

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3714

To amend the Commodity Exchange Act to ensure that all agreements, contracts, and transactions with respect to commodities are carried out on a regulated exchange, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2008

Mr. HARKIN 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 amend the Commodity Exchange Act to ensure that all agreements, contracts, and transactions with respect to commodities are carried out on a regulated exchange, 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 Act may be cited as the “Derivatives Trading  
5       Integrity Act of 2008”.

1 **SEC. 2. REGULATION OF CERTAIN AGREEMENTS, CON-**  
2 **TRACTS, AND TRANSACTIONS.**

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

5 (1) by striking paragraphs (10), (11), (13),  
6 (14), and (33); and

7 (2) by redesignating—

8 (A) paragraph (12) as paragraph (10);

9 (B) paragraphs (15) through (32) as para-  
10 graphs (11) through (28), respectively; and

11 (C) paragraph (34) as paragraph (29).

12 (b) EXCLUSIONS.—Section 2 of the Commodity Ex-  
13 change Act (7 U.S.C. 2) is amended—

14 (1) by striking subsections (d), (e), (g), (h), and  
15 (i); and

16 (2) by redesignating subsection (f) as sub-  
17 section (d).

18 (c) RESTRICTION OF FUTURES TRADING TO CON-  
19 TRACT MARKETS OR DERIVATIVES TRANSACTION EXECU-  
20 TION FACILITIES.—Section 4 of the Commodity Exchange  
21 Act (7 U.S.C. 6) is amended—

22 (1) in subsection (a), in the matter preceding  
23 paragraph (1), by striking “Unless exempted by the  
24 Commission pursuant to subsection (c), it shall” and  
25 inserting “It shall”;

26 (2) by striking subsection (c); and

1           (3) by redesignating subsection (d) as sub-  
2           section (c).

3           (d) EXEMPT BOARDS OF TRADE.—Section 5d of the  
4           Commodity Exchange Act (7 U.S.C. 7a–3) is repealed.

5           **SEC. 3. CONFORMING AMENDMENTS.**

6           (a) Section 1a of the Commodity Exchange Act (7  
7           U.S.C. 1a) (as amended by section 2(a)(2)) is amended—

8                   (1) in paragraph (10)(A)(x), by striking “(other  
9                   than an electronic trading facility with respect to a  
10                   significant price discovery contract)”;

11                   (2) in paragraph (25)—

12                           (A) in subparagraph (C), by inserting  
13                           “and” after the semicolon at the end;

14                           (B) in subparagraph (D), by striking “;  
15                           and” and inserting a period; and

16                           (C) by striking subparagraph (E); and

17                   (3) in paragraph (27), by striking “section 2(c),  
18                   2(d), 2(f), or 2(g) of this Act” and inserting “sub-  
19                   section (c) or (d) of section 2”.

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

22                   (1) in paragraph (1)—

23                           (A) in the matter preceding subparagraph

24                           (A), by striking “5d,”; and

1 (B) in subparagraph (F), by striking “in  
2 an excluded commodity”; and

3 (2) in paragraph (2)(B)(i)(II)—

4 (A) in item (cc), by striking “section  
5 1a(20) of this Act” each place it appears and  
6 inserting “section 1a(16)”; and

7 (B) in item (dd), by striking “section  
8 1a(12)(A)(ii) of this Act” and inserting “sec-  
9 tion 1a(10)(A)(ii)”.

10 (c) Section 4a of the Commodity Exchange Act (7  
11 U.S.C. 6a) is amended—

12 (1) in subsection (a)—

13 (A) in the first sentence, by striking “or on  
14 electronic trading facilities with respect to a  
15 significant price discovery contract”; and

16 (B) in the second sentence, by striking “or  
17 on an electronic trading facility with respect to  
18 a significant price discovery contract,”;

19 (2) in subsection (b)—

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

23 (B) in paragraph (2), in the matter pre-  
24 ceding the proviso, by striking “or electronic

1 trading facility with respect to a significant  
2 price discovery contract”; and

3 (3) in subsection (e)—

4 (A) in the first sentence—

5 (i) in the matter preceding the pro-  
6 viso—

7 (I) by striking “or by any elec-  
8 tronic trading facility”;

9 (II) by striking “or on an elec-  
10 tronic trading facility”; and

11 (III) by striking “or electronic  
12 trading facility”; and

13 (ii) in the proviso, by striking “or  
14 electronic trading facility”; and

15 (B) in the second sentence, in the matter  
16 preceding the proviso, by striking “or electronic  
17 trading facility with respect to a significant  
18 price discovery contract”.

19 (d) Section 4g(a) of the Commodity Exchange Act  
20 (7 U.S.C. 6g(a)) is amended by striking “and in any sig-  
21 nificant price discovery contract traded or executed on an  
22 electronic trading facility or”.

23 (e) Section 4i of the Commodity Exchange Act (7  
24 U.S.C. 6i) is amended—

1           (1) in the matter preceding paragraph (1), by  
2 striking “or any significant price discovery contract  
3 traded or executed on an electronic trading facility”;  
4 and

5           (2) in the matter following paragraph (2), by  
6 striking “or electronic trading facility”.

