regard to any order or contract or the dis-
14 position or execution of any order or contract,
15 or in regard to any act of agency performed,
16 with respect to any order or contract for or, in
17 the case of section 5a(g)(2), with the other per-
18 son; or

19 “(D)(i) to bucket an order if the order is
20 either represented by the person as an order to
21 be executed, or is required to be executed, on or
22 subject to the rules of a designated contract
23 market; or

24 “(ii) to fill an order by offset against the
25 order or orders of any other person, or willfully

1 and knowingly and without the prior consent of
2 the other person to become the buyer in respect
3 to any selling order of the other person, or be-
4 come the seller in respect to any buying order
5 of the other person, if the order is either rep-
6 resented by the person as an order to be exe-
7 cuted, or is required to be executed, on or sub-
8 ject to the rules of a designated contract mar-
9 ket unless the order is executed in accordance
10 with the rules of the designated contract mar-
11 ket.

12 “(b) CLARIFICATION.—Subsection (a)(2) of this sec-
13 tion shall not obligate any person, in or in connection with
14 a transaction in a contract of sale of a commodity for fu-
15 ture delivery, or other agreement, contract or transaction
16 subject to paragraphs (1) and (2) of section 5a(g), with
17 another person, to disclose to the other person nonpublic
18 information that may be material to the market price,
19 rate, or level of the commodity or transaction, except as
20 necessary to make any statement made to the other person
21 in or in connection with the transaction not misleading
22 in any material respect.”.

1 **SEC. 104. CRIMINAL AND CIVIL PENALTIES.**

2 (a) ENFORCEMENT POWERS OF THE COMMISSION.—

3 Section 6(c) of the Commodity Exchange Act (7 U.S.C.
4 9, 15) is amended in paragraph (3) of the 10th sentence—

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

7 (2) by inserting after “each such violation” the
8 following: “, or (B) in any case of manipulation or
9 attempted manipulation in violation of this sub-
10 section, subsection (d) of this section, or section
11 9(a)(2), a civil penalty of not more than the greater
12 of \$1,000,000 or triple the monetary gain to the
13 person for each such violation,”.

14 (b) NONENFORCEMENT OF RULES OF GOVERNMENT
15 OR OTHER VIOLATIONS.—Section 6b of such Act (7
16 U.S.C. 13a) is amended—

17 (1) in the first sentence, by inserting before the
18 period at the end the following: “, or, in any case
19 of manipulation or attempted manipulation in viola-
20 tion of section 6(c), 6(d), or 9(a)(2), a civil penalty
21 of not more than \$1,000,000 for each such viola-
22 tion”; and

23 (2) in the second sentence, by inserting before
24 the period at the end the following: “, except that
25 if the failure or refusal to obey or comply with the
26 order involved any offense under section 9(a)(2), the

1 registered entity, director, officer, agent, or employee
2 shall be guilty of a felony and, on conviction, shall
3 be subject to penalties under section 9(a)(2)”.

4 (c) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—
5 Section 6c(d) of such Act (7 U.S.C. 13a–1(d)) is amended
6 by striking “(d)” and all that follows through the end of
7 paragraph (1) and inserting the following:

8 “(d) CIVIL PENALTIES.—

9 “(1) IN GENERAL.—In any action brought
10 under this section, the Commission may seek and
11 the court shall have jurisdiction to impose, on a
12 proper showing, on any person found in the action
13 to have committed any violation—

14 “(A) a civil penalty in the amount of not
15 more than the greater of \$100,000 or triple the
16 monetary gain to the person for each violation;
17 or

18 “(B) in any case of manipulation or at-
19 tempted manipulation in violation of section
20 6(e), 6(d), or 9(a)(2), a civil penalty in the
21 amount of not more than the greater of
22 \$1,000,000 or triple the monetary gain to the
23 person for each violation.”.

24 (d) VIOLATIONS GENERALLY.—Section 9 of such Act
25 (7 U.S.C. 13) is amended—

1 (1) in subsection (a), in the matter preceding
2 paragraph (1)—

3 (A) by striking “(or \$500,000 in the case
4 of a person who is an individual)”;

5 (B) by striking “five years” and inserting
6 “10 years”;

7 (2) by re-designating subsection (f) as sub-
8 section (e); and

9 (3) in paragraph (1) of subsection (e) (as redesi-
10 gnated by paragraph (2)), by striking the period at
11 the end and inserting “; or”.

