

110TH CONGRESS
2^D SESSION

H. R. 6604

AN ACT

To amend the Commodity Exchange Act to bring greater transparency and accountability to commodity 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Commodity Markets
3 Transparency and Accountability Act of 2008”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definition of energy commodity.
- Sec. 4. Speculative limits and transparency of off-shore trading.
- Sec. 5. Disaggregation of index funds and other data in energy and agriculture
markets.
- Sec. 6. Detailed reporting from index traders and swap dealers.
- Sec. 7. Transparency and recordkeeping authorities.
- Sec. 8. Trading limits to prevent excessive speculation.
- Sec. 9. Modifications to core principles applicable to position limits for con-
tracts in agricultural and energy commodities.
- Sec. 10. CFTC Administration.
- Sec. 11. Review of prior actions.
- Sec. 12. Review of over-the-counter markets.
- Sec. 13. Studies; reports.
- Sec. 14. Over-the-counter authority.
- Sec. 15. Expedited process.

6 **SEC. 3. DEFINITION OF ENERGY COMMODITY.**

7 (a) DEFINITION OF ENERGY COMMODITY.—Section
8 1a of the Commodity Exchange Act (7 U.S.C. 1a) is
9 amended—

10 (1) by redesignating paragraphs (13) through
11 (34) as paragraphs (14) through (35), respectively;
12 and

13 (2) by inserting after paragraph (12) the fol-
14 lowing:

15 “(13) ENERGY COMMODITY.—The term ‘energy
16 commodity’ means—

17 “(A) coal;

1 “(B) crude oil, gasoline, diesel fuel, jet
2 fuel, heating oil, and propane;

3 “(C) electricity;

4 “(D) natural gas; and

5 “(E) any other substance that is used as
6 a source of energy, as the Commission, in its
7 discretion, deems appropriate.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 2(c)(2)(B)(i)(II)(cc) of the Com-
10 modity Exchange Act (7 U.S.C.
11 2(c)(2)(B)(i)(II)(cc)) is amended—

12 (A) in subitem (AA), by striking “section
13 1a(20)” and inserting “section 1a(21)”; and

14 (B) in subitem (BB), by striking “section
15 1a(20)” and inserting “section 1a(21)”.

16 (2) Section 13106(b)(1) of the Food, Conserva-
17 tion, and Energy Act of 2008 is amended by striking
18 “section 1a(32)” and inserting “section 1a”.

19 (3) Section 402 of the Legal Certainty for
20 Bank Products Act of 2000 (7 U.S.C. 27) is amend-
21 ed—

22 (A) in subsection (a)(7), by striking “sec-
23 tion 1a(20)” and inserting “section 1a”; and

24 (B) in subsection (d)—

1 (i) in paragraph (1)(B), by striking
2 “section 1a(33)” and inserting “section
3 1a”; and

4 (ii) in paragraph (2)(D), by striking
5 “section 1a(13)” and inserting “section
6 1a”.

7 **SEC. 4. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF-**
8 **SHORE TRADING.**

9 (a) IN GENERAL.—Section 4 of the Commodity Ex-
10 change Act (7 U.S.C. 6) is amended by adding at the end
11 the following:

12 “(e) FOREIGN BOARDS OF TRADE.—

13 “(1) IN GENERAL.—The Commission may not
14 permit a foreign board of trade to provide to the
15 members of the foreign board of trade or other par-
16 ticipants located in the United States direct access
17 to the electronic trading and order matching system
18 of the foreign board of trade with respect to an
19 agreement, contract, or transaction in an energy or
20 agricultural commodity that settles against any price
21 (including the daily or final settlement price) of 1 or
22 more contracts listed for trading on a registered en-
23 tity, unless—

24 “(A) the foreign board of trade makes pub-
25 lic daily trading information regarding the

1 agreement, contract, or transaction that is com-
2 parable to the daily trading information pub-
3 lished by the registered entity for the 1 or more
4 contracts against which the agreement, con-
5 tract, or transaction traded on the foreign
6 board of trade settles; and

7 “(B) the foreign board of trade (or the for-
8 eign futures authority that oversees the foreign
9 board of trade)—

10 “(i) adopts position limits (including
11 related hedge exemption provisions) for the
12 agreement, contract, or transaction that
13 are comparable, taking into consideration
14 the relative sizes of the respective markets,
15 to the position limits (including related
16 hedge exemption provisions) adopted by
17 the registered entity for the 1 or more con-
18 tracts against which the agreement, con-
19 tract, or transaction traded on the foreign
20 board of trade settles;

