

[DISCUSSION DRAFT]

111TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

_____ introduced the following bill; which was referred to the Committee on _____

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. Limitation on eligibility to purchase a credit default swap.

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 par-
10 ticipants located in the United States direct access
11 to the electronic trading and order matching system
12 of the foreign board of trade with respect to an
13 agreement, contract, or transaction that settles
14 against any price (including the daily or final settle-
15 ment price) of 1 or more contracts listed for trading
16 on a registered entity, unless—

17 “(A) the foreign board of trade makes pub-
18 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, with regard to the agreement,
8 contract, or transaction,” of any change
9 regarding—

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

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

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

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

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

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

19 “(2) EXISTING FOREIGN BOARDS OF TRADE.—
20 Paragraph (1) shall not be effective with respect to
21 any agreement, contract, or transaction executed on
22 a foreign board of trade to which the Commission
23 had granted direct access permission before the date
24 of the enactment of this subsection until the date
25 that is 180 days after such 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 foreign board of trade
16 and has not been determined by the Commission to be op-
17 erating in violation of subsection (a).”.

18 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
19 TURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.
20 25(a)) is amended by adding at the end the following:

21 “(5) A contract of sale of a commodity for fu-
22 ture delivery traded or executed on or through the
23 facilities of a board of trade, exchange, or market lo-
24 cated outside the United States for purposes of sec-
25 tion 4(a) shall not be void, voidable, or unenforce-

1 able, and a party to such a contract shall not be en-
2 titled to rescind or recover any payment made with
3 respect to the contract, based on the failure of the
4 foreign board of trade to comply with any provision
5 of this Act.”.

6 **SEC. 4. DETAILED REPORTING AND DISAGGREGATION OF**
7 **MARKET DATA.**

8 Section 4 of the Commodity Exchange Act (7 U.S.C.
9 6), as amended by section 3 of this Act, is amended by
10 adding at the end the following:

11 “(g) DETAILED REPORTING AND DISAGGREGATION
12 OF MARKET DATA.—

13 “(1) INDEX TRADERS AND SWAP DEALERS RE-
14 PORTING.—The Commission shall issue a proposed
15 rule defining and classifying index traders and swap
16 dealers (as those terms are defined by the Commis-
17 sion) for purposes of data reporting requirements
18 and setting routine detailed reporting requirements
19 for any positions of such entities in contracts traded
20 on designated contract markets, derivatives trans-
21 action execution facilities, foreign boards of trade
22 subject to section 4(e), and electronic trading facili-
23 ties with respect to significant price discovery con-
24 tracts not later than 120 days after the date of the

1 enactment of this subsection, and issue a final rule
2 within 180 days after such date of enactment.

3 “(2) DISAGGREGATION OF INDEX FUNDS AND
4 OTHER DATA IN MARKETS.—Subject to section 8
5 and beginning within 60 days of the issuance of the
6 final rule required by paragraph (1), the Commis-
7 sion shall disaggregate and make public monthly—

8 “(A) the number of positions and total no-
9 tional value of index funds and other passive,
10 long-only and short-only positions (as defined
11 by the Commission) in all markets to the extent
12 such information is available; and

13 “(B) data on speculative positions relative
14 to bona fide physical hedgers in those markets
15 to the extent such information is available.”.

16 **SEC. 5. TRANSPARENCY AND RECORDKEEPING AUTHORI-**
17 **TIES.**

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

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

22 (2) by inserting “and transactions and positions
23 traded pursuant to subsection (d), (g), (h)(1), or
24 (h)(3) of section 2, or any exemption issued by the

1 Commission by rule, regulation or order,” after
2 “United States or elsewhere,”.

3 (b) REPORTS OF DEALS EQUAL TO OR IN EXCESS
4 OF TRADING LIMITS.—

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

7 (A) in the first sentence—

8 (i) by inserting “(a)” before “It
9 shall”; and

10 (ii) by inserting “in the United States
11 or elsewhere, and of transactions and posi-
12 tions in any such commodity entered into
13 pursuant to subsection (d), (g), (h)(1), or
14 (h)(3) of section 2, or any exemption
15 issued by the Commission by rule, regula-
16 tion or order” before “, and of cash or
17 spot”; and