12 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

13 Section 12(d) of the Commodity Exchange Act (7
14 U.S.C. 16(d)) is amended to read as follows:

15 “(d) There are authorized to be appropriated such
16 sums as are necessary to carry out this Act for each of
17 the fiscal years 2008 through 2013.”.

18 **SEC. 106. TECHNICAL AND CONFORMING AMENDMENTS.**

19 (a) Section 4a(e) of the Commodity Exchange Act (7
20 U.S.C. 6a(e)) is amended in the last proviso by striking
21 “section 9(c)” and inserting “section 9(a)(5)”.

22 (b) Section 4f(c)(4)(B)(i) of such Act (7 U.S.C.
23 6f(c)(4)(B)(i)) is amended by striking “compiled” and in-
24 serting “complied”.

1 (c) Section 4k of such Act (7 U.S.C. 6k) is amended
2 by redesignating the second paragraph (5) as paragraph
3 (6).

4 (d) The Commodity Exchange Act is amended—

5 (1) by redesignating the first section 4p (7
6 U.S.C. 6o–1), as added by section 121 of the Com-
7 modity Futures Modernization Act of 2000, as sec-
8 tion 4q; and

9 (2) by moving such section to after the second
10 section 4p, as added by section 206 of Public Law
11 93–446.

12 (e) Subsections (a)(1) and (d)(1) of section 5c of such
13 Act (7 U.S.C. 7a–2(a)(1), (d)(1)) are each amended by
14 striking “5b(d)(2)” and inserting “5b(c)(2)”.

15 (f) Sections 5c(f) and 17(r) of such Act (7 U.S.C.
16 7a–2(f), 21(r)) are each amended by striking “4d(3)” and
17 inserting “4d(e)”.

18 (g) Section 8(a)(1) of such Act (7 U.S.C. 12(a)(1))
19 is amended in the matter following subparagraph (B)—

20 (1) by striking “commenced” in the 2nd place
21 it appears; and

22 (2) by inserting “commenced” after “in a judi-
23 cial proceeding”.

1 (h) Section 22(a)(2) of such Act (7 U.S.C. 25(a)(2))
2 is amended by striking “5b(b)(1)(E)” and inserting
3 “5b(c)(2)(H)”.

4 **SEC. 107. PORTFOLIO MARGINING AND SECURITY INDEX**
5 **ISSUES.**

6 (a) The agencies represented on the President’s
7 Working Group on Financial Markets shall work to ensure
8 that the Securities and Exchange Commission (SEC), the
9 Commodity Futures Trading Commission (CFTC), or
10 both, as appropriate, have taken the actions required
11 under subsection (b).

12 (b) The SEC, the CFTC, or both, as appropriate,
13 shall take action under their existing authorities to per-
14 mit—

15 (1) by September 30, 2008, risk-based portfolio
16 margining for security options and security futures
17 products; and

18 (2) by June 30, 2008, the trading of futures on
19 certain security indexes by resolving issues related to
20 foreign security indexes.

1 **TITLE II—SIGNIFICANT PRICE**
2 **DISCOVERY CONTRACTS ON**
3 **EXEMPT COMMERCIAL MAR-**
4 **KETS**

5 **SEC. 201. SIGNIFICANT PRICE DISCOVERY CONTRACTS.**

6 (a) DEFINITIONS.—Section 1a of the Commodity Ex-
7 change Act (7 U.S.C. 1a) is amended—

8 (1) by redesignating paragraph (33) as para-
9 graph (34); and

10 (2) by inserting after paragraph (32) the fol-
11 lowing:

12 “(33) SIGNIFICANT PRICE DISCOVERY CON-
13 TRACT.—The term ‘significant price discovery con-
14 tract’ means an agreement, contract, or transaction
15 subject to section 2(h)(7)(A).”.

16 (b) STANDARDS APPLICABLE TO SIGNIFICANT PRICE
17 DISCOVERY CONTRACTS.—Section 2(h) of such Act (7
18 U.S.C. 2(h)) is amended by adding at the end the fol-
19 lowing:

20 “(7) STANDARDS APPLICABLE TO SIGNIFICANT
21 PRICE DISCOVER CONTRACTS.—

22 “(A) IN GENERAL.—An agreement, con-
23 tract, or transaction conducted in reliance on
24 the exemption in paragraph (3) shall be subject
25 to the provisions of subparagraphs (B) through

1 (E), under such rules and regulations as the
2 Commission may promulgate, provided that the
3 Commission determines, in its discretion, that
4 the agreement, contract, or transaction per-
5 forms a significant price discovery function as
6 described in subparagraph (B).

