

Union Calendar No. 223

111TH CONGRESS
1ST SESSION

H. R. 977

[Report No. 111-385, Part I]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2009

Mr. PETERSON 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

DECEMBER 19, 2009

Additional sponsors: Mr. HOLDEN, Mr. BOSWELL, Mr. CARDOZA, Ms. HERSETH SANDLIN, Mr. WALZ, Mr. KAGEN, Mr. SCHRADER, Mr. MASSA, Ms. MARKEY of Colorado, Mr. SCHAUER, Mr. KISSELL, Mr. POMEROY, Mr. WELCH, Mr. HIGGINS, Mr. ANDREWS, Mr. MICHAUD, Mr. SHULER, Mr. RAHALL, Mr. WEXLER, Mr. PASCRELL, Mr. HALL of New York, Mr. BRIGHT, Mr. BISHOP of New York, Mr. COHEN, and Mr. HODES

DECEMBER 19, 2009

Reported from the Committee on Agriculture with an amendment and referred to the Committee on the Judiciary for a period ending not later than December 19, 2009, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 19, 2009

Committees on Financial Services and the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Derivatives Markets*
 5 *Transparency and Accountability Act of 2009”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *The table of contents of this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Speculative limits and transparency of off-shore trading.

Sec. 4. Detailed reporting and disaggregation of market data.

Sec. 5. Transparency and recordkeeping authorities.

Sec. 6. Trading limits to prevent excessive speculation.

Sec. 7. CFTC Administration.

Sec. 8. Review of prior actions.

Sec. 9. Review of over-the-counter markets.

Sec. 10. Study relating to international regulation of energy commodity markets.

Sec. 11. Over-the-counter authority.

Sec. 12. Expedited process.

Sec. 13. Certain exclusions and exemptions available only for certain transactions settled and cleared through registered derivatives clearing organizations.

Sec. 14. Treatment of emission allowances and offset credits.

Sec. 15. Inspector General of the Commodity Futures Trading Commission.

Sec. 16. Authority of Commodity Futures Trading Commission to suspend trading in credit default swaps.

Sec. 17. Authority of Commodity Futures Trading Commission to prosecute criminal violations of the Commodity Exchange Act.

Sec. 18. Diversity of directors of boards of trade.

1 **SEC. 3. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF-**
2 **SHORE TRADING.**

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

6 “(e) *FOREIGN BOARDS OF TRADE.*—

7 “(1) *IN GENERAL.*—The Commission may not
8 permit a foreign board of trade to provide to the
9 members of the foreign board of trade or other partici-
10 pants located in the United States direct access to the
11 electronic trading and order matching system of the
12 foreign board of trade with respect to an agreement,
13 contract, or transaction that settles against any price
14 (including the daily or final settlement price) of 1 or
15 more contracts listed for trading on a registered enti-
16 ty, unless—

17 “(A) the foreign board of trade makes public
18 daily trading information regarding the agree-
19 ment, contract, or transaction that is comparable
20 to the daily trading information published by
21 the registered entity for the 1 or more contracts
22 against which the agreement, contract, or trans-
23 action traded on the foreign board of trade set-
24 tles; and

1 “(B) the foreign board of trade (or the for-
2 eign futures authority that oversees the foreign
3 board of trade)—

4 “(i) adopts position limits (including
5 related hedge exemption provisions) for the
6 agreement, contract, or transaction that are
7 comparable, taking into consideration the
8 relative sizes of the respective markets, to
9 the position limits (including related hedge
10 exemption provisions) adopted by the reg-
11 istered entity for the 1 or more contracts
12 against which the agreement, contract, or
13 transaction traded on the foreign board of
14 trade settles;

15 “(ii) has the authority to require or di-
16 rect market participants to limit, reduce, or
17 liquidate any position the foreign board of
18 trade (or the foreign futures authority that
19 oversees the foreign board of trade) deter-
20 mines to be necessary to prevent or reduce
21 the threat of price manipulation, excessive
22 speculation as described in section 4a, price
23 distortion, or disruption of delivery or the
24 cash settlement process;

1 “(iii) agrees to promptly notify the
2 Commission, with regard to the agreement,
3 contract, or transaction, of any change re-
4 garding—

5 “(I) the information that the for-
6 eign board of trade will make publicly
7 available;

8 “(II) the position limits that the
9 foreign board of trade or foreign fu-
10 tures authority will adopt and enforce;

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

17 “(IV) any other area of interest
18 expressed by the Commission to the for-
19 eign board of trade or foreign futures
20 authority;

21 “(iv) provides information to the Com-
22 mission regarding large trader positions in
23 the agreement, contract, or transaction that
24 is comparable to the large trader position
25 information collected by the Commission for

1 the 1 or more contracts against which the
2 agreement, contract, or transaction traded
3 on the foreign board of trade settles; and

4 “(v) provides the Commission with in-
5 formation necessary to publish reports on
6 aggregate trader positions for the agree-
7 ment, contract, or transaction traded on the
8 foreign board of trade that are comparable
9 to such reports on aggregate trading posi-
10 tions for 1 or more contracts against which
11 the agreement, contract, or transaction
12 traded on the foreign board of trade settles.

13 “(2) *EXISTING FOREIGN BOARDS OF TRADE.*—
14 Paragraph (1) shall not be effective with respect to
15 any agreement, contract, or transaction executed on a
16 foreign board of trade to which the Commission had
17 granted direct access permission before the date of the
18 enactment of this subsection until the date that is 180
19 days after such date of enactment.”.