21 “(ii) has the authority to require or
22 direct market participants to limit, reduce,
23 or liquidate any position the foreign board
24 of trade (or the foreign futures authority
25 that oversees the foreign board of trade)

1 determines to be necessary to prevent or
2 reduce the threat of price manipulation,
3 excessive speculation as described in sec-
4 tion 4a, price distortion, or disruption of
5 delivery or the cash settlement process;

6 “(iii) agrees to promptly notify the
7 Commission of any change regarding—

8 “(I) the information that the for-
9 eign board of trade will make publicly
10 available;

11 “(II) the position limits that the
12 foreign board of trade or foreign fu-
13 tures authority will adopt and enforce;

14 “(III) the position reductions re-
15 quired to prevent manipulation, exces-
16 sive speculation as described in sec-
17 tion 4a, price distortion, or disruption
18 of delivery or the cash settlement
19 process; and

20 “(IV) any other area of interest
21 expressed by the Commission to the
22 foreign board of trade or foreign fu-
23 tures authority;

24 “(iv) provides information to the
25 Commission regarding large trader posi-

1 tions in the agreement, contract, or trans-
2 action that is comparable to the large trad-
3 er position information collected by the
4 Commission for the 1 or more contracts
5 against which the agreement, contract, or
6 transaction traded on the foreign board of
7 trade settles; and

8 “(v) provides the Commission with in-
9 formation necessary to publish reports on
10 aggregate trader positions for the agree-
11 ment, contract, or transaction traded on
12 the foreign board of trade that are com-
13 parable to such reports for 1 or more con-
14 tracts against which the agreement, con-
15 tract, or transaction traded on the foreign
16 board of trade settles.

17 “(2) EXISTING FOREIGN BOARDS OF TRADE.—

18 Paragraph (1) shall not be effective with respect to
19 any agreement, contract, or transaction in an energy
20 commodity executed on a foreign board of trade to
21 which the Commission had granted direct access
22 permission before the date of the enactment of this
23 subsection until the date that is 180 days after such
24 date of enactment.”.

1 (b) LIABILITY OF REGISTERED PERSONS TRADING
2 ON A FOREIGN BOARD OF TRADE.—

3 (1) Section 4(a) of such Act (7 U.S.C. 6(a)) is
4 amended by inserting “or by subsection (f)” after
5 “Unless exempted by the Commission pursuant to
6 subsection (c)”.

7 (2) Section 4 of such Act (7 U.S.C. 6) is fur-
8 ther amended by adding at the end the following:

9 “(f) A person registered with the Commission, or ex-
10 empt from registration by the Commission, under this Act
11 may not be found to have violated subsection (a) with re-
12 spect to a transaction in, or in connection with, a contract
13 of sale of a commodity for future delivery if the person
14 has reason to believe the transaction and the contract is
15 made on or subject to the rules of a board of trade that
16 is legally organized under the laws of a foreign country,
17 authorized to act as a board of trade by a foreign futures
18 authority, subject to regulation by the foreign futures au-
19 thority, and has not been determined by the Commission
20 to be operating in violation of subsection (a).”.

21 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
22 TURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.
23 25(a)) is amended by adding at the end the following:

24 “(5) A contract of sale of a commodity for fu-
25 ture delivery traded or executed on or through the

1 facilities of a board of trade, exchange, or market lo-
2 cated outside the United States for purposes of sec-
3 tion 4(a) shall not be void, voidable, or unenforce-
4 able, and a party to such a contract shall not be en-
5 titled to rescind or recover any payment made with
6 respect to the contract, based on the failure of the
7 foreign board of trade to comply with any provision
8 of this Act.”.

9 **SEC. 5. DISAGGREGATION OF INDEX FUNDS AND OTHER**
10 **DATA IN ENERGY AND AGRICULTURE MAR-**
11 **KETS.**

12 Section 4 of the Commodity Exchange Act (7 U.S.C.
13 6), as amended by section 4 of this Act, is amended by
14 adding at the end the following:

15 “(g) DISAGGREGATION OF INDEX FUNDS AND
16 OTHER DATA IN ENERGY AND AGRICULTURE MAR-
17 KETS.—Subject to section 8 and beginning within 30 days
18 of the issuance of the final rule required by section 4(h),
19 the Commission shall disaggregate and make public week-
20 ly—

21 “(1) the number of positions and total value of
22 index funds and other passive, long-only and short-
23 only positions (as defined by the Commission) in all
24 energy and agricultural markets to the extent such
25 information is available; and

1 “(2) data on speculative positions relative to
2 bona fide physical hedgers in those markets to the
3 extent such information is available.”.