7 “(B) SIGNIFICANT PRICE DISCOVERY DE-
8 TERMINATION.—In making a determination
9 whether an agreement, contract, or transaction
10 performs a significant price discovery function,
11 the Commission shall consider, as appropriate:

12 “(i) PRICE LINKAGE.—The extent to
13 which the agreement, contract, or trans-
14 action uses or otherwise relies on a daily or
15 final settlement price, or other major price
16 parameter, of a contract or contracts list-
17 ed, for trading on or subject to the rules
18 of a designated contract market or a de-
19 rivatives transaction execution facility, or a
20 significant price discovery contract traded
21 on an electronic trading facility, to value a
22 position, transfer or convert a position,
23 cash or financially settle a position, or
24 close out a position.

1 “(ii) ARBITRAGE.—The extent to
2 which the price for the agreement, con-
3 tract, or transaction is sufficiently related
4 to the price of a contract or contracts list-
5 ed for trading on or subject to the rules of
6 a designated contract market or derivatives
7 transaction execution facility so as to per-
8 mit market participants to effectively arbi-
9 trage between the markets by simulta-
10 neously maintaining positions or executing
11 trades in the contracts on the electronic
12 trading facility and the designated contract
13 market or derivatives transaction execution
14 facility on a frequent and recurring basis.

15 “(iii) MATERIAL PRICE REF-
16 ERENCE.—The extent to which, on a fre-
17 quent and recurring basis, bids, offers, or
18 transactions in a commodity are directly
19 based on, or are determined by ref-
20 erencing, the prices generated by agree-
21 ments, contracts, or transactions being
22 traded or executed on the electronic trad-
23 ing facility.

24 “(iv) MATERIAL LIQUIDITY.—The ex-
25 tent to which the volume of agreements,

1 contracts, or transactions in the com-
2 modity being traded on the electronic trad-
3 ing facility is sufficient to have a material
4 impact on other agreements, contracts, or
5 transactions listed for trading on or sub-
6 ject to the rules of a designated contract
7 market, a derivatives trading execution fa-
8 cility, or an electronic trading facility oper-
9 ating in reliance on the exemption in para-
10 graph (3).

11 “(v) OTHER MATERIAL FACTORS.—
12 Such other material factors as the Com-
13 mission specifies by rule as relevant to de-
14 termine whether an agreement, contract,
15 or transaction serves a significant price
16 discovery function.

17 “(C) CORE PRINCIPLES APPLICABLE TO
18 SIGNIFICANT PRICE DISCOVERY CONTRACTS.—

19 “(i) IN GENERAL.—An electronic
20 trading facility on which significant price
21 discovery contracts are traded or executed
22 shall, with respect to those contracts, com-
23 ply with the core principles specified in this
24 subparagraph.

1 “(ii) CORE PRINCIPLES.—The elec-
2 tronic trading facility shall have reasonable
3 discretion in establishing the manner in
4 which it complies with the following core
5 principles:

6 “(I) CONTRACTS NOT READILY
7 SUSCEPTIBLE TO MANIPULATION.—
8 The electronic trading facility shall
9 list only significant price discovery
10 contracts that are not readily suscep-
11 tible to manipulation.

12 “(II) MONITORING OF TRAD-
13 ING.—The electronic trading facility
14 shall monitor trading in significant
15 price discovery contracts to prevent
16 market manipulation, price distortion,
17 and disruptions of the delivery or
18 cash-settlement process through mar-
19 ket surveillance, compliance, and dis-
20 ciplinary practices and procedures, in-
21 cluding methods for conducting real-
22 time monitoring of trading and com-
23 prehensive and accurate trade recon-
24 structions.

1 “(III) ABILITY TO OBTAIN IN-
2 FORMATION.—The electronic trading
3 facility shall—

4 “(aa) establish and enforce
5 rules that will allow the electronic
6 trading facility to obtain any nec-
7 essary information to perform
8 any of the functions described in
9 this subparagraph;

10 “(bb) provide the informa-
11 tion to the Commission upon re-
12 quest; and

13 “(cc) have the capacity to
14 carry out such international in-
15 formation-sharing agreements as
16 the Commission may require.

