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(Original Signature of Member)

110TH CONGRESS  
1ST SESSION

**H. R.**

To reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. ETHERIDGE (for himself, Mr. MORAN of Kansas, Mr. GOODLATTE, and Mr. PETERSON of Minnesota) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, 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 “CFTC Reauthorization  
5 Act of 2007”.

1 **TITLE I—GENERAL PROVISIONS**

2 **SEC. 101. COMMISSION AUTHORITY OVER AGREEMENTS,**  
3 **CONTRACTS OR TRANSACTIONS IN FOREIGN**  
4 **CURRENCY.**

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

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

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

15 “(I) is a contract of sale of a  
16 commodity for future delivery (or an  
17 option on such a contract) or an op-  
18 tion (other than an option executed or  
19 traded on a national securities ex-  
20 change registered pursuant to section  
21 6(a) of the Securities Exchange Act of  
22 1934 (15 U.S.C. 78f(a)); and

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

1                    counterparty, or the person offering to  
2                    be the counterparty, of the person  
3                    is—

4                                 “(aa) a financial institution;

5                                 “(bb)(AA) a broker or deal-  
6                                 er registered under section 15(b)  
7                                 (except paragraph (11) thereof)  
8                                 or 15C of the Securities Ex-  
9                                 change Act of 1934 (15 U.S.C.  
10                                78o(b), 78o-5); or

11                                “(BB) an associated person  
12                                of a broker or dealer registered  
13                                under section 15(b) (except para-  
14                                graph (11) thereof) or 15C of the  
15                                Securities Exchange Act of 1934  
16                                (15 U.S.C. 78o(b), 78o-5) con-  
17                                cerning the financial or securities  
18                                activities of which the broker or  
19                                dealer makes and keeps records  
20                                under section 15C(b) or 17(h) of  
21                                the Securities Exchange Act of  
22                                1934 (15 U.S.C. 78o-5(b),  
23                                78q(h));

24                                “(cc)(AA) a futures commis-  
25                                sion merchant that is primarily

1 or substantially engaged in the  
2 business activities described in  
3 section 1a(20) of this Act, is reg-  
4 istered under this Act, is not a  
5 person described in item (bb) of  
6 this subclause, and maintains ad-  
7 justed net capital equal to or in  
8 excess of \$20,000,000; or

9 “(BB) an affiliated person  
10 of a futures commission mer-  
11 chant that is primarily or sub-  
12 stantially engaged in the business  
13 activities described in section  
14 1a(20) of this Act, is registered  
15 under this Act, and is not a per-  
16 son described in item (bb) of this  
17 subclause, if the affiliated person  
18 maintains adjusted net capital  
19 equal to or in excess of  
20 \$20,000,000 and is not a person  
21 described in such item (bb), and  
22 the futures commission merchant  
23 makes and keeps records under  
24 section 4f(e)(2)(B) of this Act  
25 concerning the futures and other

1 financial activities of the affili-  
2 ated person;

3 “(dd) an insurance company  
4 described in section 1a(12)(A)(ii)  
5 of this Act, or a regulated sub-  
6 sidiary or affiliate of such an in-  
7 surance company;

8 “(ee) a financial holding  
9 company (as defined in section 2  
10 of the Bank Holding Company  
11 Act of 1956);

12 “(ff) an investment bank  
13 holding company (as defined in  
14 section 17(i) of the Securities  
15 Exchange Act of 1934 (15  
16 U.S.C. 78q(i)); or

17 “(gg) a retail foreign ex-  
18 change dealer that maintains ad-  
19 justed net capital equal to or in  
20 excess of \$20,000,000 and is reg-  
21 istered in such capacity with the  
22 Commission, subject to such  
23 terms, conditions, rules and regu-  
24 lations as the Commission shall  
25 prescribe.