4 **SEC. 6. DETAILED REPORTING FROM INDEX TRADERS AND**
5 **SWAP DEALERS.**

6 Section 4 of the Commodity Exchange Act (7 U.S.C.
7 6), as amended by sections 4 and 5 of this Act, is amended
8 by adding at the end the following:

9 “(h) INDEX TRADERS AND SWAP DEALERS REPORT-
10 ING.—The Commission shall issue a proposed rule defin-
11 ing and classifying index traders and swap dealers (as
12 those terms are defined by the Commission) for purposes
13 of data reporting requirements and setting routine de-
14 tailed reporting requirements for such entities in des-
15 ignated contract markets, derivatives transaction execu-
16 tion facilities, foreign boards of trade subject to section
17 4(e), and electronic trading facilities with respect to sig-
18 nificant price discovery contracts with respect to exempt
19 and agricultural commodities not later than 60 days after
20 the date of the enactment of this subsection, and issue
21 a final rule within 120 days after such date of enact-
22 ment.”.

1 **SEC. 7. TRANSPARENCY AND RECORDKEEPING AUTHORI-**
2 **TIES.**

3 (a) IN GENERAL.—Section 4g(a) of the Commodity
4 Exchange Act (7 U.S.C. 6g(a)) is amended—

5 (1) by inserting “a” before “futures commission
6 merchant”; and

7 (2) by inserting “and transactions and positions
8 traded pursuant to subsection (g), (h)(1), or (h)(2)
9 of section 2, or any exemption issued by the Com-
10 mission by rule, regulation or order,” after “United
11 States or elsewhere,”.

12 (b) REPORTS OF DEALS EQUAL TO OR IN EXCESS
13 OF TRADING LIMITS.—Section 4i of such Act (7 U.S.C.
14 6i) is amended—

15 (1) in the first sentence—

16 (A) by inserting “(a)” before “It shall”;
17 and

18 (B) by inserting “in the United States or
19 elsewhere, and of transactions and positions in
20 any such commodity entered into pursuant to
21 subsection (g), (h)(1), or (h)(2) of section 2, or
22 any exemption issued by the Commission by
23 rule, regulation or order” before “, and of cash
24 or spot”; and

25 (2) by striking all that follows the 1st sentence
26 and inserting the following:

1 “(b) With respect to agricultural and energy com-
2 modities, upon special call by the Commission, any person
3 shall provide to the Commission, in a form and manner
4 and within the period specified in the special call, books
5 and records of all transactions and positions traded on or
6 subject to the rules of any board of trade or electronic
7 trading facility in the United States or elsewhere, or pur-
8 suant to subsection (g), (h)(1), or (h)(2) of section 2, or
9 any exemption issued by the Commission by rule, regula-
10 tion, or order, as the Commission may determine appro-
11 priate to deter and prevent price manipulation or any
12 other disruption to market integrity or to diminish, elimi-
13 nate, or prevent excessive speculation as described in sec-
14 tion 4a(a).

15 “(c) Such books and records described in subsections
16 (a) and (b) shall show complete details concerning all such
17 transactions, positions, inventories, and commitments, in-
18 cluding the names and addresses of all persons having any
19 interest therein, shall be kept for a period of 5 years, and
20 shall be open at all times to inspection by any representa-
21 tive of the Commission or the Department of Justice. For
22 the purposes of this section, the futures and cash or spot
23 transactions and positions of any person shall include such
24 transactions and positions of any persons directly or indi-
25 rectly controlled by the person.”.

1 (c) CONFORMING AMENDMENTS.—

2 (1) Section 2(g) of such Act (7 U.S.C. 2(g)) is
3 amended—

4 (A) by inserting “4g(a), 4i,” before “5a
5 (to”); and

6 (B) by inserting “, and the regulations of
7 the Commission pursuant to section 4i(b) re-
8 quiring reporting in connection with commodity
9 option transactions,” before “shall apply”.