17 “(IV) POSITION LIMITATIONS OR
18 ACCOUNTABILITY.—The electronic
19 trading facility shall adopt position
20 limitations or position accountability
21 for speculators in significant price dis-
22 covery contracts, where necessary and
23 appropriate, to reduce the potential
24 threat of market manipulation, price
25 distortion, and disruptions of the de-

1 livery or cash-settlement process or
2 congestion, especially during trading
3 in the delivery month.

4 “(V) EMERGENCY AUTHORITY.—

5 The electronic trading facility shall
6 adopt rules to provide for the exercise
7 of emergency authority, in consulta-
8 tion or cooperation with the Commis-
9 sion, where necessary and appro-
10 priate, including the authority—

11 “(aa) to liquidate open posi-
12 tions in a significant price dis-
13 covery contract; and

14 “(bb) to suspend or curtail
15 trading in a significant price dis-
16 covery contract.

17 “(VI) DAILY PUBLICATION OF

18 TRADING INFORMATION.—The elec-
19 tronic trading facility shall make pub-
20 lic daily information on price, trading
21 volume, and other trading data for
22 significant price discovery contracts,
23 as the Commission considers appro-
24 priate.

1 “(VII) COMPLIANCE WITH
2 RULES.—The electronic trading facil-
3 ity shall monitor and enforce compli-
4 ance with any rules of the electronic
5 trading facility applicable to signifi-
6 cant price discovery contracts, includ-
7 ing the terms and conditions of the
8 contracts and any limitations on ac-
9 cess to the electronic trading facility
10 with respect to the contracts.

11 “(VIII) CONFLICT OF INTER-
12 EST.—The electronic trading facility
13 shall—

14 “(aa) establish and enforce
15 rules to minimize conflicts of in-
16 terest in its decision-making
17 process; and

18 “(bb) establish a process for
19 resolving the conflicts.

20 “(IX) ANTITRUST CONSIDER-
21 ATIONS.—Unless necessary or appro-
22 priate to achieve the purposes of this
23 Act, the electronic trading facility
24 shall endeavor to avoid—

1 “(aa) adopting any rules or
2 taking any actions that result in
3 any unreasonable restraints of
4 trade; or

5 “(bb) imposing any material
6 anticompetitive burden on trad-
7 ing on the electronic trading fa-
8 cility.

9 “(D) IMPLEMENTATION.—The electronic
10 trading facility shall have discretion to take into
11 account differences between cleared and
12 uncleared significant price discovery contracts
13 in applying core principles in subclauses (IV)
14 and (V) of subparagraph (C)(ii), and the Com-
15 mission shall take the differences into consider-
16 ation when reviewing the implementation of the
17 core principles by an electronic trading facility.

18 “(E) NEW SIGNIFICANT PRICE DISCOVERY
19 CONTRACTS.—

20 “(i) NOTIFICATION.—An electronic
21 trading facility shall notify the Commission
22 whenever the electronic trading facility has
23 reason to believe that an agreement, con-
24 tract, or transaction conducted in reliance
25 on the exemption provided in paragraph

1 (3) displays any of the factors relating to
2 a significant price discovery function as de-
3 scribed in subparagraph (B) (including
4 regulations under this paragraph).

5 “(ii) REVIEW.—In addition to any re-
6 view conducted upon receiving a notifica-
7 tion pursuant to clause (i), at any other
8 such time the Commission determines to
9 be appropriate, but at least on an annual
10 basis, the Commission shall conduct an
11 evaluation, appropriate to the agreement,
12 contract, or transaction, to determine
13 whether any agreement, contract, or trans-
14 action conducted on an electronic trading
15 facility in reliance on the exemption pro-
16 vided in paragraph (3) is performing a sig-
17 nificant price discovery function.”.

18 **SEC. 202. LARGE TRADER REPORTING.**

19 (a) REPORTING AND RECORDKEEPING.—Section
20 4g(a) of the Commodity Exchange Act (7 U.S.C. 6g(a))
21 is amended by striking “elsewhere;” and inserting “else-
22 where, and in any significant price discovery contract trad-
23 ed or executed on an electronic trading facility;”.

1 (b) REPORTS OF POSITIONS EQUAL TO OR IN EX-
2 CESS OF TRADING LIMITS.—Section 4i of such Act (7
3 U.S.C. 6i) is amended—

4 (1) by inserting “, or any significant price dis-
5 covery contract on an electronic trading facility”
6 after “subject to the rules of any contract market or
7 derivatives transaction execution facility” ; and

8 (2) by inserting in the matter following para-
9 graph (2), “or electronic trading facility” after “sub-
10 ject to the rules of any other board of trade”.