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

20 “(b) Upon special call by the Commission, any person
21 shall provide to the Commission, in a form and manner
22 and within the period specified in the special call, books
23 and records of all transactions and positions traded on or
24 subject to the rules of any board of trade or electronic
25 trading facility in the United States or elsewhere, or pur-

1 suant to subsection (d), (g), (h)(1), or (h)(3) of section
2 2, or any exemption issued by the Commission by rule,
3 regulation, or order, as the Commission may determine
4 appropriate to deter and prevent price manipulation or
5 any other disruption to market integrity or to diminish,
6 eliminate, or prevent excessive speculation as described in
7 section 4a(a).

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

19 (2) NOTICE AND COMMENT.—Within 60 days
20 after the date of the enactment of this subsection,
21 the Commodity Futures Trading Commission shall
22 provide an opportunity for notice and comment on
23 implementing the amendments made by paragraph
24 (1).”

25 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

17 (3) Section 2(h)(2)(A) of such Act (7 U.S.C.
18 2(h)(2)(A)) is amended to read as follows:

19 “(A) sections 4g(a), 4i, 5b and
20 12(e)(2)(B), and the regulations of the Com-
21 mission pursuant to section 4i(b) requiring re-
22 porting in connection with commodity option
23 transactions;”.

24 (4) Section 2(h)(4)(A) of such Act (7 U.S.C.
25 2(h)(4)(A)) is amended to read as follows:

1 “(A) sections 4g(a), 4i, 5a (to the extent
2 provided in section 5a(g)), 5b, 5d, and
3 12(e)(2)(B), and the regulations of the Com-
4 mission pursuant to section 4i(b) requiring re-
5 porting in connection with commodity option
6 transactions;”.

7 **SEC. 6. TRADING LIMITS TO PREVENT EXCESSIVE SPECU-**
8 **LATION.**

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

11 (1) in subsection (a)—

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

13 (B) by adding after and below the end the
14 following:

15 “(2)(A) In accordance with the standards set forth
16 in paragraph (1) of this subsection and consistent with
17 the good faith exception cited in subsection (b)(2), the
18 Commission shall by rule, regulation, or order establish
19 limits on the amount of positions, as appropriate, other
20 than bona fide hedge positions, that may be held by any
21 person with respect to contracts of sale for future delivery
22 or with respect to options on such contracts or commod-
23 ities traded on or subject to the rules of a contract market
24 or derivatives transaction execution facility, or on an elec-

1 tronic trading facility as a significant price discovery con-
2 tract.

3 “(B)(i) For exempt commodities, the limits shall be
4 established within 90 days after the date of the enactment
5 of this paragraph.

6 “(ii) For agricultural commodities, the limits shall be
7 established within 180 days after the date of the enact-
8 ment of this paragraph.

9 “(iii) For excluded commodities, the limits shall be
10 established within 270 days after the date of the enact-
11 ment of this paragraph.

12 “(3) In establishing the limits required in paragraph
13 (2), the Commission, as appropriate, shall set limits—

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

18 “(B) to the maximum extent practicable, in its
19 discretion—

20 “(i) to diminish, eliminate, or prevent ex-
21 cessive speculation as described under this sec-
22 tion;

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

1 “(iii) to ensure sufficient market liquidity
2 for bona fide hedgers; and

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

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

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

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

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

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

21 “(iv) each designated contract market or de-
22 rivatives transaction execution facility upon which a
23 contract in the commodity for future delivery is
24 traded, and each electronic trading facility that has

1 a significant price discovery contract in the com-
2 modity.