1           “(ii) Notwithstanding items (cc) and  
2           (gg) of clause (i)(II) of this subparagraph,  
3           agreements, contracts, or transactions de-  
4           scribed in clause (i) of this subparagraph  
5           shall be subject to subsection (a)(1)(B) of  
6           this section and sections 4(b), 4b, 4c(b),  
7           4o, 6(c) and 6(d) (except to the extent that  
8           sections 6(c) and 6(d) prohibit manipula-  
9           tion of the market price of any commodity  
10          in interstate commerce, or for future deliv-  
11          ery on or subject to the rules of any mar-  
12          ket), 6c, 6d, 8(a), 13(a), and 13(b) if the  
13          agreements, contracts, or transactions are  
14          offered, or entered into, by a person that  
15          is registered as a futures commission mer-  
16          chant or retail foreign exchange dealer, or  
17          an affiliated person of a futures commis-  
18          sion merchant registered under this Act  
19          that is not also a person described in any  
20          of item (aa), (bb), (dd), (ee), or (ff) of  
21          clause (i) of this subparagraph.

22           “(iii)(I) Notwithstanding items (cc)  
23           and (gg) of clause (i)(II), a person, unless  
24           registered in such capacity as the Commis-  
25           sion by rule, regulation, or order shall de-

1           termine and a member of a futures asso-  
2           ciation registered under section 17, shall  
3           not—

4                   “(aa) solicit or accept orders  
5                   from any person that is not an eligible  
6                   contract participant in connection  
7                   with agreements, contracts, or trans-  
8                   actions described in clause (i) entered  
9                   into with or to be entered into with a  
10                  person who is not described in item  
11                  (aa), (bb), (dd), (ee), or (ff) of clause  
12                  (i);

13                   “(bb) exercise discretionary trad-  
14                   ing authority or obtain written au-  
15                   thorization to exercise discretionary  
16                   trading authority over any account for  
17                   or on behalf of any person that is not  
18                   an eligible contract participant in con-  
19                   nection with agreements, contracts, or  
20                   transactions described in clause (i) en-  
21                   tered into with or to be entered into  
22                   with a person who is not described in  
23                   item (aa), (bb), (dd), (ee), or (ff) of  
24                   clause (i); or

1                   “(cc) operate or solicit funds, se-  
2                   curities, or property for any pooled in-  
3                   vestment vehicle that is not an eligible  
4                   contract participant in connection  
5                   with agreements, contracts, or trans-  
6                   actions described in clause (i) entered  
7                   into with or to be entered into with a  
8                   person who is not described in item  
9                   (aa), (bb), (dd), (ee), or (ff) of clause  
10                   (i).

11                   “(II) Subclause (I) shall not apply  
12                   to—

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

16                   “(bb) any such person’s associ-  
17                   ated persons; or

18                   “(cc) any person who would be  
19                   exempt from registration if engaging  
20                   in the same activities in connection  
21                   with transactions conducted on or  
22                   subject to the rules of a contract mar-  
23                   ket or a derivatives transaction execu-  
24                   tion facility.



1           “(III) The Commission may make,  
2           promulgate, and enforce such rules and  
3           regulations as, in the judgment of the  
4           Commission, are reasonably necessary to  
5           effectuate any of the provisions of, or to  
6           accomplish any of the purposes of, this Act  
7           in connection with the activities of persons  
8           subject to subclause (I).

9           “(IV) Subclause (III) shall not apply  
10          to—

11                   “(aa) any person described in  
12                   any of item (aa) through (ff) of sub-  
13                   paragraph (B)(i)(II);

14                   “(bb) any such person’s associ-  
15                   ated persons; or

16                   “(cc) any person who would be  
17                   exempt from registration if engaging  
18                   in the same activities in connection  
19                   with transactions conducted on or  
20                   subject to the rules of a contract mar-  
21                   ket or a derivatives transaction execu-  
22                   tion facility.