11 **SEC. 203. CONFORMING AMENDMENTS.**

12 (a) Section 1a(12)(A)(x) of the Commodity Exchange
13 Act (7 U.S.C. 1a(12)(A)(x)) is amended by inserting
14 “(other than an electronic trading facility with respect to
15 a significant price discovery contract)” after “registered
16 entity”.

17 (b) Section 1a(29) of such Act (7 U.S.C. 1a(29)) is
18 amended—

19 (1) in subparagraph (C), by striking “and” at
20 the end;

21 (2) in subparagraph (D), by striking the period
22 and inserting “; and”; and

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

24 “(E) with respect to a contract that the
25 Commission determines is a significant price

1 discovery contract, any electronic trading facil-
2 ity on which the contract is executed or trad-
3 ed.”.

4 (c)(1) Section 2(a)(1)(A) of such Act (7 U.S.C.
5 2(a)(1)(A)) is amended by inserting after “section 19 of
6 this Act” the following: “, and significant price discovery
7 contracts traded or executed on an electronic trading facil-
8 ity”.

9 (2) Nothing contained in this title or amendments
10 made by this title shall be construed to affect the jurisdic-
11 tion that the Commission or any regulatory authority may
12 otherwise have under any other provision of law with re-
13 spect to contracts, agreements, or transactions that are
14 not significant price discovery contracts.

15 (d) Section 2(h)(3) of such Act (7 U.S.C. 2(h)(3))
16 is amended by striking “paragraph (4)” and inserting
17 “paragraphs (4) and (7)”.

18 (e) Section 2(h)(4) of such Act (7 U.S.C. 2(h)(4))
19 is amended by striking subparagraph (D) and inserting
20 the following:

21 “(D) such rules, regulations, and orders as
22 the Commission may issue to ensure timely
23 compliance with any of the provisions of this
24 Act applicable to a significant price discovery

1 contract traded on or executed on any electronic
2 trading facility.”.

3 (f) Section 2(h)(5)(B)(iii)(I) of such Act (7 U.S.C.
4 2(h)(5)(B)(iii)(I)) is amended by inserting “or to make
5 the determination described in subparagraph (B) of para-
6 graph (7)” after “paragraph (4)”.

7 (g) Section 4a of such Act (7 U.S.C. 6a) is amend-
8 ed—

9 (1) in subsection (a)—

10 (A) in the first sentence, by inserting “, or
11 on electronic trading facilities with respect to a
12 significant price discovery contract” after “de-
13 rivatives transaction execution facilities”; and

14 (B) in the second sentence, by inserting “,
15 or on an electronic trading facility with respect
16 to a significant price discovery contract,” after
17 “derivatives transaction execution facility”; and

18 (2) in subsection (b)—

19 (A) in paragraph (1), by inserting “or elec-
20 tronic trading facility with respect to a signifi-
21 cant price discovery contract” after “facility or
22 facilities”; and

23 (B) in paragraph (2), by inserting “or elec-
24 tronic trading facility with respect to a signifi-

1 cant price discovery contract” after “derivatives
2 transaction execution facility”; and

3 (3) in subsection (e)—

4 (A) in the first sentence—

5 (i) by inserting “or by any electronic
6 trading facility” after “registered by the
7 Commission”;

8 (ii) by inserting “or on an electronic
9 trading facility” after “derivatives trans-
10 action execution facility” the second place
11 it appears; and

12 (iii) by inserting “or electronic trading
13 facility” before “or such board of trade”
14 each place it appears; and

15 (B) in the second sentence, by inserting
16 “or electronic trading facility with respect to a
17 significant price discovery contract” after “reg-
18 istered by the Commission”.

19 (h) Section 5a(d) of such Act (7 U.S.C. 7a(d)(1)) is
20 amended—

21 (1) by redesignating paragraphs (4) through
22 (9) as paragraphs (5) through (10); and

23 (2) by inserting after paragraph (3) the fol-
24 lowing:

1 “(4) POSITION LIMITS OR ACCOUNTABILITY.—
2 To reduce the potential threat of market manipula-
3 tion, price distortion, and disruption of the delivery
4 or cash-settled process or congestion, especially dur-
5 ing trading in the delivery month, the derivatives
6 transaction execution facility shall adopt position
7 limits or position accountability for speculators,
8 where necessary and appropriate for a contract,
9 agreement or transaction with an underlying com-
10 modity that has a physically deliverable supply.”.