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

13 (2) in subsection (c)—

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

15 (B) by adding after and below the end the
16 following:

17 “(2) For the purposes of contracts of sale for future
18 delivery and options on such contracts or commodities, the
19 Commission shall define what constitutes a bona fide
20 hedging transaction or position as a transaction or posi-
21 tion that—

22 “(A)(i) represents a substitute for transactions
23 made or to be made or positions taken or to be
24 taken at a later time in a physical marketing chan-
25 nel;

1 “(ii) is economically appropriate to the reduc-
2 tion of risks in the conduct and management of a
3 commercial enterprise; and

4 “(iii) arises from the potential change in the
5 value of—

6 “(I) assets that a person owns, produces,
7 manufactures, processes, or merchandises or
8 anticipates owning, producing, manufacturing,
9 processing, or merchandising;

10 “(II) liabilities that a person owns or an-
11 ticipates incurring; or

12 “(III) services that a person provides, pur-
13 chases, or anticipates providing or purchasing;
14 or

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

17 “(i) was executed pursuant to subsection
18 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-
19 emption issued by the Commission by rule, reg-
20 ulation or order; and

21 “(ii) was executed opposite a counterparty
22 for which the transaction would qualify as a
23 bona fide hedging transaction pursuant to para-
24 graph (2)(A) of this subsection.”.

1 **SEC. 7. CFTC ADMINISTRATION.**

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

5 “(D) **ADDITIONAL EMPLOYEES.**—As soon
6 as practicable after the date of the enactment
7 of this subparagraph, subject to appropriations,
8 the Commission shall appoint at least 200 full-
9 time employees (in addition to the employees
10 employed by the Commission as of the date of
11 the enactment of this subparagraph)—

12 “(i) to increase the public trans-
13 parency of operations in markets;

14 “(ii) to improve the enforcement of
15 this Act in those markets;

16 “(iii) to enhance oversight of the
17 clearing of contracts, agreements, and
18 transactions; and

19 “(iv) to carry out such other duties as
20 are prescribed by the Commission.”.

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

22 Notwithstanding any other provision of the Com-
23 modity Exchange Act, the Commodity Futures Trading
24 Commission shall review, as appropriate, all regulations,
25 rules, exemptions, exclusions, guidance, no action letters,
26 orders, other actions taken by or on behalf of the Commis-

1 sion, and any action taken pursuant to the Commodity
2 Exchange Act by an exchange, self-regulatory organiza-
3 tion, or any other registered entity, that are currently in
4 effect, to ensure that such prior actions are in compliance
5 with the provisions of this Act.

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

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

9 (1) to determine the efficacy, practicality, and
10 consequences of establishing limits on the size of a
11 position, other than bona fide hedge positions, that
12 may be held by any person with respect to agree-
13 ments, contracts, or transactions involving an agri-
14 cultural or energy commodity, conducted in reliance
15 on sections 2(g) and 2(h) of the Commodity Ex-
16 change Act and of any exemption issued by the
17 Commission by rule, regulation or order, that are
18 fungible (as defined by the Commission) with agree-
19 ments, contracts, or transactions traded on or sub-
20 ject to the rules of any board of trade or of any elec-
21 tronic trading facility with respect to a significant
22 price discovery contract, as a means to deter and
23 prevent price manipulation or any other disruption
24 to market integrity or to diminish, eliminate, or pre-
25 vent excessive speculation as described in section 4a

1 of such Act for physical-based agricultural or energy
2 commodities; and

3 (2) to determine the efficacy, practicality, and
4 consequences of establishing aggregate position lim-
5 its for similar agreements, contracts, or transactions
6 for physical-based agricultural or energy commod-
7 ities traded—

8 (A) on designated contract markets;

9 (B) on derivatives transaction execution fa-
10 cilities; and

11 (C) in reliance on such sections 2(g) and
12 2(h) and of any exemption issued by the Com-
13 mission by rule, regulation or order.

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

18 (c) REPORT AND RECOMMENDATIONS.—Not less
19 than 12 months after the date of the enactment of this
20 section, the Commission shall provide to the Committee
21 on Agriculture of the House of Representatives and the
22 Committee on Agriculture, Nutrition, and Forestry of the
23 Senate a report that—

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

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

7 (A) any additional statutory authority that
8 the Commission determines to be necessary to
9 implement the recommendations; and

10 (B) a description of the resources that the
11 Commission considers to be necessary to imple-
12 ment the recommendations.

13 **SEC. 10. STUDY RELATING TO INTERNATIONAL REGULA-**
14 **TION OF ENERGY COMMODITY MARKETS.**

15 (a) **IN GENERAL.**—The Comptroller General of the
16 United States shall conduct a study of the international
17 regime for regulating the trading of energy commodity fu-
18 tures and derivatives.