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

1           “(aa) offered to, or entered into  
2           with, a person that is not an eligible  
3           contract participant (except that this  
4           subparagraph shall not apply if the  
5           counterparty, or the person offering to  
6           be the counterparty, of the person  
7           that is not an eligible contract partici-  
8           pant is a person described in any of  
9           item (aa), (bb), (dd), (ee), or (ff) of  
10          subparagraph (B)(i)(II)); and

11           “(bb) offered, or entered into, on  
12          a leveraged or margined basis, or fi-  
13          nanced by the offeror, the  
14          counterparty, or a person acting in  
15          concert with the offeror or  
16          counterparty on a similar basis.

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

18           “(aa) a security that is not a security  
19          futures product; or

20           “(bb) a contract of sale that—

21           “(AA) results in actual delivery  
22          within 2 days; or

23           “(BB) creates an enforceable ob-  
24          ligation to deliver between a seller and  
25          buyer that have the ability to deliver

1                   and accept delivery, respectively, in  
2                   connection with their line of business.

3                   “(ii)(I) Agreements, contracts, or trans-  
4                   actions described in clause (i) of this subpara-  
5                   graph shall be subject to subsection (a)(1)(B)  
6                   of this section and sections 4(b), 4b, 4c(b), 4o,  
7                   6(e) and 6(d) (except to the extent that sections  
8                   6(e) and 6(d) prohibit manipulation of the mar-  
9                   ket price of any commodity in interstate com-  
10                  merce, or for future delivery on or subject to  
11                  the rules of any market), 6c, 6d, 8(a), 13(a),  
12                  and 13(b).

13                  “(II) Subclause (I) of this clause shall not  
14                  apply to—

15                         “(aa) any person described in any of  
16                         item (aa), (bb), (dd), (ee), or (ff) of sub-  
17                         paragraph (B)(i)(II); or

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

20                  “(III) The Commission may make, promul-  
21                  gate, and enforce such rules and regulations as,  
22                  in the judgment of the Commission, are reason-  
23                  ably necessary to effectuate any of the provi-  
24                  sions of or to accomplish any of the purposes  
25                  of this Act in connection with agreements, con-

1 tracts, or transactions described in clause (i) of  
2 this subparagraph if the agreements, contracts,  
3 or transactions are offered, or entered into, by  
4 a person that is not described in item (aa)  
5 through (ff) of subparagraph (B)(i)(II).

6 “(iii)(I) A person, unless registered in such  
7 capacity as the Commission by rule, regulation,  
8 or order shall determine and a member of a fu-  
9 tures association registered under section 17,  
10 shall not—

11 “(aa) solicit or accept orders from any  
12 person that is not an eligible contract par-  
13 ticipant in connection with agreements,  
14 contracts, or transactions described in  
15 clause (i) of this subparagraph entered  
16 into with or to be entered into with a per-  
17 son who is not described in item (aa), (bb),  
18 (dd), (ee), or (ff) of subparagraph (B)(i);

19 “(bb) exercise discretionary trading  
20 authority or obtain written authorization  
21 to exercise written trading authority over  
22 any account for or on behalf of any person  
23 that is not an eligible contract participant  
24 in connection with agreements, contracts,  
25 or transactions described in clause (i) of

1 this subparagraph entered into with or to  
2 be entered into with a person who is not  
3 described in item (aa), (bb), (dd), (ee), or  
4 (ff) of subparagraph (B)(i); or

5 “(cc) operate or solicit funds, securi-  
6 ties, or property for any pooled investment  
7 vehicle that is not an eligible contract par-  
8 ticipant in connection with agreements,  
9 contracts, or transactions described in  
10 clause (i) of this subparagraph entered  
11 into with or to be entered into with a per-  
12 son who is not described in item (aa), (bb),  
13 (dd), (ee), or (ff) of subparagraph (B)(i).