10 (2) Section 2(h)(2)(A) of such Act (7 U.S.C.
11 2(h)(2)(A)) is amended to read as follows:

12 “(A) sections 4g(a), 4i, 5b and
13 12(e)(2)(B), and the regulations of the Com-
14 mission pursuant to section 4i(b) requiring re-
15 porting in connection with commodity option
16 transactions;”.

17 **SEC. 8. TRADING LIMITS TO PREVENT EXCESSIVE SPECU-**
18 **LATION.**

19 Section 4a of the Commodity Exchange Act (7 U.S.C.
20 6a) is amended—

21 (1) in subsection (a)—

22 (A) by inserting “(1)” after “(a)”; and

23 (B) by adding after and below the end the
24 following:

1 “(2) In accordance with the standards set forth in
2 paragraph (1) of this subsection and consistent with the
3 good faith exception cited in subsection (b)(2), with re-
4 spect to agricultural commodities enumerated in section
5 1a(4) and energy commodities, the Commission, within 60
6 days after the date of the enactment of this paragraph,
7 shall by rule, regulation, or order establish limits on the
8 amount of positions, other than bona fide hedge positions,
9 that may be held by any person with respect to contracts
10 of sale for future delivery or with respect to options on
11 such contracts or commodities traded on or subject to the
12 rules of a contract market or derivatives transaction exe-
13 cution facility, or on an electronic trading facility as a sig-
14 nificant price discovery contract.

15 “(3) In establishing the limits required in paragraph
16 (2), the Commission shall set limits—

17 “(A) on the number of positions that may be
18 held by any person for the spot month, each other
19 month, and the aggregate number of positions that
20 may be held by any person for all months;

21 “(B) to the maximum extent practicable, in its
22 discretion—

23 “(i) to diminish, eliminate, or prevent ex-
24 cessive speculation as described under this sec-
25 tion;

1 “(ii) to deter and prevent market manipu-
2 lation, squeezes, and corners;

3 “(iii) to ensure sufficient market liquidity
4 for bona fide hedgers; and

5 “(iv) to ensure that the price discovery
6 function of the underlying market is not dis-
7 rupted; and

8 “(C) to the maximum extent practicable, in its
9 discretion, take into account the total number of po-
10 sitions in fungible agreements, contracts, or trans-
11 actions that a person can hold in agricultural and
12 energy commodities in other markets.

13 “(4)(A) Not later than 150 days after the date of
14 the enactment of this paragraph, the Commission shall
15 convene a Position Limit Agricultural Advisory Group and
16 a Position Limit Energy Group, each group consisting of
17 representatives from—

18 “(i) 7 predominantly commercial short hedgers
19 of the actual physical commodity for future delivery;

20 “(ii) 7 predominantly commercial long hedgers
21 of the actual physical commodity for future delivery;

22 “(iii) 4 non-commercial participants in markets
23 for commodities for future delivery; and

24 “(iv) each designated contract market or de-
25 rivatives transaction execution facility upon which a

1 contract in the commodity for future delivery is
2 traded, and each electronic trading facility that has
3 a significant price discovery contract in the com-
4 modity.

5 “(B) Not later than 60 days after the date on which
6 the advisory groups are convened under subparagraph (A),
7 and annually thereafter, the advisory groups shall submit
8 to the Commission advisory recommendations regarding
9 the position limits to be established in paragraph (2) and
10 a recommendation as to whether the position limits should
11 be administered directly by the Commission, or by the reg-
12 istered entity on which the commodity is listed (with en-
13 forcement by both the registered entity and the Commis-
14 sion).”; and

15 (2) in subsection (c)—

16 (A) by inserting “(1)” after “(c)”; and

17 (B) by adding after and below the end the
18 following:

19 “(2) With respect to agricultural and energy com-
20 modities, for the purposes of contracts of sale for future
21 delivery and options on such contracts or commodities, the
22 Commission shall define what constitutes a bona fide
23 hedging transaction or position as a transaction or posi-
24 tion that—

1 “(A)(i) represents a substitute for transactions
2 to be made or positions to be taken at a later time
3 in a physical marketing channel;

4 “(ii) is economically appropriate to the reduc-
5 tion of risks in the conduct and management of a
6 commercial enterprise; and

7 “(iii) arises from the potential change in the
8 value of—

9 “(I) assets that a person owns, produces,
10 manufactures, processes, or merchandises or
11 anticipates owning, producing, manufacturing,
12 processing, or merchandising;