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

21 (1) key common features and differences among
22 countries in the regulation of energy commodity
23 trading, including with respect to market oversight
24 and enforcement standards and activities;

1 (2) variations among countries with respect to
2 the use of position limits, position accountability lev-
3 els, or other thresholds to detect and prevent price
4 manipulation, excessive speculation as described in
5 section 4a of the Commodity Exchange Act, or other
6 unfair trading practices;

7 (3) variations in practices regarding the dif-
8 ferentiation of commercial and noncommercial trad-
9 ing;

10 (4) agreements and practices for sharing mar-
11 ket and trading data among futures authorities and
12 between futures authorities and the entities that the
13 futures authorities oversee; and

14 (5) agreements and practices for facilitating
15 international cooperation on market oversight, com-
16 pliance, and enforcement.

17 (c) REPORT.—Not later than 1 year after the date
18 of the enactment of this Act, the Comptroller General shall
19 submit to the Committee on Agriculture of the House of
20 Representatives and the Committee on Agriculture, Nutri-
21 tion, and Forestry of the Senate a report that—

22 (1) describes the results of the study;

23 (2) addresses whether there is excessive specu-
24 lation, and if so, the effects of any such speculation
25 and energy price volatility on energy futures; and

1 (3) provides recommendations to improve open-
2 ness, transparency, and other necessary elements of
3 a properly functioning market in a manner that pro-
4 tects consumers in the United States.

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

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

9 “(j) OVER-THE-COUNTER AUTHORITY.—

10 “(1) Notwithstanding subsections (d), (g),
11 (h)(1), and (h)(3) of section 2, and any exemption
12 issued by the Commission by rule, regulation, or
13 order, the Commission shall assess and issue a find-
14 ing on whether agreements, contracts, or trans-
15 actions entered into in reliance on subsection (d),
16 (g), (h)(1), or (h)(3) of section 2 or any other ex-
17 emption issued by the Commission by rule, regula-
18 tion, or order, that are fungible (as defined by the
19 Commission) with agreements, contracts, or trans-
20 actions traded on or subject to the rules of any
21 board of trade or electronic trading facility with re-
22 spect to a significant price discovery contract, alone
23 or in conjunction with other similar agreements, con-
24 tracts, or transactions, have the potential to—

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

3 “(B) cause a severe market disturbance in
4 the underlying cash or futures market; or

5 “(C) prevent or otherwise impair the price
6 of a contract listed for trading on a registered
7 entity from reflecting the forces of supply and
8 demand in any market.

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

18 (b) CONFORMING AMENDMENTS.—

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

22 (2) Section 2(d)(2) of such Act (7 U.S.C.
23 2(d)(2)) is amended by inserting “subsection (j) of
24 this section, and” after “(other than”.

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

4 (4) Section 2(h)(2)(A) of such Act (7 U.S.C.
5 2(h)(2)(A)), as amended by section 5(c)(3) of this
6 Act, is amended by inserting “subsection (j) of this
7 section and” before “sections”.

8 (5) Section 2(h)(4)(A) of such Act (7 U.S.C.
9 2(h)(4)(A)), as amended by section 5(c)(4) of this
10 Act, is amended by inserting “subsection (j) of this
11 section and” before “sections”.

12 (6) Section 8a(9) of such Act (7 U.S.C.
13 12a(a)(9)) is amended by inserting after “of the
14 Commission’s action” the following: “, and to fix
15 and enforce position limits to agreements, contracts,
16 or transactions subject to section 2(j)(1) pursuant to
17 a finding made under section 2(j)(2)”.

18 **SEC. 12. EXPEDITED PROCESS.**

19 The Commodity Futures Trading Commission may
20 use emergency and expedited procedures (including any
21 administrative or other procedure as appropriate) to carry
22 out this Act if, in its discretion, it deems it necessary to
23 do so.