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

15 “(aa) any person described in item  
16 (aa), (bb), (dd), (ee), or (ff) of subpara-  
17 graph (B)(i)(II);

18 “(bb) any such person’s associated  
19 persons; or

20 “(cc) any person who would be ex-  
21 empt from registration if engaging in the  
22 same activities in connection with trans-  
23 actions conducted on or subject to the  
24 rules of a contract market required to reg-  
25 ister under section 5 or a derivatives trans-

1           action execution facility required to reg-  
2           ister under section 5a.

3           “(III) The Commission may make, promul-  
4           gate, and enforce such rules and regulations as,  
5           in the judgment of the Commission, are reason-  
6           ably necessary to effectuate any of the provi-  
7           sions of, or to accomplish any of the purposes  
8           of, this Act in connection with the activities of  
9           persons subject to subclause (I).

10           “(IV) Subclause (III) shall not apply to—

11           “(aa) any person described in item  
12           (aa) through (ff) of subparagraph  
13           (B)(i)(II);

14           “(bb) any such person’s associated  
15           persons; or

16           “(cc) any person who would be ex-  
17           empt from registration if engaging in the  
18           same activities in connection with trans-  
19           actions conducted on or subject to the  
20           rules of a contract market required to reg-  
21           ister under section 5 or a derivatives trans-  
22           action execution facility required to reg-  
23           ister under section 5a.

24           “(iv) Sections 4(b) and 4b shall apply to  
25           any agreement, contract, or transaction de-

1           scribed in clause (i) of this subparagraph as if  
2           the agreement, contract, or transaction were a  
3           contract of sale of a commodity for future deliv-  
4           ery.

5           “(v) This subparagraph shall not be con-  
6           strued to limit any jurisdiction that the Com-  
7           mission may otherwise have under any other  
8           provision of this Act over an agreement, con-  
9           tract, or transaction that is a contract of sale  
10          of a commodity for future delivery.

11          “(vi) This subparagraph shall not be con-  
12          strued to limit any jurisdiction that the Com-  
13          mission or the Securities and Exchange Com-  
14          mission may otherwise have under any other  
15          provision of this Act with respect to security fu-  
16          tures products and persons effecting trans-  
17          actions in security futures products.”.

18          (b) EFFECTIVE DATE.—The following provisions of  
19          the Commodity Exchange Act, as amended by subsection  
20          (a) of this section, shall be effective 120 days after the  
21          date of the enactment of this Act or at such other time  
22          as the Commodity Futures Trading Commission shall de-  
23          termine:

24                  (1) Subparagraphs (B)(i)(II)(gg), (B)(iii), and  
25                  (C)(iii) of section 2(c)(2).

1           (2)       The       provisions       of       section  
2       2(c)(2)(B)(i)(II)(cc) that set forth adjusted net cap-  
3       ital requirements, and the provisions of such section  
4       that require a futures commission merchant to be  
5       primarily or substantially engaged in certain busi-  
6       ness activities.

7       **SEC. 102. ANTIFRAUD AUTHORITY.**

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

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

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

15       **“SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MIS-**  
16                           **LEAD.**

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

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

24           “(2) for any person, in or in connection with  
25       any order to make, or the making of, any contract



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

7 “(A) to cheat or defraud or attempt to  
8 cheat or defraud the other person;

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

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

21 “(D)(i) to bucket an order if the order is  
22 represented by the person as an order to be ex-  
23 ecuted, or is required to be executed, on or sub-  
24 ject to the rules of a designated contract mar-  
25 ket; or

1           “(ii) to fill an order by offset against the  
2           order or orders of any other person, or willfully  
3           and knowingly and without the prior consent of  
4           the other person to become the buyer in respect  
5           to any selling order of the other person, or be-  
6           come the seller in respect to any buying order  
7           of the other person, if the order is represented  
8           by the person as an order to be executed, or is  
9           required to be executed, on or subject to the  
10          rules of a designated contract market unless the  
11          order is executed in accordance with the rules  
12          of the designated contract market.