13 “(II) liabilities that a person owns or an-
14 ticipates incurring; or

15 “(III) services that a person provides, pur-
16 chases, or anticipates providing or purchasing;
17 or

18 “(B) reduces risks attendant to a position re-
19 sulting from a transaction that—

20 “(i) was executed pursuant to subsection
21 (g), (h)(1), or (h)(2) of section 2, or an exemp-
22 tion issued by the Commission by rule, regula-
23 tion or order; and

24 “(ii) was executed opposite a counterparty
25 for which the transaction would qualify as a

1 bona fide hedging transaction pursuant to para-
2 graph (2)(A) of this subsection.”.

3 **SEC. 9. MODIFICATIONS TO CORE PRINCIPLES APPLICABLE**
4 **TO POSITION LIMITS FOR CONTRACTS IN AG-**
5 **RICULTURAL AND ENERGY COMMODITIES.**

6 (a) **CONTRACTS TRADED ON CONTRACT MARKETS.**—
7 Section 5(d)(5) of the Commodity Exchange Act (7 U.S.C.
8 7(d)(5)) is amended by striking all that follows “adopt”
9 and inserting “, for speculators, position limitations with
10 respect to agricultural commodities enumerated in section
11 1a(4) or energy commodities, and position limitations or
12 position accountability with respect to other commodities,
13 where necessary and appropriate.”.

14 (b) **CONTRACTS TRADED ON DERIVATIVES TRANS-**
15 **ACTION EXECUTION FACILITIES.**—Section 5a(d)(4) of
16 such Act (7 U.S.C. 7a(d)(4)) is amended by striking all
17 that follows “adopt” and inserting “, for speculators, posi-
18 tion limitations with respect to energy commodities, and
19 position limitations or position accountability with respect
20 to other commodities, where necessary and appropriate for
21 a contract, agreement or transaction with an underlying
22 commodity that has a physically deliverable supply.”.

23 (c) **SIGNIFICANT PRICE DISCOVERY CONTRACTS.**—
24 Section 2(h)(7)(C)(ii)(IV) of such Act (7 U.S.C.
25 2(h)(7)(C)(ii)(IV)) is amended by striking “where nec-

1 essary” and all that follows through “in significant price
2 discovery contracts” and inserting “for speculators, posi-
3 tion limitations with respect to significant price discovery
4 contracts in energy commodities, and position limitations
5 or position accountability with respect to significant price
6 discovery contracts in other commodities”.

7 **SEC. 10. CFTC ADMINISTRATION.**

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

11 “(D) **ADDITIONAL EMPLOYEES.**—As soon
12 as practicable after the date of the enactment
13 of this subparagraph, subject to appropriations,
14 the Commission shall appoint at least 100 full-
15 time employees (in addition to the employees
16 employed by the Commission as of the date of
17 the enactment of this subparagraph)—

18 “(i) to increase the public trans-
19 parency of operations in agriculture and
20 energy markets;

21 “(ii) to improve the enforcement of
22 this Act in those markets; and

23 “(iii) to carry out such other duties as
24 are prescribed by the Commission.”.

1 **SEC. 11. REVIEW OF PRIOR ACTIONS.**

2 Notwithstanding any other provision of the Com-
3 modity Exchange Act, the Commodity Futures Trading
4 Commission shall review, as appropriate, all regulations,
5 rules, exemptions, exclusions, guidance, no action letters,
6 orders, other actions taken by or on behalf of the Commis-
7 sion, and any action taken pursuant to the Commodity
8 Exchange Act by an exchange, self-regulatory organiza-
9 tion, or any other registered entity, that are currently in
10 effect, to ensure that such prior actions are in compliance
11 with the provisions of this Act.

12 **SEC. 12. REVIEW OF OVER-THE-COUNTER MARKETS.**

13 (a) STUDY.—The Commodity Futures Trading Com-
14 mission shall conduct a study—

15 (1) to determine the efficacy, practicality, and
16 consequences of establishing limits on the amount of
17 positions, other than bona fide hedge positions, that
18 may be held by any person with respect to agree-
19 ments, contracts, or transactions involving an agri-
20 cultural or energy commodity, conducted in reliance
21 on sections 2(g) and 2(h) of the Commodity Ex-
22 change Act and of any exemption issued by the
23 Commission by rule, regulation or order, that are
24 fungible (as defined by the Commission) with agree-
25 ments, contracts, or transactions traded on or sub-
26 ject to the rules of any board of trade or of any elec-