1 **SEC. 13. CERTAIN EXCLUSIONS AND EXEMPTIONS AVAIL-**
2 **ABLE ONLY FOR CERTAIN TRANSACTIONS**
3 **SETTLED AND CLEARED THROUGH REG-**
4 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
5 **TIONS.**

6 (a) IN GENERAL.—

7 (1) EXCLUSION OF CERTAIN DERIVATIVE
8 TRANSACTIONS.—

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

11 (i) by striking “and” at the end of
12 subparagraph (A);

13 (ii) by striking the period at the end
14 of subparagraph (B) and inserting “and”;
15 and

16 (iii) by adding at the end the fol-
17 lowing:

18 “(C) except as provided in section 4(h), the
19 agreement, contract, or transaction is settled
20 and cleared through a derivatives clearing orga-
21 nization registered with the Commission.”.

22 (B) Section 2(d)(2) of such Act (7 U.S.C.
23 2(d)(2)) is amended—

24 (i) by striking “and” at the end of
25 subparagraph (B);

1 (ii) by striking the period at the end
2 of subparagraph (C) and inserting “; and”;
3 and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(D) except as provided in section 4(h),
7 the agreement, contract, or transaction is set-
8 tled and cleared through a derivatives clearing
9 organization registered with the Commission.”.

10 (2) EXCLUSION FOR CERTAIN SWAP TRANS-
11 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))
12 is amended—

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

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

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

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

21 (3) EXEMPTION FOR CERTAIN TRANSACTIONS
22 IN EXEMPT COMMODITIES.—

23 (A) Section 2(h)(1) of such Act (7 U.S.C.
24 2(h)(1)) is amended—

1 (i) by striking “and” at the end of
2 subparagraph (A);

3 (ii) by striking the period at the end
4 of subparagraph (B) and inserting “;
5 and”; and

6 (iii) by adding at the end the fol-
7 lowing:

8 “(C) except as provided in section 4(h), is
9 settled and cleared through a derivatives clear-
10 ing organization registered with the Commis-
11 sion.”.

12 (B) Section 2(h)(3) of such Act (7 U.S.C.
13 2(h)(3)) is amended—

14 (i) by striking “and” at the end of
15 subparagraph (A);

16 (ii) by striking the period at the end
17 of subparagraph (B) and inserting “;
18 and”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(C) except as provided in section 4(h),
22 settled and cleared through a derivatives clear-
23 ing organization registered with the Commis-
24 sion.”.

1 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-
2 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is
3 amended by inserting “the agreement, contract, or
4 transaction, except as provided in section 4(h), will
5 be settled and cleared through a derivatives clearing
6 organization registered with the Commission and”
7 before “the Commission determines”.

8 (b) ALTERNATIVES TO CLEARING THROUGH DES-
9 IGNATED CLEARING ORGANIZATIONS.—Section 4 of such
10 Act (7 U.S.C. 6), as amended by sections 3 and 4 of this
11 Act, is amended by adding at the end the following:

12 “(h) ALTERNATIVES TO CLEARING THROUGH DES-
13 IGNATED CLEARING ORGANIZATIONS.—

14 “(1) SETTLEMENT AND CLEARING THROUGH
15 CERTAIN OTHER REGULATED ENTITIES.—An agree-
16 ment, contract, or transaction, or class thereof, re-
17 lating to an excluded commodity, that would other-
18 wise be required to be settled and cleared by section
19 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or
20 2(h)(3)(C) of this Act, or subsection (c)(1) of this
21 section may be settled and cleared through an entity
22 listed in subsections (a) or (b) of section 409 of the
23 Federal Deposit Insurance Corporation Improvement
24 Act of 1991.

25 “(2) WAIVER OF CLEARING REQUIREMENT.—

1 “(A) The Commission, in its discretion,
2 may exempt an agreement, contract, or trans-
3 action, or class thereof, that would otherwise be
4 required by section 2(d)(1)(C), 2(d)(2)(D),
5 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,
6 or subsection (c)(1) of this section to be settled
7 and cleared through a derivatives clearing orga-
8 nization registered with the Commission from
9 such requirement.

10 “(B) In granting exemptions pursuant to
11 subparagraph (A), the Commission shall consult
12 with the Securities and Exchange Commission
13 and the Board of Governors of the Federal Re-
14 serve System regarding exemptions that relate
15 to excluded commodities or entities for which
16 the Securities Exchange Commission or the
17 Board of Governors of the Federal Reserve Sys-
18 tem serve as the primary regulator.