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

1 **SEC. 103. AUTHORIZATION OF APPROPRIATIONS.**

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

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

7 **SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.**

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

11 (b) Section 4f(c)(4)(B)(i) of such Act (7 U.S.C.  
12 6f(c)(4)(B)(i)) is amended by striking “compiled” and in-  
13 serting “complied”.

14 (c) Section 4k of such Act (7 U.S.C. 6k) is amended  
15 by redesignating the second paragraph (5) as paragraph  
16 (6).

17 (d) The Commodity Exchange Act is amended—

18 (1) by redesignating the first section 4p (7  
19 U.S.C. 6o–1), as added by section 121 of the Com-  
20modity Futures Modernization Act of 2000, as sec-  
21tion 4q; and

22 (2) by moving such section to after the second  
23 section 4p, as added by section 206 of Public Law  
24 93–446.

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

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

7 (g) Section 8(a)(1) of such Act (7 U.S.C. 12(a)(1))  
8 is amended in the matter following subparagraph (B)—  
9 (1) by striking “commenced” the 2nd place it  
10 appears; and

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

13 (h) Section 9 of such Act (7 U.S.C. 13) is amended—

14 (1) in subsection (f)(1), by striking the period  
15 and inserting “; or”; and

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

18 (i) Section 22(a)(2) of such Act (7 U.S.C. 25(a)(2))  
19 is amended by striking “5b(b)(1)(E)” and inserting  
20 “5b(e)(2)(H)”.

21 **SEC. 105. CRIMINAL AND CIVIL PENALTIES.**

22 (a) ENFORCEMENT POWERS OF THE COMMISSION.—  
23 Section 6(c) of the Commodity Exchange Act (7 U.S.C.  
24 9, 15) is amended in clause (3) of the 10th sentence—

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

3           (2) by inserting after “each such violation” the  
4           following: “or (B) in any case of manipulation or at-  
5           tempted manipulation in violation of this subsection,  
6           subsection (d) of this section, or section 9(a)(2), a  
7           civil penalty of not more than the greater of  
8           \$1,000,000 or triple the monetary gain to such per-  
9           son for each such violation,”.

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

13                 (1) in the 1st sentence, by inserting “, or, in  
14                 any case of manipulation or attempted manipulation  
15                 in violation of section 6(c), 6(d), or 9(a)(2), a civil  
16                 penalty of not more than \$1,000,000 for each such  
17                 violation” before the period; and

18                 (2) in the 2nd sentence, by inserting “, except  
19                 that if the failure or refusal to obey or comply with  
20                 the order involved any offense under section 9(a)(2),  
21                 the registered entity, director, officer, agent, or em-  
22                 ployee shall be guilty of a felony and, on conviction,  
23                 shall be subject to penalties under section 9(a)(2)”  
24                 before the period.

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

5 “(d) CIVIL PENALTIES.—(1) In any action brought  
6 under this section, the Commission may seek and the  
7 court shall have jurisdiction to impose, on a proper show-  
8 ing, on any person found in the action to have committed  
9 any violation—

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

13 “(B) in any case of manipulation or attempted  
14 manipulation in violation of section 6(e), 6(d), or  
15 9(a)(2), a civil penalty in the amount of not more  
16 than the greater of \$1,000,000 or triple the mone-  
17 tary gain to the person for each violation.”.

18 (d) VIOLATIONS GENERALLY.—Section 9(a) of such  
19 Act (7 U.S.C. 13(a)) is amended—

20 (1) by striking “(or \$500,000 in the case of a  
21 person who is an individual)”; and

22 (2) by striking “five years” and inserting “10  
23 years”.

1 **TITLE II—EXEMPT COMMERCIAL**  
2 **MARKETS**

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

4 (a) DEFINITION.—Section 1a of the Commodity Ex-  
5 change Act (7 U.S.C. 1a) is amended by redesignating  
6 paragraph (33) as paragraph (34) and by inserting after  
7 paragraph (32) the following:

8 “(33) SIGNIFICANT PRICE DISCOVERY CON-  
9 TRACT.—The term ‘significant price discovery con-  
10 tract’ means an agreement, contract, or transaction  
11 subject to section 2(h)(7).”.