20 (b) *LIABILITY OF REGISTERED PERSONS TRADING ON*
21 *A FOREIGN BOARD OF TRADE.*—

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

1 (2) *Section 4 of such Act (7 U.S.C. 6) is further*
2 *amended by adding at the end the following:*

3 “(f)(1) *A person registered with the Commission, or*
4 *exempt from registration by the Commission, under this Act*
5 *may not be found to have violated subsection (a) with re-*
6 *spect to a transaction in, or in connection with, a contract*
7 *of sale of a commodity for future delivery if the person—*

8 “(A) *has reason to believe the transaction and*
9 *the contract is made on or subject to the rules of a*
10 *board of trade that is—*

11 “(i) *legally organized under the laws of a*
12 *foreign country;*

13 “(ii) *authorized to act as a board of trade*
14 *by a foreign futures authority; and*

15 “(iii) *subject to regulation by the foreign fu-*
16 *tures authority; and*

17 “(B) *has not been determined by the Commission*
18 *to be operating in violation of subsection (a).*

19 “(2) *Nothing in this subsection shall be construed as*
20 *implying or creating any presumption that a board of*
21 *trade, exchange, or market is located outside the United*
22 *States, or its territories or possessions, for purposes of sub-*
23 *section (a).”.*

1 (c) *CONTRACT ENFORCEMENT FOR FOREIGN FUTURES*
2 *CONTRACTS.*—Section 22(a) of such Act (7 U.S.C. 25(a))
3 is amended by adding at the end the following:

4 “(5) A contract of sale of a commodity for future
5 delivery traded or executed on or through the facilities
6 of a board of trade, exchange, or market located out-
7 side the United States for purposes of section 4(a)
8 shall not be void, voidable, or unenforceable, and a
9 party to such a contract shall not be entitled to re-
10 scind or recover any payment made with respect to
11 the contract, based on the failure of the foreign board
12 of trade to comply with any provision of this Act.”.

13 **SEC. 4. DETAILED REPORTING AND DISAGGREGATION OF**
14 **MARKET DATA.**

15 Section 4 of the Commodity Exchange Act (7 U.S.C.
16 6), as amended by section 3 of this Act, is amended by add-
17 ing at the end the following:

18 “(g) *DETAILED REPORTING AND DISAGGREGATION OF*
19 *MARKET DATA.*—

20 “(1) *INDEX TRADERS AND SWAP DEALERS RE-*
21 *PORTING.*—The Commission shall issue a proposed
22 rule defining and classifying index traders and swap
23 dealers (as those terms are defined by the Commis-
24 sion) for purposes of data reporting requirements and
25 setting routine detailed reporting requirements for

1 *any positions of such entities in contracts traded on*
2 *designated contract markets, derivatives transaction*
3 *execution facilities, foreign boards of trade subject to*
4 *section 4(e), and electronic trading facilities with re-*
5 *spect to significant price discovery contracts not later*
6 *than 90 days after the date of the enactment of this*
7 *subsection, and issue a final rule within 180 days*
8 *after such date of enactment.*

9 “(2) *DISAGGREGATION OF INDEX FUNDS AND*
10 *OTHER DATA IN MARKETS.—Subject to section 8 and*
11 *beginning within 60 days of the issuance of the final*
12 *rule required by paragraph (1), the Commission shall*
13 *disaggregate and make public monthly—*

14 “(A) *the number of positions and total no-*
15 *tional value of index funds and other passive,*
16 *long-only and short-only positions (as defined by*
17 *the Commission) in all markets to the extent*
18 *such information is available; and*

19 “(B) *data on speculative positions relative*
20 *to bona fide hedgers in those markets to the ex-*
21 *tent such information is available.”.*

22 **SEC. 5. TRANSPARENCY AND RECORDKEEPING AUTHORI-**
23 **TIES.**

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

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

3 (2) by inserting “and transactions and positions
4 traded pursuant to subsection (d), (g), (h)(1), or
5 (h)(3) of section 2, or any exemption issued by the
6 Commission by rule, regulation or order,” after
7 “United States or elsewhere.”

8 (b) *REPORTS OF DEALS EQUAL TO OR IN EXCESS OF*
9 *TRADING LIMITS.*—

10 (1) *IN GENERAL.*—Section 4i of such Act (7
11 U.S.C. 6i) is amended—

12 (A) in the first sentence—

13 (i) by inserting “(a)” before “It shall”;
14 and

15 (ii) by inserting “in the United States
16 or elsewhere, and of transactions and posi-
17 tions in any such commodity entered into
18 pursuant to subsection (d), (g), (h)(1), or
19 (h)(3) of section 2, or any exemption issued
20 by the Commission by rule, regulation or
21 order” before “, and of cash or spot”; and

22 (B) by striking all that follows the 1st sen-
23 tence and inserting the following:

24 “(b) Upon special call by the Commission, any person
25 shall provide to the Commission, in a form and manner

1 *and within the period specified in the special call, books*
2 *and records of all transactions and positions traded on or*
3 *subject to the rules of any board of trade or electronic trad-*
4 *ing facility in the United States or elsewhere, or pursuant*
5 *to subsection (d), (g), (h)(1), or (h)(3) of section 2, or any*
6 *exemption issued by the Commission by rule, regulation,*
7 *or order, as the Commission may determine appropriate to*
8 *deter and prevent price manipulation or any other disrup-*
9 *tion to market integrity or to diminish, eliminate, or pre-*
10 *vent excessive speculation as described in section 4a(a).*

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

22 (2) *NOTICE AND COMMENT.—Within 60 days*
23 *after the date of the enactment of this subsection, the*
24 *Commodity Futures Trading Commission shall con-*
25 *duct rulemaking, including an opportunity for notice*

1 *and comment, on implementing the amendments*
2 *made by paragraph (1).*

3 *(c) CONFORMING AMENDMENTS.—*

4 *(1) Section 2(d)(1) of such Act (7 U.S.C.*
5 *2(d)(1)) is amended by striking “5b or 12(e)(2)(B)”*
6 *and inserting “4g(a), 4i, 5b, or 12(e)(2)(B), and the*
7 *regulations of the Commission pursuant to section*
8 *4i(b) requiring reporting in connection with com-*
9 *modity option transactions)”.*

10 *(2) Section 2(d)(2) of such Act (7 U.S.C.*
11 *2(d)(2)) is amended—*

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

14 *(B) by inserting “, and the regulations of*
15 *the Commission pursuant to section 4i(b) requir-*
16 *ing reporting in connection with commodity op-*
17 *tion transactions” after “12(e)(2)(B)”.*