1 tronic trading facility with respect to a significant
2 price discovery contract, as a means to deter and
3 prevent price manipulation or any other disruption
4 to market integrity or to diminish, eliminate, or pre-
5 vent excessive speculation as described in section 4a
6 of such Act for physical-based agricultural or energy
7 commodities; and

8 (2) to determine the efficacy, practicality, and
9 consequences of establishing aggregate position lim-
10 its for similar agreements, contracts, or transactions
11 for physical-based agricultural or energy commod-
12 ities traded—

13 (A) on designated contract markets;

14 (B) on derivatives transaction execution fa-
15 cilities; and

16 (C) in reliance on such sections 2(g) and
17 2(h) and of any exemption issued by the Com-
18 mission by rule, regulation or order.

19 (b) PUBLIC HEARINGS.—The Commission shall pro-
20 vide for not less than 2 public hearings to take testimony,
21 on the record, as part of the fact- gathering process in
22 preparation of the report.

23 (c) REPORT AND RECOMMENDATIONS.—Not less
24 than 12 months after the date of the enactment of this
25 section, the Commission shall provide to the Committee

1 on Agriculture of the House of Representatives and the
2 Committee on Agriculture, Nutrition, and Forestry of the
3 Senate a report that—

4 (1) describes the results of the study; and

5 (2) provides recommendations on any actions
6 necessary to deter and prevent price manipulation or
7 any other disruption to market integrity or to dimin-
8 ish, eliminate, or prevent excessive speculation as de-
9 scribed in section 4a of the Commodity Exchange
10 Act for physical-based commodities, including—

11 (A) any additional statutory authority that
12 the Commission determines to be necessary to
13 implement the recommendations; and

14 (B) a description of the resources that the
15 Commission considers to be necessary to imple-
16 ment the recommendations.

17 **SEC. 13. STUDIES; REPORTS.**

18 (a) **STUDY RELATING TO INTERNATIONAL REGULA-**
19 **TION OF ENERGY COMMODITY MARKETS.—**

20 (1) **IN GENERAL.—**The Comptroller General of
21 the United States shall conduct a study of the inter-
22 national regime for regulating the trading of energy
23 commodity futures and derivatives.

24 (2) **ANALYSIS.—**The study shall include an
25 analysis of, at a minimum—

1 (A) key common features and differences
2 among countries in the regulation of energy
3 commodity trading, including with respect to
4 market oversight and enforcement standards
5 and activities;

6 (B) variations among countries with re-
7 spect to the use of position limits, position ac-
8 countability levels, or other thresholds to detect
9 and prevent price manipulation, excessive spec-
10 ulation as described in section 4a of the Com-
11 modity Exchange Act, or other unfair trading
12 practices;

13 (C) variations in practices regarding the
14 differentiation of commercial and noncommer-
15 cial trading;

16 (D) agreements and practices for sharing
17 market and trading data among futures au-
18 thorities and between futures authorities and
19 the entities that the futures authorities oversee;
20 and

21 (E) agreements and practices for facili-
22 tating international cooperation on market over-
23 sight, compliance, and enforcement.

24 (3) REPORT.—Not later than 1 year after the
25 date of the enactment of this Act, the Comptroller

1 General shall submit to the Committee on Agri-
2 culture of the House of Representatives and the
3 Committee on Agriculture, Nutrition, and Forestry
4 of the Senate a report that—

5 (A) describes the results of the study;

6 (B) addresses whether there is excessive
7 speculation, and if so, the effects of any such
8 speculation and energy price volatility on energy
9 futures; and

10 (C) provides recommendations to improve
11 openness, transparency, and other necessary
12 elements of a properly functioning market in a
13 manner that protects consumers in the United
14 States.

15 (b) STUDY RELATING TO EFFECTS OF SPECULATORS
16 ON AGRICULTURE AND ENERGY FUTURES MARKETS AND
17 AGRICULTURE AND ENERGY PRICES.—

18 (1) STUDY.—The Commodity Futures Trading
19 Commission shall conduct a study of the effects of
20 speculators on agriculture and energy futures mar-
21 kets and agriculture and energy prices.