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

16 “(7) SIGNIFICANT PRICE DISCOVERY CON-  
17 TRACTS.—

18 “(A) IN GENERAL.—An agreement, con-  
19 tract, or transaction conducted in reliance on  
20 the exemption provided in paragraph (3) shall  
21 be subject to subparagraphs (B) through (D) of  
22 this paragraph, under such rules and regula-  
23 tions as the Commission shall promulgate if the  
24 Commission determines that the agreement,  
25 contract, or transaction performs a significant

1 price discovery function as described in sub-  
2 paragraph (B) of this paragraph.

3 “(B) SIGNIFICANT PRICE DISCOVERY DE-  
4 TERMINATION.—In determining whether an  
5 agreement, contract, or transaction performs a  
6 significant price discovery function, the Com-  
7 mission shall consider, as appropriate, the fol-  
8 lowing:

9 “(i) PRICE LINKAGE.—

10 “(I) Whether the agreement, con-  
11 tract, or transaction uses or otherwise  
12 relies on a daily or final settlement  
13 price, or other major price parameter,  
14 of a contract listed for trading on or  
15 subject to the rules of a designated  
16 contract market or a derivatives  
17 transaction execution facility, or a sig-  
18 nificant price discovery contract trad-  
19 ed on another electronic trading facil-  
20 ity, to value a position, transfer or  
21 convert a position, cash or financially  
22 settle a position, or close out a posi-  
23 tion.

24 “(II) Whether the price for the  
25 agreement, contract, or transaction is



1 sufficiently related to the price of a  
2 contract listed for trading on or sub-  
3 ject to the rules of a designated con-  
4 tract market or derivatives trans-  
5 action execution facility so as to per-  
6 mit market participants to effectively  
7 arbitrage between the markets by si-  
8 multaneously maintaining positions or  
9 executing trades in the contracts on  
10 the electronic trading facility and the  
11 designated contract market or deriva-  
12 tives transaction execution facility on  
13 a frequent and recurring basis.

14 “(ii) MATERIAL PRICE REFERENCE.—  
15 Whether, on a frequent and recurring  
16 basis, bids, offers, or transactions in a  
17 commodity are directly based on, or are de-  
18 termined by referencing, the prices gen-  
19 erated by agreements, contracts, or trans-  
20 actions being traded or executed on the  
21 electronic trading facility.

22 “(iii) MATERIAL LIQUIDITY.—Wheth-  
23 er the volume of agreements, contracts, or  
24 transactions in the commodity being traded  
25 on the electronic trading facility is suffi-

1           cient to have a material effect on other  
2           agreements, contracts, or transactions list-  
3           ed for trading on or subject to the rules of  
4           a designated contract market, a derivatives  
5           transaction execution facility, or an elec-  
6           tronic trading facility operating in reliance  
7           on the exemption provided in paragraph  
8           (3).

9                   “(iv) OTHER MATERIAL FACTORS.—  
10           Such other material factors as the Com-  
11           mission specifies in its rules and regula-  
12           tions as relevant to the determination.

13                   “(C) CORE PRINCIPLES APPLICABLE TO  
14           SIGNIFICANT PRICE DISCOVERY CONTRACTS.—  
15           An electronic trading facility on which signifi-  
16           cant price discovery contracts are traded or exe-  
17           cuted shall, with respect to the contracts, com-  
18           ply with the core principles specified in this  
19           subparagraph. The electronic trading facility  
20           shall have reasonable discretion in establishing  
21           the manner in which it complies with the fol-  
22           lowing core principles:

23                   “(i) CONTRACTS NOT READILY SUS-  
24           CEPTIBLE TO MANIPULATION.—The elec-  
25           tronic trading facility shall list only signifi-

1 cant price discovery contracts that are not  
2 readily susceptible to manipulation.