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

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

22 *(B) by inserting “, and the regulations of*
23 *the Commission pursuant to section 4i(b) requir-*
24 *ing reporting in connection with commodity op-*
25 *tion transactions” after “12(e)(2)”.*

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

3 “(A) *sections 4g(a), 4i, 5b and 12(e)(2)(B),*
 4 *and the regulations of the Commission pursuant*
 5 *to section 4i(b) requiring reporting in connection*
 6 *with commodity option transactions;”.*

7 (5) *Section 2(h)(4)(A) of such Act (7 U.S.C.*
 8 *2(h)(4)(A)) is amended to read as follows:*

9 “(A) *sections 4g(a), 4i, 5a (to the extent*
 10 *provided in section 5a(g)), 5b, 5d, and*
 11 *12(e)(2)(B), and the regulations of the Commis-*
 12 *sion pursuant to section 4i(b) requiring report-*
 13 *ing in connection with commodity option trans-*
 14 *actions;”.*

15 **SEC. 6. TRADING LIMITS TO PREVENT EXCESSIVE SPECULA-**
 16 **TION.**

17 (a) *POSITION LIMITS.*—*Section 4a of the Commodity*
 18 *Exchange Act (7 U.S.C. 6a) is amended—*

19 (1) *in subsection (a)—*

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

21 (B) *by adding after and below the end the*
 22 *following:*

23 “(2)(A) *In accordance with the standards set forth in*
 24 *paragraph (1) of this subsection and consistent with the*
 25 *good faith exception cited in subsection (b)(2), with respect*

1 *to physical commodities other than excluded commodities*
2 *as defined by the Commission, the Commission shall by*
3 *rule, regulation, or order establish limits on the amount of*
4 *positions, as appropriate, other than bona fide hedge posi-*
5 *tions, that may be held by any person with respect to con-*
6 *tracts of sale for future delivery or with respect to options*
7 *on such contracts or commodities traded on or subject to*
8 *the rules of a contract market or derivatives transaction*
9 *execution facility, or on an electronic trading facility as*
10 *a significant price discovery contract.*

11 “(B)(i) *For exempt commodities, the limits shall be es-*
12 *tablished within 180 days after the date of the enactment*
13 *of this paragraph.*

14 “(ii) *For agricultural commodities, the limits shall be*
15 *established within 270 days after the date of the enactment*
16 *of this paragraph.*

17 “(3) *In establishing the limits required in paragraph*
18 *(2), the Commission, as appropriate, shall set limits—*

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

23 “(B) *to the maximum extent practicable, in its*
24 *discretion—*

1 “(i) to diminish, eliminate, or prevent ex-
2 cessive speculation as described under this sec-
3 tion;

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

6 “(iii) to ensure sufficient market liquidity
7 for bona fide hedgers; and

8 “(iv) to ensure that the price discovery
9 function of the underlying market is not dis-
10 rupted; and

11 “(C) to the maximum extent practicable, in its
12 discretion, take into account the total number of posi-
13 tions in fungible agreements, contracts, or trans-
14 actions that a person can hold in other markets.

15 “(4)(A) Not later than 150 days after the establishment
16 of position limits pursuant to paragraph (2), and bian-
17 nually thereafter, the Commission shall hold 2 public hear-
18 ings, 1 for agriculture commodities and 1 for energy com-
19 modities as such terms are defined by the Commission, in
20 order to receive recommendations regarding the position
21 limits to be established in paragraph (2).

22 “(B) Each public hearing held pursuant to subpara-
23 graph (A) shall, at a minimum providing there is sufficient
24 interest, receive recommendations from—

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

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

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

7 “(iv) each designated contract market or deriva-
8 tives transaction execution facility upon which a con-
9 tract in the commodity for future delivery is traded,
10 and each electronic trading facility that has a signifi-
11 cant price discovery contract in the commodity.

12 “(C) Within 60 days after each public hearing held
13 pursuant to subparagraph (A), the Commission shall pub-
14 lish in the Federal Register its response to the recommenda-
15 tions regarding position limits heard at the hearing.”; and

16 (2) in subsection (c)—

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

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

20 “(2) For the purposes of implementation of subsection
21 (a)(2) for contracts of sale for future delivery and options
22 on such contracts or commodities, the Commission shall de-
23 fine what constitutes a bona fide hedging transaction or po-
24 sition as a transaction or position that—

1 “(A)(i) represents a substitute for transactions
2 made or to be made or positions taken or to be taken
3 at a later time 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 an-
11 ticipates 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 result-
19 ing from a transaction that—

20 “(i) was executed pursuant to subsection
21 (g), (h)(1), or (h)(3) of section 2, or an exemp-
22 tion issued by the Commission by rule, regula-
23 tion or order; and

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

1 *qualify as a bona fide hedging transaction pur-*
2 *suant to subparagraph (A); or*

3 *“(II) meets the requirements of subpara-*
4 *graph (A).”.*

5 **(b) CONFORMING AMENDMENTS.—**

6 *(1) Section 5(d)(5) of such Act (7 U.S.C.*
7 *7(d)(5)) is amended to read as follows:*

8 *“(5) To reduce the potential threat of market*
9 *manipulation or congestion, especially during trading*
10 *in the delivery month, the board of trade shall adopt*
11 *for each of its contracts, where necessary and appro-*
12 *priate, position limitations or position accountability*
13 *standards for speculators. For any contract that is*
14 *subject to a position limitation established by the*
15 *Commission pursuant to section 4a(a), the board of*
16 *trade shall set its position limitation at a level no*
17 *higher than the Commission-established limitation.”.*

18 *(2) Section 5a(d)(4) of such Act (7 U.S.C.*
19 *7a(d)(4)) is amended to read as follows:*

20 *“(4) To reduce the potential threat of market*
21 *manipulation or congestion, especially during trading*
22 *in the delivery month, the board of trade shall adopt*
23 *for each of its contracts, where necessary and appro-*
24 *priate, position limitations or position accountability*
25 *standards for speculators. For any contract that is*