19 “(C) Before granting an exemption pursu-
20 ant to subparagraph (A), the Commission shall
21 find that the agreement, contract, or trans-
22 action, or class thereof—

23 “(i) is highly customized as to its ma-
24 terial terms and conditions;

25 “(ii) is transacted infrequently;

1 “(iii) does not serve a significant
2 price-discovery function in the market-
3 place; and

4 “(iv) is being entered into by parties
5 who can demonstrate the financial integ-
6 rity of the agreement, contract, or trans-
7 action and their own financial integrity, as
8 such terms and standards are determined
9 by the Commission. The standards may in-
10 clude, with respect to any federally regu-
11 lated financial entity for which net capital
12 requirements are imposed, a net capital re-
13 quirement associated with any agreement,
14 contract, or transaction subject to an ex-
15 emption from the clearing requirement
16 that is higher than the net capital require-
17 ment that would be associated with such a
18 transaction were it cleared

19 “(D) Any agreement, contract, or trans-
20 action, or class thereof, which is exempted pur-
21 suant to subparagraph (A) shall be reported to
22 the Commission in a manner designated by the
23 Commission, or to such other entity the Com-
24 mission deems appropriate.

1 “(E) The Commission, the Securities and
2 Exchange Commission and the Board of Gov-
3 ernors of the Federal Reserve System shall
4 enter into a memorandum of understanding by
5 which the information reported to the Commis-
6 sion pursuant to subparagraph (D) with regard
7 to excluded commodities or entities for which
8 the Securities Exchange Commission or the
9 Board of Governors of the Federal Reserve Sys-
10 tem serve as the primary regulator may be pro-
11 vided to the other agencies.

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

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

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

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

4 “(ii) the conventions, mechanisms,
5 and practices applicable to the contracts,
6 agreements, 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
17 cleared pursuant to the requirements of
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 appli-
20 cant if the Commission determines that the
21 contracts perform a significant price discovery
22 function for transactions in the cash market for
23 the commodity underlying the contracts.

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

1 standards for directors, members of any dis-
2 ciplinary committee, and members of the appli-
3 cant, and any other persons with direct access
4 to the settlement or clearing activities of the
5 applicant, including any parties affiliated with
6 any of the persons described in this subpara-
7 graph.”.

8 (d) AMENDMENTS.—

9 (1) Section 409 of the Federal Deposit Insur-
10 ance Corporation Improvement Act of 1991 (12
11 U.S.C. 4422) is amended by adding at the end the
12 following:

13 “(c) CLEARING REQUIREMENT.—A multilateral
14 clearing organization described in subsections (a) or (b)
15 of this section shall comply with requirements similar to
16 the requirements of sections 5b and 5c or the Commodity
17 Exchange Act.”.

18 (2) Section 407 of the Legal Certainty for
19 Bank Products Act of 2000 (7 U.S.C. 27e) is
20 amended by inserting “and the settlement and clear-
21 ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),
22 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such
23 Act” after “the clearing of covered swap agree-
24 ments”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect 150 days after the date of
3 the enactment of this Act.

4 (f) TRANSITION RULE.—Any agreement, contract, or
5 transaction entered into before the date of the enactment
6 of this Act or within 150 days after such date of enact-
7 ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)
8 of section 2 of the Commodity Exchange Act or any other
9 exemption issued by the Commission Futures Trading
10 Commission by rule, regulation, or order shall, within 90
11 days after such date of enactment, unless settled and
12 cleared through an entity registered with the Commission
13 as a derivatives clearing organization or another clearing
14 entity pursuant to section 4(h) of such Act, be reported
15 to the Commission in a manner designated by the Com-
16 mission, or to such other entity as the Commission deems
17 appropriate.

18 **SEC. 14. TREATMENT OF EMISSION ALLOWANCES AND OFF-**
19 **SET CREDITS.**

20 (a) Section 1a(14) of the Commodity Exchange Act
21 (7 U.S.C. 1a(14)) is amended by striking “or an agricul-
22 tural commodity” and inserting “, an agricultural com-
23 modity, any allowance authorized under law to emit a
24 greenhouse gas, and any credit authorized under law to-

1 ward the reduction in greenhouse gas emissions or an in-
2 crease in carbon sequestration”.