22 (2) ANALYSIS.—The study shall include an
23 analysis of, at a minimum—

24 (A) the effect of increased amounts of cap-
25 ital in agriculture and energy futures markets;

1 (B) the impact of the roll-over of positions
2 by index fund traders and swap dealers on agri-
3 culture and energy futures markets and agri-
4 culture and energy prices; and

5 (C) the extent to which each factor de-
6 scribed in subparagraphs (A) and (B) and spec-
7 ulators—

8 (i) affect—

9 (I) the pricing of agriculture and
10 energy commodities; and

11 (II) risk management functions;
12 and

13 (ii) contribute to economically efficient
14 price discovery.

15 (3) REPORT.—Not later than 2 years after the
16 date of the enactment of this Act, the Commodity
17 Futures Trading Commission shall submit to the
18 Committee on Agriculture of the House of Rep-
19 resentatives and the Committee on Agriculture, Nu-
20 trition, and Forestry of the Senate a report that de-
21 scribes the results of the study.

22 **SEC. 14. OVER-THE-COUNTER AUTHORITY.**

23 (a) IN GENERAL.—Section 2 of the Commodity Ex-
24 change Act (7 U.S.C. 2) is amended by adding at the end
25 the following:

1 “(j) OVER-THE-COUNTER AUTHORITY.—

2 “(1) Within 60 days after the date of the enact-
3 ment of this subsection, the Commission shall, by
4 rule, regulation, or order, require routine reporting
5 as it deems in its discretion appropriate, on not less
6 than a monthly basis, of agreements, contracts, or
7 transactions, with regard to an agricultural or en-
8 ergy commodity, entered into in reliance on sub-
9 section (g), (h)(1), or (h)(2) of section 2, or any ex-
10 emption issued by the Commission by rule, regula-
11 tion, or order that are fungible (as defined by the
12 Commission) with agreements, contracts, or trans-
13 actions traded on or subject to the rules of any
14 board of trade or of any electronic trading facility
15 with respect to a significant price discovery contract.

16 “(2) Notwithstanding subsections (g), (h)(1),
17 and (h)(2) of section 2, and any exemption issued by
18 the Commission by rule, regulation, or order, the
19 Commission shall assess and issue a finding on
20 whether the agreements, contracts, or transactions
21 reported pursuant to paragraph (1), alone or in con-
22 junction with other similar agreements, contracts, or
23 transactions, have the potential to—

24 “(A) disrupt the liquidity or price dis-
25 covery function on a registered entity;

1 “(B) cause a severe market disturbance in
2 the underlying cash or futures market for an
3 agricultural or energy commodity; or

4 “(C) prevent or otherwise impair the price
5 of a contract listed for trading on a registered
6 entity from reflecting the forces of supply and
7 demand in any market for an agricultural com-
8 modity enumerated in section 1a(4) or an en-
9 ergy commodity.

10 “(3) If the Commission makes a finding pursu-
11 ant to paragraph (2) of this subsection, the Commis-
12 sion may, in its discretion, utilize its authority under
13 section 8a(9) to impose position limits (including, as
14 appropriate and in its discretion, related hedge ex-
15 emption provisions for bona fide hedging comparable
16 to bona fide hedge provisions of section 4a(e)(2)) on
17 agreements, contracts, or transactions involved, and
18 take corrective actions to enforce the limits.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 2(g) of such Act (7 U.S.C. 2(g)) is
21 amended by inserting “subsection (j) of this section,
22 and” after “(other than”.

23 (2) Section 2(h)(2)(A) of such Act (7 U.S.C.
24 2(h)(2)(A)) is amended by inserting “subsection (j)
25 of this section and” before “sections”.

1 (3) Section 8a(9) of such Act (7 U.S.C.
2 12a(a)(9)) is amended by inserting after “of the
3 Commission’s action” the following: “, and to fix
4 and enforce limits to agreements, contracts, or
5 transaction subject to section 2(j)(1) pursuant to a
6 finding made under section 2(j)(2)”.

7 **SEC. 15. EXPEDITED PROCESS.**

8 The Commodity Futures Trading Commission may
9 use emergency and expedited procedures (including any
10 administrative or other procedure as appropriate) to carry
11 out this Act if, in its discretion, it deems it necessary to
12 do so.

 Passed the House of Representatives September 18,
2008.

Attest:

Clerk.

110TH CONGRESS
2^D SESSION

H. R. 6604

AN ACT

To amend the Commodity Exchange Act to bring greater transparency and accountability to commodity markets, and for other purposes.