1 *subject to a position limitation established by the*
2 *Commission pursuant to section 4a(a), the board of*
3 *trade shall set its position limitation at a level no*
4 *higher than the Commission-established limitation.”.*

5 *(3) Section 2(h)(7)(C)(ii)(IV) of such Act (7*
6 *U.S.C. 2(h)(7)(C)(ii)(IV)) is amended to read as fol-*
7 *lows:*

8 *“(IV) The electronic trading facil-*
9 *ity shall adopt, where necessary and*
10 *appropriate, position limitations or*
11 *position accountability standards for*
12 *speculators in significant price dis-*
13 *covery contracts, taking into account*
14 *positions in other agreements, con-*
15 *tracts, and transactions that are treat-*
16 *ed by a derivatives clearing organiza-*
17 *tion, whether registered or not reg-*
18 *istered, as fungible with such signifi-*
19 *cant price discovery contracts to reduce*
20 *the potential threat of market manipu-*
21 *lation or congestion, especially during*
22 *trading in the delivery month. For any*
23 *contract that is subject to a position*
24 *limitation established by the Commis-*
25 *sion pursuant to section 4a(a), the*

1 *electronic trading facility shall set its*
2 *position limitation at a level no higher*
3 *than the Commission-established limi-*
4 *tation.”.*

5 **SEC. 7. CFTC ADMINISTRATION.**

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

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

16 “(i) *to increase the public trans-*
17 *parency of operations in markets;*

18 “(ii) *to improve the enforcement of this*
19 *Act in those markets;*

20 “(iii) *to enhance oversight of the trad-*
21 *ing and clearing of contracts, agreements,*
22 *and transactions; and*

23 “(iv) *to carry out the provisions of the*
24 *Derivatives Markets Transparency and Ac-*

1 *countability Act of 2009 and such other du-*
2 *ties as are prescribed by the Commission.”.*

3 **SEC. 8. REVIEW OF PRIOR ACTIONS.**

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

14 **SEC. 9. REVIEW OF OVER-THE-COUNTER MARKETS.**

15 *(a) STUDY.—The Commodity Futures Trading Com-*
16 *mission shall conduct a study—*

17 *(1) to determine the efficacy, practicality, and*
18 *consequences of establishing limits on the size of a po-*
19 *sition, other than bona fide hedge positions, that may*
20 *be held by any person with respect to agreements,*
21 *contracts, or transactions involving an agricultural*
22 *or energy commodity, conducted in reliance on section*
23 *2(g) or 2(h) of the Commodity Exchange Act and of*
24 *any exemption issued by the Commission by rule, reg-*
25 *ulation or order, that are fungible (as defined by the*

1 *Commission) with agreements, contracts, or trans-*
2 *actions traded on or subject to the rules of any board*
3 *of trade or of any electronic trading facility with re-*
4 *spect to a significant price discovery contract, as a*
5 *means to deter and prevent price manipulation or*
6 *any other disruption to market integrity or to dimin-*
7 *ish, eliminate, or prevent excessive speculation as de-*
8 *scribed in section 4a of such Act for physical-based*
9 *agricultural or energy commodities; and*

10 *(2) to determine the efficacy, practicality, and*
11 *consequences of establishing aggregate position limits*
12 *for similar agreements, contracts, or transactions for*
13 *physical-based agricultural or energy commodities*
14 *traded—*

15 *(A) on designated contract markets;*
16 *(B) on derivatives transaction execution fa-*
17 *ilities; and*

18 *(C) in reliance on such section 2(g) or 2(h)*
19 *and of any exemption issued by the Commission*
20 *by rule, regulation or order.*

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

1 (c) *REPORT AND RECOMMENDATIONS.*—Not less than
2 12 months after the date of the enactment of this section,
3 the Commission shall provide to the Committee on Agri-
4 culture of the House of Representatives and the Committee
5 on Agriculture, Nutrition, and Forestry of the Senate a re-
6 port that—

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

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

14 (A) any additional statutory authority that
15 the Commission determines to be necessary to
16 implement the recommendations; and

17 (B) a description of the resources that the
18 Commission considers to be necessary to imple-
19 ment the recommendations.

20 **SEC. 10. STUDY RELATING TO INTERNATIONAL REGULA-**
21 **TION OF ENERGY COMMODITY MARKETS.**

22 (a) *IN GENERAL.*—The Comptroller General of the
23 United States shall conduct a study of the international re-
24 gime for regulating the trading of energy commodity futures
25 and derivatives.

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

3 (1) *key common features and differences among*
4 *countries in the regulation of energy commodity trad-*
5 *ing, including with respect to market oversight and*
6 *enforcement standards and activities;*

7 (2) *variations among countries with respect to*
8 *the use of position limits, position accountability lev-*
9 *els, or other thresholds to detect and prevent price ma-*
10 *nipulation, excessive speculation as described in sec-*
11 *tion 4a of the Commodity Exchange Act, or other un-*
12 *fair trading practices;*

13 (3) *variations in practices regarding the dif-*
14 *ferentiation of commercial and noncommercial trad-*
15 *ing;*

16 (4) *agreements and practices for sharing market*
17 *and trading data among futures authorities and be-*
18 *tween futures authorities and the entities that the fu-*
19 *tures authorities oversee; and*

20 (5) *agreements and practices for facilitating*
21 *international cooperation on market oversight, com-*
22 *pliance, and enforcement.*

23 (c) *REPORT.*—*Not later than 1 year after the date of*
24 *the enactment of this Act, the Comptroller General shall*
25 *submit to the Committee on Agriculture of the House of*

1 *Representatives and the Committee on Agriculture, Nutri-*
2 *tion, and Forestry of the Senate a report that—*

3 *(1) describes the results of the study;*

4 *(2) addresses whether there is excessive specula-*
5 *tion, and if so, the effects of any such speculation and*
6 *energy price volatility on energy futures; and*