3 (b) Within 180 days after the date of the enactment
4 of this section, the Commodity Futures Trading Commis-
5 sion shall enter into a memorandum of understanding with
6 the Secretary of Agriculture which shall include provi-
7 sions, consistent with section 1245 of the Food Security
8 Act of 1985, ensuring that the development of any proce-
9 dures and protocols for a market-based greenhouse gas
10 program are properly constructed and coordinated to
11 maximize credits for carbon sequestration.

12 **SEC. 15. INSPECTOR GENERAL OF THE COMMODITY FU-**
13 **TURES TRADING COMMISSION.**

14 (a) ELEVATION OF OFFICE.—

15 (1) INCLUSION OF CFTC IN DEFINITION OF ES-
16 TABLISHMENT.—

17 (A) Section 11(1) of the Inspector General
18 Act of 1978 (5 U.S.C. App.) is amended by
19 striking “or the Federal Cochairpersons of the
20 Commissions established under section 15301
21 of title 40, United States Code;” and inserting
22 “the Federal Cochairpersons of the Commis-
23 sions established under section 15301 of title
24 40, United States Code; or the Chairman of the
25 Commodity Futures Trading Commission;”.

1 (B) Section 11(2) of the Inspector General
2 Act of 1978 (5 U.S.C. App.) is amended by
3 striking “or the Commissions established under
4 section 15301 of title 40, United States Code,”
5 and inserting “the Commissions established
6 under section 15301 of title 40, United States
7 Code, or the Commodity Futures Trading Com-
8 mission,”.

9 (2) EXCLUSION OF CFTC FROM DEFINITION OF
10 DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2)
11 of the Inspector General Act of 1978 (5 U.S.C.
12 App.) is amended by striking “the Commodity Fu-
13 tures Trading Commission,”.

14 (b) EFFECTIVE DATE; TRANSITION RULE.—

15 (1) EFFECTIVE DATE.—The amendments made
16 by this section shall take effect 30 days after the
17 date of the enactment of this Act.

18 (2) TRANSITION RULE.—An individual serving
19 as Inspector General of the Commodity Futures
20 Trading Commission on the effective date of this
21 section pursuant to an appointment made under sec-
22 tion 8G of the Inspector General Act of 1978 (5
23 U.S.C. App.)—

24 (A) may continue so serving until the
25 President makes an appointment under section

1 3(a) of such Act consistent with the amend-
2 ments made by this section; and

3 (B) shall, while serving under subpara-
4 graph (A), remain subject to the provisions of
5 section 8G of such Act which apply with respect
6 to the Commodity Futures Trading Commis-
7 sion.

8 **SEC. 16. LIMITATION ON ELIGIBILITY TO PURCHASE A**
9 **CREDIT DEFAULT SWAP.**

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

13 “(h) LIMITATION ON ELIGIBILITY TO PURCHASE A
14 CREDIT DEFAULT SWAP.—It shall be unlawful for any
15 person to enter into a credit default swap unless the per-
16 son would experience financial loss if an event that is the
17 subject of the credit default swap occurs.”.

18 (b) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-
19 tion 1a of such Act (7 U.S.C. 1a) is amended by adding
20 at the end the following:

21 “(34) CREDIT DEFAULT SWAP.—the term ‘cred-
22 it default swap’ means a contract which insures a
23 party to the contract against the risk that an entity
24 may experience a loss of value as a result of an
25 event specified in the contract, such as a default or

1 credit downgrade. A credit default swap that is trad-
2 ed on or cleared by a registered entity shall be ex-
3 cluded from the definition of a security as defined in
4 this Act and in section 2(a)(1) of the Securities Act
5 of 1933 or section 3(a)(10) of the Securities Ex-
6 change Act of 1934, except it shall be deemed a se-
7 curity solely for purpose of enforcing prohibitions
8 against insider trading in sections 10 and 16 of the
9 Securities Exchange Act of 1934.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall be effective for credit default swaps (as
12 defined in section 1a(34) of the Commodity Exchange Act)
13 entered into after 90 days after the date of the enactment
14 of this section.