7           (f) Section 5a of the Commodity Exchange Act (7  
8 U.S.C. 7a) is amended—

9           (1) in subsection (b)(2)—

10           (A) in subparagraph (D)(ii), by inserting  
11 “or” after the semicolon at the end;

12           (B) in subparagraph (E), by striking “;  
13 or” and inserting a period; and

14           (C) by striking subparagraph (F); and

15           (2) in subsection (g)—

16           (A) in the heading, by striking “ELECTION  
17 TO TRADE EXCLUDED AND EXEMPT COMMOD-  
18 ITIES” and inserting “EXCLUDED SECURI-  
19 TIES”; and

20           (B) in paragraph (1)—

21           (i) by striking “excluded or exempt  
22 commodities other than” and inserting  
23 “commodities other than an agricultural  
24 commodity enumerated in section 1a(4)  
25 or”; and

1 (ii) by striking “, 2(d), or 2(g) of this  
2 Act, or exempt under section 2(h) of this  
3 Act”.

4 (g) Section 5b of the Commodity Exchange Act (7  
5 U.S.C. 7a–1) is amended—

6 (1) in subsection (a)(1), by striking “section  
7 2(a)(1)(C)(i), 2(c), 2(d), 2(f), or 2(g) of this Act or  
8 title IV of the Commodity Futures Modernization  
9 Act of 2000, or exempted under section 2(h) or 4(c)  
10 of this Act” and inserting “subsection (a)(1)(C)(i),  
11 (c), or (d) of section 2 or title IV of the Commodity  
12 Futures Modernization Act of 2000 (Public Law  
13 106–554; 114 Stat. 2763A457)”; and

14 (2) in subsection (b), by striking “section 2(c),  
15 2(d), 2(f), or 2(g) of this Act or title IV of the Com-  
16 modity Futures Modernization Act of 2000, or ex-  
17 empted under section 2(h) or 4(c) of this Act” and  
18 inserting “subsection (c) or (d) of section 2 or title  
19 IV of the Commodity Futures Modernization Act of  
20 2000 (Public Law 106–554; 114 Stat. 2763A457)”.

21 (h) Section 5c of the Commodity Exchange Act (7  
22 U.S.C. 7a–2) is amended—

23 (1) in subsection (a)(1), by striking “and sec-  
24 tion 2(h)(7) with respect to significant price dis-  
25 covery contracts,”;

1 (2) in subsection (b)—

2 (A) in paragraph (1), by striking “, deriva-  
3 tives transaction execution facility, or electronic  
4 trading facility with respect to a significant  
5 price discovery contract” and inserting “or de-  
6 rivatives transaction execution facility”; and

7 (B) in paragraphs (2) and (3), by striking  
8 “, derivatives transaction execution facility, or  
9 electronic trading facility” each place it appears  
10 and inserting “or derivatives transaction execu-  
11 tion facility”; and

12 (3) in subsection (d)(1), in the matter pre-  
13 ceding subparagraph (A), by striking “or 2(h)(7)(C)  
14 with respect to a significant price discovery contract  
15 traded or executed on an electronic trading facil-  
16 ity,”.

17 (i) Section 5e of the Commodity Exchange Act (7  
18 U.S.C. 7b) is amended by striking “or revocation of the  
19 right of an electronic trading facility to rely on the exemp-  
20 tion set forth in section 2(h)(3) with respect to a signifi-  
21 cant price discovery contract,”.

22 (j) Section 5f(b)(1) of the Commodity Exchange Act  
23 (7 U.S.C. 7b–1(b)(1)) is amended in the matter preceding  
24 subparagraph (A), by striking “section 5f” and inserting  
25 “this section”.

1 (k) Section 6(b) of the Commodity Exchange Act (7  
2 U.S.C. 8(b)) is amended—

3 (1) in the first sentence—

4 (A) by striking “or to revoke the right of  
5 an electronic trading facility to rely on the ex-  
6 emption set forth in section 2(h)(3) with re-  
7 spect to a significant price discovery contract,”;  
8 and

9 (B) by striking “or electronic trading facil-  
10 ity”; and

11 (2) in the second sentence, in the matter pre-  
12 ceding the proviso, by striking “or electronic trading  
13 facility”.

14 (l) Section 12(e) of the Commodity Exchange Act (7  
15 U.S.C. 16(e)) is amended by striking paragraph (2) and  
16 inserting the following:

17 “(2) EFFECT.—This Act supersedes and pre-  
18 empts the application of any State or local law that  
19 prohibits or regulates gaming or the operation of  
20 bucket shops (other than antifraud provisions of  
21 general applicability) in the case of an agreement,  
22 contract, or transaction that is excluded from this  
23 Act under—

24 “(A) subsection (c) or (d) of section 2; or

1                   “(B) title IV of the Commodity Futures  
2                   Modernization Act of 2000 (Public Law 106–  
3                   554; 114 Stat. 2763A457).”.

4           (m) Section 15(b) of the Commodity Exchange Act  
5 (7 U.S.C. 19(b)) is amended by striking “4(c) or”.

6           (n) Section 22(b)(1)(A) of the Commodity Exchange  
7 Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “by  
8 section 2(h)(7) or sections 5 through 5c” and inserting  
9 “under sections 5 through 5c”.

10          (o) Section 13106(b)(1) of the Food, Conservation,  
11 and Energy Act of 2008 (7 U.S.C. 2 note; Public Law  
12 110–246) is amended by striking “section 1a(32)” and in-  
13 serting “section 1a”.

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