7 *(3) provides recommendations to improve open-*
8 *ness, transparency, and other necessary elements of a*
9 *properly functioning market in a manner that pro-*
10 *TECTS consumers in the United States.*

11 **SEC. 11. OVER-THE-COUNTER AUTHORITY.**

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

15 *“(j) OVER-THE-COUNTER AUTHORITY.—*

16 *“(1) Notwithstanding subsections (d), (g), (h)(1),*
17 *and (h)(3) 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 agreements, contracts, or transactions entered*
21 *into in reliance on subsection (d), (g), (h)(1), or*
22 *(h)(3) of section 2 or any other exemption issued by*
23 *the 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 subject*

1 *to the rules of any board of trade or electronic trading*
2 *facility with respect to a significant price discovery*
3 *contract, alone or in conjunction with other similar*
4 *agreements, contracts, or transactions, have the poten-*
5 *tial to—*

6 *“(A) disrupt the liquidity or price discovery*
7 *function on a registered entity;*

8 *“(B) cause a severe market disturbance in*
9 *the underlying cash or futures market; or*

10 *“(C) prevent or otherwise impair the price*
11 *of a contract listed for trading on a registered*
12 *entity from reflecting the forces of supply and*
13 *demand in any market.*

14 *“(2) If the Commission makes a finding pursu-*
15 *ant to paragraph (1) of this subsection, the Commis-*
16 *sion may, in its discretion, utilize its authority under*
17 *section 8a(9) to impose position limits (including, as*
18 *appropriate and in its discretion, related hedge ex-*
19 *emption provisions for bona fide hedging comparable*
20 *to bona fide hedge provisions of section 4a(c)(2)) on*
21 *agreements, contracts, or transactions involved, and*
22 *take corrective actions to enforce the limits.”.*

23 *(b) CONFORMING AMENDMENTS.—*

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

4 (2) Section 2(d)(2) of such Act (7 U.S.C.
5 2(d)(2)) is amended by inserting “subsection (j) of
6 this section, and” after “(other than”.

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

10 (4) Section 2(h)(2)(A) of such Act (7 U.S.C.
11 2(h)(2)(A)), as amended by section 5(c)(4) of this Act,
12 is amended by inserting “subsection (j) of this section
13 and” before “sections”.

14 (5) Section 2(h)(4)(A) of such Act (7 U.S.C.
15 2(h)(4)(A)), as amended by section 5(c)(5) of this Act,
16 is amended by inserting “subsection (j) of this section
17 and” before “sections”.

18 (6) Section 8a(9) of such Act (7 U.S.C.
19 12a(a)(9)) is amended—

20 (A) by striking “(9)” and inserting
21 “(9)(A)”; and

22 (B) by striking “action.” and inserting “ac-
23 tion; and (B) to direct any person to abide by
24 any position limits to agreements, contracts, or

1 *transactions subject to section 2(j)(1) that are*
2 *imposed pursuant to section 2(j)(2).”.*

3 **SEC. 12. EXPEDITED PROCESS.**

4 *The Commodity Futures Trading Commission may*
5 *use emergency and expedited procedures (including any ad-*
6 *ministrative or other procedure as appropriate) to carry*
7 *out this Act if, in its discretion, it deems it necessary to*
8 *do so.*

9 **SEC. 13. CERTAIN EXCLUSIONS AND EXEMPTIONS AVAIL-**
10 **ABLE ONLY FOR CERTAIN TRANSACTIONS**
11 **SETTLED AND CLEARED THROUGH REG-**
12 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
13 **TIONS.**

14 *(a) IN GENERAL.—*

15 *(1) EXCLUSION OF CERTAIN DERIVATIVE TRANS-*
16 *ACTIONS.—*

17 *(A) Section 2(d)(1) of the Commodity Ex-*
18 *change Act (7 U.S.C. 2(d)(1)) is amended—*

19 *(i) by striking “and” at the end of sub-*
20 *paragraph (A);*

21 *(ii) by striking the period at the end of*
22 *subparagraph (B) and inserting “; and”;*
23 *and*

24 *(iii) by adding at the end the fol-*
25 *lowing:*

1 “(C) except as provided in section 4(h), the
2 agreement, contract, or transaction is settled and
3 cleared through a derivatives clearing organiza-
4 tion registered with the Commission.”.

5 (B) Section 2(d)(2) of such Act (7 U.S.C.
6 2(d)(2)) is amended—

7 (i) by striking “and” at the end of sub-
8 paragraph (B);

9 (ii) by striking the period at the end of
10 subparagraph (C) and inserting “; and”;
11 and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(D) except as provided in section 4(h), the
15 agreement, contract, or transaction is settled and
16 cleared through a derivatives clearing organiza-
17 tion registered with the Commission.”.

18 (2) *EXCLUSION FOR CERTAIN SWAP TRANS-*
19 *ACTIONS.*—Section 2(g) of such Act (7 U.S.C. 2(g)) is
20 amended—

21 (A) by striking “and” at the end of para-
22 graph (2);

23 (B) by striking the period at the end of
24 paragraph (3) and inserting “; and”; and

25 (C) by adding at the end the following:

1 “(4) except as provided in section 4(h), settled
2 and cleared through a derivatives clearing organiza-
3 tion registered with the Commission.”.

4 (3) *EXEMPTION FOR CERTAIN TRANSACTIONS IN*
5 *EXEMPT COMMODITIES.*—

6 (A) Section 2(h)(1) of such Act (7 U.S.C.
7 2(h)(1)) is amended—

8 (i) by striking “and” at the end of sub-
9 paragraph (A);

10 (ii) by striking the period at the end of
11 subparagraph (B) and inserting “; and”;
12 and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(C) except as provided in section 4(h), is
16 settled and cleared through a derivatives clearing
17 organization registered with the Commission.”.