11 (i) Section 5c(a) of such Act (7 U.S.C. 7a–2(a)) is
12 amended in paragraph (1) by inserting “, and section
13 2(h)(7) with respect to significant price discovery con-
14 tracts,” after “, and 5b(d)(2)”.

15 (j) Section 5c(b) of such Act (7 U.S.C. 7a–2(b)) is
16 amended—

17 (1) by striking paragraph (1) and inserting fol-
18 lowing:

19 “(1) IN GENERAL.—A contract market, deriva-
20 tives transaction execution facility, or electronic
21 trading facility with respect to a significant price
22 discovery contract may comply with any applicable
23 core principle through delegation of any relevant
24 function to a registered futures association or a reg-

1 istered entity that is not an electronic trading facil-
2 ity.”;

3 (2) in paragraph (2), by striking “contract
4 market or derivatives transaction execution facility”
5 and inserting “contract market, derivatives trans-
6 action execution facility, or electronic trading facil-
7 ity”; and

8 (3) in paragraph (3), by striking “contract
9 market or derivatives transaction execution facility”
10 each place it appears and inserting “contract mar-
11 ket, derivatives transaction execution facility, or
12 electronic trading facility”.

13 (k) Section 5c(d)(1) of such Act (7 U.S.C. 7a-
14 2(d)(1)) is amended by inserting “or 2(h)(7)(C) with re-
15 spect to a significant price discovery contract traded or
16 executed on an electronic trading facility,” after
17 “5b(d)(2)”.

18 (l) Section 5e of such Act (7 U.S.C. 7b) is amended
19 by inserting “, or revocation of the right of an electronic
20 trading facility to rely on the exemption set forth in sec-
21 tion 2(h)(3) with respect to a significant price discovery
22 contract,” after “revocation of designation as a registered
23 entity” ;

24 (m) Section 6(b) of such Act (7 U.S.C. 8(b)) is
25 amended by striking the first sentence and all that follows

1 through “*Provided*,” and inserting the following: “The
2 Commission may suspend for a period not to exceed 6
3 months or revoke the designation or registration of any
4 contract market or derivatives transaction execution facil-
5 ity, or revoke the right of an electronic trading facility to
6 rely on the exemption set forth in section 2(h)(3) with re-
7 spect to a significant price discovery contract, on a show-
8 ing that the contract market or derivatives transaction
9 execution facility is not enforcing or has not enforced its
10 rules of government, made a condition of its designation
11 or registration as set forth in sections 5 through 5b or
12 section 5f, or that the contract market, derivatives trans-
13 action execution facility, or electronic trading facility, or
14 any director, officer, agent, or employee thereof, otherwise
15 is violating or has violated any of the provisions of this
16 Act or any of the rules, regulations, or orders of the Com-
17 mission under this Act. The suspension or revocation shall
18 only be made after a notice to the officers of the contract
19 market, derivatives transaction execution facility, or elec-
20 tronic trading facility and upon a hearing on the record:
21 *Provided*,”.

22 **SEC. 204. EFFECTIVE DATE.**

23 (a) IN GENERAL.—Except as provided in this section,
24 this title shall become effective on the date of enactment
25 of this Act.

1 (b) SIGNIFICANT PRICE DISCOVERY STANDARDS
2 RULEMAKING.—The Commodity Futures Trading Com-
3 mission shall—

4 (1) not later than 180 days after the date of
5 the enactment of this Act, issue a proposed rule re-
6 garding the significant price discovery standards in
7 section 2(h)(7) of the Commodity Exchange Act;
8 and

9 (2) not later than 270 days after the date of
10 enactment of this Act, issue a final rule.

11 (c) SIGNIFICANT PRICE DISCOVERY DETERMINA-
12 TIONS.—With respect to any electronic trading facility (as
13 defined in section 1a(10) of the Commodity Exchange Act)
14 operating on the effective date of the final rule regarding
15 the significant price discovery standards referred to in
16 subsection (b) of this section, the Commodity Futures
17 Trading Commission shall complete a review of the agree-
18 ments, contracts, and transactions of the facilities not
19 later than 180 days after that effective date to determine
20 whether any such agreement, contract, or transaction per-
21 forms a significant price discovery function.

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