3 “(ii) MONITORING OF TRADING.—The  
4 electronic trading facility shall monitor  
5 trading in significant price discovery con-  
6 tracts to prevent market manipulation,  
7 price distortion, and disruptions of the de-  
8 livery or cash-settlement process through  
9 market surveillance, compliance, and dis-  
10 ciplinary practices and procedures, includ-  
11 ing methods for conducting real-time moni-  
12 toring of trading and comprehensive and  
13 accurate trade reconstructions.

14 “(iii) ABILITY TO OBTAIN INFORMA-  
15 TION.—The electronic trading facility shall  
16 establish and enforce rules that will allow  
17 the electronic trading facility to obtain any  
18 necessary information to perform any of  
19 the functions described in this subpara-  
20 graph, shall provide such information to  
21 the Commission on request, and shall have  
22 the capacity to carry out such international  
23 information-sharing agreements as the  
24 Commission may require.

1                   “(iv) POSITION LIMITATIONS OR AC-  
2                   COUNTABILITY.—The electronic trading fa-  
3                   cility shall adopt position limitations or po-  
4                   sition accountability for speculators in sig-  
5                   nificant price discovery contracts, where  
6                   necessary and appropriate to reduce the  
7                   potential threat of market manipulation or  
8                   congestion, especially during trading in the  
9                   delivery month.

10                   “(v) EMERGENCY AUTHORITY.—The  
11                   electronic trading facility shall adopt rules  
12                   to provide for the exercise of emergency  
13                   authority, in consultation or cooperation  
14                   with the Commission, where necessary and  
15                   appropriate, including the authority to—

16                   “(I) liquidate open positions in a  
17                   significant price discovery contract;  
18                   and

19                   “(II) suspend or curtail trading  
20                   in a significant price discovery con-  
21                   tract.

22                   “(vi) DAILY PUBLICATION OF TRAD-  
23                   ING INFORMATION.—The electronic trading  
24                   facility shall make public daily information  
25                   on price, trading volume, and other trading

1 data to the extent appropriate for signifi-  
2 cant price discovery contracts.

3 “(vii) COMPLIANCE WITH RULES.—

4 The electronic trading facility shall mon-  
5 itor and enforce compliance with any rules  
6 of the electronic trading facility applicable  
7 to significant price discovery contracts, in-  
8 cluding the terms and conditions of the  
9 contracts and any limitations on access to  
10 the electronic trading facility with respect  
11 to the contracts.

12 “(viii) CONFLICT OF INTEREST.—The  
13 electronic trading facility shall establish  
14 and enforce rules to minimize conflicts of  
15 interest in its decision-making process, and  
16 establish a process for resolving the con-  
17 flicts.

18 “(D) IMPLEMENTATION.—An electronic  
19 trading facility may implement any rule or rule  
20 amendment relating to a significant price dis-  
21 covery contract, including the terms and condi-  
22 tions of such a contract, by providing to the  
23 Commission a written certification that the rule  
24 or rule amendment complies with the require-

1           ments of this subsection (including regulations  
2           under this subsection).”.

3 **SEC. 202. LARGE TRADER REPORTING.**

4           (a) Section 4g(a) of the Commodity Exchange Act (7  
5 U.S.C. 6g(a)) is amended by striking “elsewhere” and in-  
6 serting “elsewhere, and in any significant price discovery  
7 contract traded or executed on an electronic trading facil-  
8 ity”.

9           (b) Section 4i of such Act (7 U.S.C. 6i) is amended—

10           (1) by inserting “, or any significant price dis-  
11 covery contract on an electronic trading facility” be-  
12 fore “—” ; and

13           (2) by inserting after “board of trade” the fol-  
14 lowing: “or electronic trading facility”.

15 **SEC. 203. COMMISSION EMERGENCY AUTHORITY.**

16           Section 8a of the Commodity Exchange Act (7 U.S.C.  
17 12a) is amended—

18           (1) in paragraph (6)—

19           (A) by inserting after “registered entity”  
20 the first place it appears the following: “or,  
21 with respect to a significant price discovery con-  
22 tract, an electronic trading facility,”; and

23           (B) by inserting after “registered entity”  
24 the second place it appears the following: “,  
25 electronic trading facility”;

1 (2) in paragraph (7)—

2 (A) by inserting after “registered entity”  
3 the first place it appears the following: “or,  
4 with respect to a significant price discovery con-  
5 tract, an electronic trading facility”; and

6 (B) by inserting after “registered entity”  
7 each other place it appears, the following: “or  
8 electronic trading facility”; and

9 (3) in paragraph (9)—

10 (A) by inserting after “to direct the reg-  
11 istered entity,” the following: “or, with respect  
12 to a significant price discovery contract, an  
13 electronic trading facility,”; and

14 (B) by inserting after “meaning or inter-  
15 pretation given by a registered entity” the fol-  
16 lowing: “or electronic trading facility”.

17 **SEC. 204. CONFORMING AMENDMENTS.**

18 (a) Section 2(a)(1)(A) of the Commodity Exchange  
19 Act (7 U.S.C. 2(a)(1)(A)) is amended by striking “of this  
20 Act” and inserting “, and significant price discovery con-  
21 tracts traded or executed on an electronic trading facil-  
22 ity”.

23 (b) Section 2(h)(3) of such Act (7 U.S.C. 2(h)(3))  
24 is amended by striking “paragraph (4)” and inserting  
25 “paragraphs (4) and (7)”.

1 (c) Section 2(h)(4) of such Act (7 U.S.C. 2(h)(4))  
2 is amended—

3 (1) in subparagraph (B), by inserting “and”  
4 after the semicolon;

5 (2) in subparagraph (C), by striking “; and”  
6 and inserting a period; and

7 (3) by striking subparagraph (D).

8 (d) Section 2(h)(5)(B)(iii)(I) of such Act (7 U.S.C.  
9 2(h)(5)(B)(iii)(I)) is amended by inserting “or to make  
10 the determination described in paragraph (7)(B)” before  
11 the semicolon.

12 (e) Section 5c(a)(1) of such Act (7 U.S.C. 7a–  
13 2(a)(1)), as amended by section 104(e) of this Act, is  
14 amended by inserting after “5b(c)(2)” the following: “,  
15 and section 2(h)(7) with respect to significant price dis-  
16 covery contracts,”.

17 (f) Section 5c(b) of such Act (7 U.S.C. 7a–2(b)) is  
18 amended—

19 (1) in paragraph (1), by striking “or derivatives  
20 transaction execution facility” and inserting “, de-  
21 rivatives transaction execution facility or, with re-  
22 spect to a significant price discovery contract, an  
23 electronic trading facility”; and

24 (2) in each of paragraphs (2) and (3), by strik-  
25 ing “or derivatives transaction execution facility”



1 and inserting “, derivatives transaction execution fa-  
2 cility, or electronic trading facility”.

3 (g) Section 5c(d) of such Act (7 U.S.C. 7a-2(d)), as  
4 amended by section 104(e) of this Act, is amended—

5 (1) in paragraph (1)—

6 (A) by inserting after “registered entity”  
7 the first place it appears the following: “or,  
8 with respect to a significant price discovery con-  
9 tract, an electronic trading facility”;

10 (B) by inserting after “registered entity”  
11 each other place it appears the following: “or  
12 electronic trading facility”; and

13 (C) by inserting after “5b(c)(2),” the fol-  
14 lowing: “or section 2(h)(7)(C) with respect to a  
15 significant price discovery contract traded or  
16 executed on an electronic trading facility,”; and

17 (2) in paragraph (2), by inserting after “reg-  
18 istered entity” the following: “or electronic trading  
19 facility”.