18 (B) Section 2(h)(3) of such Act (7 U.S.C.
19 2(h)(3)) is amended—

20 (i) by striking “and” at the end of sub-
21 paragraph (A);

22 (ii) by striking the period at the end of
23 subparagraph (B) and inserting “; and”;
24 and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(C) except as provided in section 4(h), set-
4 tled and cleared through a derivatives clearing
5 organization registered with the Commission.”.

6 (4) *GENERAL EXEMPTIVE AUTHORITY.*—Section
7 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is amended by
8 inserting “the agreement, contract, or transaction, ex-
9 cept as provided in section 4(h), will be settled and
10 cleared through a derivatives clearing organization
11 registered with the Commission and” before “the
12 Commission determines”.

13 (b) *ALTERNATIVES TO CLEARING THROUGH DERIVA-*
14 *TIVES CLEARING ORGANIZATIONS.*—Section 4 of such Act
15 (7 U.S.C. 6), as amended by sections 3 and 4 of this Act,
16 is amended by adding at the end the following:

17 “(h) *ALTERNATIVES TO CLEARING THROUGH DERIVA-*
18 *TIVES CLEARING ORGANIZATIONS.*—

19 “(1) *SETTLEMENT AND CLEARING THROUGH*
20 *CERTAIN OTHER REGULATED ENTITIES.*—

21 “(A) An agreement, contract, or trans-
22 action, or class thereof, relating to an excluded
23 commodity, that would otherwise be required to
24 be settled and cleared by section 2(d)(1)(C),
25 2(d)(2)(D), or 2(g)(4) of this Act, or subsection

1 (c)(1) of this section may be settled and cleared
2 through an entity listed in section 409(b)(1) of
3 the Federal Deposit Insurance Corporation Im-
4 provement Act of 1991.

5 “(B) An agreement, contract, or trans-
6 action, or class thereof, that would otherwise be
7 required to be settled and cleared by section
8 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or
9 2(h)(3)(C) of this Act, or subsection (c)(1) of this
10 section may be settled and cleared through an
11 entity listed in section 409(b)(3) of the Federal
12 Deposit Insurance Corporation Improvement Act
13 of 1991.

14 “(2) WAIVER OF CLEARING REQUIREMENT.—

15 “(A) The Commission, in its discretion,
16 may exempt an agreement, contract, or trans-
17 action, or class thereof, that would otherwise be
18 required by section 2(d)(1)(C), 2(d)(2)(D),
19 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or
20 subsection (c)(1) of this section to be settled and
21 cleared through a derivatives clearing organiza-
22 tion registered with the Commission from such
23 requirement.

24 “(B) In granting exemptions pursuant to
25 subparagraph (A), the Commission shall consult

1 *with the Securities and Exchange Commission*
2 *and the Board of Governors of the Federal Re-*
3 *serve System regarding exemptions that relate to*
4 *excluded commodities or entities for which the*
5 *Securities Exchange Commission or the Board of*
6 *Governors of the Federal Reserve System serve as*
7 *the primary regulator.*

8 “(C) *Before granting an exemption pursu-*
9 *ant to subparagraph (A), the Commission shall*
10 *find that the agreement, contract, or transaction,*
11 *or class thereof—*

12 “(i) *is highly customized as to its ma-*
13 *terial terms and conditions;*

14 “(ii) *is transacted infrequently;*

15 “(iii) *does not serve a significant*
16 *price-discovery function in the marketplace;*
17 *and*

18 “(iv) *is being entered into by parties*
19 *who can demonstrate the financial integrity*
20 *of the agreement, contract, or transaction*
21 *and their own financial integrity, as such*
22 *terms and standards are determined by the*
23 *Commission. The standards shall include a*
24 *net capital requirement associated with any*
25 *agreement, contract, or transaction subject*

1 to an exemption from the clearing require-
2 ment that recognizes the risks associated
3 with the absence of clearing.

4 “(D) Any agreement, contract, or trans-
5 action, or class thereof, which is exempted pursu-
6 ant to subparagraph (A) shall be reported in a
7 manner designated by the Commission to the
8 Commission, the Securities and Exchange Com-
9 mission, the Board of Governors of the Federal
10 Reserve System, or such other entity the Com-
11 mission deems appropriate.

12 “(i) *SPOT AND FORWARD EXCLUSION.*—The settlement
13 and clearing requirements of section 2(d)(1)(C), 2(d)(2)(D),
14 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(c)(1) shall not apply
15 to an agreement, contract, or transaction of any cash com-
16 modity for immediate or deferred shipment or delivery, as
17 defined by the Commission.”

18 (c) *ADDITIONAL REQUIREMENTS APPLICABLE TO AP-*
19 *PLICANTS FOR REGISTRATION AS A DERIVATIVES CLEARING*
20 *ORGANIZATION.*—Section 5b(c)(2) of such Act (7 U.S.C.
21 7a-1(c)(2)) is amended by adding at the end the following:

22 “(O) *DISCLOSURE OF GENERAL INFORMA-*
23 *TION.*—The applicant shall disclose publicly and
24 to the Commission information concerning—

1 “(i) the terms and conditions of con-
2 tracts, agreements, and transactions cleared
3 and settled by the applicant;

4 “(ii) the conventions, mechanisms, and
5 practices applicable to the contracts, agree-
6 ments, and transactions;

7 “(iii) the margin-setting methodology
8 and the size and composition of the finan-
9 cial resource package of the applicant; and

10 “(iv) other information relevant to
11 participation in the settlement and clearing
12 activities of the applicant.

13 “(P) *DAILY PUBLICATION OF TRADING IN-*
14 *FORMATION.—The applicant shall make public*
15 *daily information on settlement prices, volume,*
16 *and open interest for contracts settled or cleared*
17 *pursuant to the requirements of section*
18 *2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),*
19 *2(h)(3)(C) or 4(c)(1) of this Act by the applicant*
20 *if the Commission determines that the contracts*
21 *perform a significant price discovery function*
22 *for transactions in the cash market for the com-*
23 *modity underlying the contracts.*

24 “(Q) *FITNESS STANDARDS.—The applicant*
25 *shall establish and enforce appropriate fitness*

1 standards for directors, members of any discipli-
2 nary committee, and members of the applicant,
3 and any other persons with direct access to the
4 settlement or clearing activities of the applicant,
5 including any parties affiliated with any of the
6 persons described in this subparagraph.”.

7 (d) *AMENDMENTS.*—

8 (1) *Section 409 of the Federal Deposit Insurance*
9 *Corporation Improvement Act of 1991 (12 U.S.C.*
10 *4422) is amended—*

11 (A) *in subsection (a), by inserting after*
12 *“Federal Reserve Act” the following: “, and the*
13 *person is registered as a clearing agency under*
14 *the Securities Exchange Act of 1934 or as a de-*
15 *rivatives clearing organization under the Com-*
16 *modity Exchange Act”;* and

17 (B) *in subsection (b)(3), by striking “the*
18 *Comptroller of the Currency, the Board of Gov-*
19 *ernors of the Federal Reserve System, the Federal*
20 *Deposit Insurance Corporation,”.*

21 (2) *Section 407 of the Legal Certainty for Bank*
22 *Products Act of 2000 (7 U.S.C. 27e) is amended by*
23 *inserting “and the settlement and clearing require-*
24 *ments of sections 2(d)(1)(C), 2(d)(2)(D), 2(g)(4),*

1 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such Act” after
2 “the clearing of covered swap agreements”.

3 (3) Section 10 of the Federal Reserve Act is
4 amended by adding at the end the following new pro-
5 vision:

6 “The Board shall have no power to issue any rule, reg-
7 ulation, or order, or otherwise to establish the standards of
8 regulation of any entity in its capacity as a multilateral
9 clearing organization as defined in section 408 of the Fed-
10 eral Deposit Insurance Corporation Improvement Act of
11 1991.”.

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

14 (A) by striking “(b) VOLUNTARY REGISTRA-
15 TION.—A derivatives clearing organization” and
16 inserting the following:

17 “(b) VOLUNTARY REGISTRATION.—

18 “(1) A derivatives clearing organization”; and

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

20 “(2)(A) A national bank, a State member bank,
21 an insured State nonmember bank, an affiliate of a
22 national bank, a State member bank, an insured
23 State nonmember bank, or a corporation chartered
24 under section 25A of the Federal Reserve Act may

1 register with the Commission as a derivatives clearing
2 organization.

3 “(B) The Commission shall expedite the applica-
4 tion of any institution referred to in subparagraph
5 (A) to the extent that, as of the date of enactment of
6 this paragraph, the institution had received the ap-
7 proval of the Board of Governors of the Federal Re-
8 serve System to act as a multilateral clearing organi-
9 zation.”.

10 (e) *EFFECTIVE DATE.*—

11 (1) *IN GENERAL.*—The amendments made by
12 this section shall take effect 150 days after the date
13 of the enactment of this Act.

14 (2) *PUBLICATION OF GUIDELINES.*—Before the
15 amendments made by this section take effect, the
16 Commission shall through rulemaking, after notice
17 and comment, establish and publish guidelines out-
18 lining the terms and conditions that must apply for
19 an agreement, contract, transaction, or class thereof,
20 to qualify for the exemption cited in section 4(h)(2)
21 of the Commodity Exchange Act.

22 (f) *TRANSITION RULE.*—Any agreement, contract, or
23 transaction entered into before the date of the enactment
24 of this Act or within 150 days after such date of enactment,
25 in reliance on subsection (d), (g), (h)(1), or (h)(3) of section

1 *2 of the Commodity Exchange Act or any other exemption*
2 *issued by the Commodity Futures Trading Commission by*
3 *rule, regulation, or order shall, within 150 days after such*
4 *date of enactment, unless settled and cleared through an en-*
5 *tity registered with the Commission as a derivatives clear-*
6 *ing organization or another clearing entity pursuant to sec-*
7 *tion 4(h) of such Act, be reported to the Commission in a*
8 *manner designated by the Commission, or to such other en-*
9 *tity as the Commission deems appropriate.*

10 **SEC. 14. TREATMENT OF EMISSION ALLOWANCES AND OFF-**
11 **SET CREDITS.**

12 *(a) Section 1a(14) of the Commodity Exchange Act (7*
13 *U.S.C. 1a(14)) is amended by striking “or an agricultural*
14 *commodity” and inserting “, an agricultural commodity,*
15 *any allowance authorized under law to emit a greenhouse*
16 *gas, and any credit authorized under law toward the reduc-*
17 *tion in greenhouse gas emissions or an increase in carbon*
18 *sequestration”.*

19 *(b) Within 180 days after the date of the enactment*
20 *of this section, the Commodity Futures Trading Commis-*
21 *sion shall enter into a memorandum of understanding with*
22 *the Secretary of Agriculture which shall include provisions,*
23 *consistent with section 1245 of the Food Security Act of*
24 *1985, ensuring that the development of any procedures and*
25 *protocols for a market-based greenhouse gas contract on a*

1 *board of trade designated as a contract market under sec-*
2 *tion 5 of the Commodity Exchange Act are properly con-*
3 *structed and coordinated to maximize credits for carbon se-*
4 *questration.*

5 **SEC. 15. INSPECTOR GENERAL OF THE COMMODITY FU-**
6 **TURES TRADING COMMISSION.**

7 (a) *ELEVATION OF OFFICE.—*

8 (1) *INCLUSION OF CFTC IN DEFINITION OF ES-*
9 *TABLISHMENT.—*

10 (A) *Section 12(1) of the Inspector General*
11 *Act of 1978 (5 U.S.C. App.) is amended by strik-*
12 *ing “or the Federal Cochairpersons of the Com-*
13 *missions established under section 15301 of title*
14 *40, United States Code;” and inserting “the Fed-*
15 *eral Cochairpersons of the Commissions estab-*
16 *lished under section 15301 of title 40, United*
17 *States Code; or the Chairman of the Commodity*
18 *Futures Trading Commission;”.*

19 (B) *Section 12(2) of the Inspector General*
20 *Act of 1978 (5 U.S.C. App.) is amended by strik-*
21 *ing “or the Commissions established under sec-*
22 *tion 15301 of title 40, United States Code,” and*
23 *inserting “the Commissions established under*
24 *section 15301 of title 40, United States Code, or*
25 *the Commodity Futures Trading Commission;”.*

1 (2) *EXCLUSION OF CFTC FROM DEFINITION OF*
2 *DESIGNATED FEDERAL ENTITY.*—Section 8G(a)(2) of
3 *the Inspector General Act of 1978 (5 U.S.C. App.) is*
4 *amended by striking “the Commodity Futures Trad-*
5 *ing Commission,”.*

6 (b) *EFFECTIVE DATE; TRANSITION RULE.*—

7 (1) *EFFECTIVE DATE.*—*The amendments made*
8 *by this section shall take effect 30 days after the date*
9 *of the enactment of this Act.*

10 (2) *TRANSITION RULE.*—*An individual serving*
11 *as Inspector General of the Commodity Futures Trad-*
12 *ing Commission on the effective date of this section*
13 *pursuant to an appointment made under section 8G*
14 *of the Inspector General Act of 1978 (5 U.S.C.*
15 *App.)—*

16 (A) *may continue so serving until the Presi-*
17 *dent makes an appointment under section 3(a)*
18 *of such Act consistent with the amendments*
19 *made by this section; and*

20 (B) *shall, while serving under subparagraph*
21 (A), *remain subject to the provisions of section*
22 8G *of such Act which apply with respect to the*
23 *Commodity Futures Trading Commission.*

1 **SEC. 16. AUTHORITY OF COMMODITY FUTURES TRADING**
2 **COMMISSION TO SUSPEND TRADING IN CRED-**
3 **IT DEFAULT SWAPS.**

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

7 “(h) *AUTHORITY OF COMMISSION TO SUSPEND TRAD-*
8 *ING OF CREDIT DEFAULT SWAPS.*—

9 “(1) *IN GENERAL.*—If, in the opinion of the
10 Commission, the public interest and the protection of
11 investors so require, the Commission may, by order—

12 “(A) summarily suspend trading in any
13 credit default swap; and

14 “(B) summarily suspend all trading on any
15 contract market, derivatives transaction execu-
16 tion facility, or otherwise, in credit default
17 swaps.

18 “(2) *LIMITATION.*—An action described in para-
19 graph (1) shall—

20 “(A) not take effect unless the Commission
21 notifies the President of its decision, and the
22 President notifies the Commission that the Presi-
23 dent does not disapprove of the decision;

24 “(B) only apply to credit default swaps that
25 are related to securities subject to a short selling
26 suspension order by the Securities and Exchange

1 *Commission, and such action must terminate*
2 *when such suspension order terminates; and*

3 “(C) *only apply to credit default swaps*
4 *purchased by persons who are not purchasing the*
5 *credit default swap to reduce an existing credit*
6 *risk directly related to the reference entity or its*
7 *obligations.”.*

8 **(b) DEFINITION OF CREDIT DEFAULT SWAP.**—*Section*
9 *1a of such Act (7 U.S.C. 1a) is amended by adding at the*
10 *end the following:*

11 “(34) **CREDIT DEFAULT SWAP.**—*The term ‘credit*
12 *default swap’ means a contract which hedges a party*
13 *to the contract against the risk that an entity may*
14 *experience a loss of value as a result of an event spec-*
15 *ified in the contract, such as a default or credit down-*
16 *grade. A credit default swap that is proposed to be*
17 *traded or is traded on or proposed to be or is cleared*
18 *by a registered entity pursuant to this Act shall be ex-*
19 *cluded from the definition of a security as defined in*
20 *this Act and in section 2(a)(1) of the Securities Act*
21 *of 1933 or section 3(a)(10) of the Securities Exchange*
22 *Act of 1934, except as necessary solely for purposes of*
23 *enforcing prohibitions against insider trading in sec-*
24 *tions 10 and 16 of the Securities Exchange Act of*
25 *1934.”.*

1 (c) *EFFECTIVE DATE.*—*The amendment made by sub-*
 2 *section (b) shall be effective for credit default swaps entered*
 3 *into after 90 days after the date of the enactment of this*
 4 *section.*

5 **SEC. 17. AUTHORITY OF COMMODITY FUTURES TRADING**
 6 **COMMISSION TO PROSECUTE CRIMINAL VIO-**
 7 **LATIONS OF THE COMMODITY EXCHANGE**
 8 **ACT.**

9 *Section 9 of the Commodity Exchange Act (7 U.S.C.*
 10 *13) is amended by adding at the end the following:*

11 “(f) *Notwithstanding section 516 of title 28, United*
 12 *States Code, the Commission may initiate and conduct*
 13 *criminal litigation relating to a violation of this Act, and*
 14 *secure evidence therefor, if the Attorney General has de-*
 15 *clined to do so.”.*

16 **SEC. 18. DIVERSITY OF DIRECTORS OF BOARDS OF TRADE.**

17 *Section 5(d) of the Commodity Exchange Act (7 U.S.C.*
 18 *7(d)) is amended by adding at the end the following:*

19 “(19) *DIVERSITY OF BOARDS OF DIRECTORS.*—
 20 *The board of trade of a publicly traded company shall*
 21 *endeavor to recruit individuals to serve on the board*
 22 *of directors and the other decision-making bodies (as*
 23 *determined by the Commission) of the board of trade*
 24 *from among, and to have the composition of such bod-*

1 *ies reflect, a broad and culturally diverse pool of*
2 *qualified candidates.”.*

Union Calendar No. 223

11TH CONGRESS
1ST Session

H. R. 977

[Report No. 111-385, Part I]

A BILL

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

DECEMBER 19, 2009

Reported from the Committee on Agriculture with an amendment and referred to the Committee on the Judiciary for a period ending not later than December 19, 2009, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

DECEMBER 19, 2009

Committees on Financial Services and the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed