

DERIVATIVES MARKETS TRANSPARENCY AND  
ACCOUNTABILITY ACT OF 2009

DECEMBER 19, 2009.—Ordered to be printed

Mr. PETERSON of Minnesota, from the Committee on Agriculture,  
submitted the following

R E P O R T

[To accompany H.R. 977]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 977) to amend the Commodity Exchange Act to bring greater transparency and accountability to commodity markets, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

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

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

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.

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

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

“(e) **FOREIGN BOARDS OF TRADE.**—

“(1) **IN GENERAL.**—The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless—

“(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

“(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable, taking into consideration the relative sizes of the respective markets, to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

“(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

“(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction, of any change regarding—

“(I) the information that the foreign board of trade will make publicly available;

“(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trading positions for 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

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

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

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

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

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

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

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

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

“(iii) subject to regulation by the foreign futures authority; and

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

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

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

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

#### **SEC. 4. DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA.**

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

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

“(1) **INDEX TRADERS AND SWAP DEALERS REPORTING.**—The Commission shall issue a proposed rule defining and classifying index traders and swap dealers (as those terms are defined by the Commission) for purposes of data reporting requirements and setting routine detailed reporting requirements for any positions of such entities in contracts traded on designated contract markets, derivatives transaction execution facilities, foreign boards of trade subject to section 4(e), and electronic trading facilities with respect to significant price discovery contracts not later than 90 days after the date of the enactment of this subsection, and issue a final rule within 180 days after such date of enactment.

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

“(A) the number of positions and total notional value of index funds and other passive, long-only and short-only positions (as defined by the Commission) in all markets to the extent such information is available; and

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

#### **SEC. 5. TRANSPARENCY AND RECORDKEEPING AUTHORITIES.**

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

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

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

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

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

(A) in the first sentence—

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

(ii) by inserting “in the United States or elsewhere, and of transactions and positions in any such commodity entered into pursuant to subsection (d), (g), (h)(1), or (h)(3) of section 2, or any exemption issued by the Commission by rule, regulation or order” before “, and of cash or spot”; and

(B) by striking all that follows the 1st sentence and inserting the following:

“(b) Upon special call by the Commission, any person shall provide to the Commission, in a form and manner and within the period specified in the special call, books and records of all transactions and positions traded on or subject to the rules of any board of trade or electronic trading facility in the United States or elsewhere, or pursuant to subsection (d), (g), (h)(1), or (h)(3) of section 2, or any exemption issued by the Commission by rule, regulation, or order, as the Commission may determine appropriate to deter and prevent price manipulation or any other disruption to market integrity or to diminish, eliminate, or prevent excessive speculation as described in section 4a(a).

“(c) Such books and records described in subsections (a) and (b) shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, shall be kept for a period of 5 years, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by the person.”

(2) NOTICE AND COMMENT.—Within 60 days after the date of the enactment of this subsection, the Commodity Futures Trading Commission shall conduct rulemaking, including an opportunity for notice and comment, on implementing the amendments made by paragraph (1).

(c) CONFORMING AMENDMENTS.—

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

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

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

(B) by inserting “, and the regulations of the Commission pursuant to section 4i(b) requiring reporting in connection with commodity option transactions” after “12(e)(2)(B)”.

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

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

(B) by inserting “, and the regulations of the Commission pursuant to section 4i(b) requiring reporting in connection with commodity option transactions” after “12(e)(2)”.

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

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

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

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

#### SEC. 6. TRADING LIMITS TO PREVENT EXCESSIVE SPECULATION.

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

(1) in subsection (a)—

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

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

“(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on such contracts or commodities traded on or subject to the rules of a contract market or derivatives transaction execution facility, or on an electronic trading facility as a significant price discovery contract.

“(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.

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

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

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

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

(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

(ii) to deter and prevent market manipulation, squeezes, and corners;

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

- “(iv) to ensure that the price discovery function of the underlying market is not disrupted; and
- “(C) to the maximum extent practicable, in its discretion, take into account the total number of positions in fungible agreements, contracts, or transactions that a person can hold in other markets.
- “(4)(A) Not later than 150 days after the establishment of position limits pursuant to paragraph (2), and biannually thereafter, the Commission shall hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).
- “(B) Each public hearing held pursuant to subparagraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from—
- “(i) 7 predominantly commercial short hedgers of the actual physical commodity for future delivery;
  - “(ii) 7 predominantly commercial long hedgers of the actual physical commodity for future delivery;
  - “(iii) 4 non-commercial participants in markets for commodities for future delivery; and
  - “(iv) each designated contract market or derivatives transaction execution facility upon which a contract in the commodity for future delivery is traded, and each electronic trading facility that has a significant price discovery contract in the commodity.
- “(C) Within 60 days after each public hearing held pursuant to subparagraph (A), the Commission shall publish in the Federal Register its response to the recommendations regarding position limits heard at the hearing.”; and
- (2) in subsection (c)—
- (A) by inserting “(1)” after “(c)”; and
  - (B) by adding after and below the end the following:
- “(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery and options on such contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—
- “(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;
  - “(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and
  - “(iii) arises from the potential change in the value of—
    - “(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;
    - “(II) liabilities that a person owns or anticipates incurring; or
    - “(III) services that a person provides, purchases, or anticipates providing or purchasing; or
  - “(B) reduces risks attendant to a position resulting from a transaction that—
    - “(i) was executed pursuant to subsection (g), (h)(1), or (h)(3) of section 2, or an exemption issued by the Commission by rule, regulation or order; and
    - “(ii)(I) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or
    - “(II) meets the requirements of subparagraph (A).”.
- (b) CONFORMING AMENDMENTS.—
- (1) Section 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is amended to read as follows:
 

“(5) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability standards for speculators. For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set its position limitation at a level no higher than the Commission-established limitation.”.
  - (2) Section 5a(d)(4) of such Act (7 U.S.C. 7a(d)(4)) is amended to read as follows:
 

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

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

“(IV) The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability standards for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts, and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month. For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the electronic trading facility shall set its position limitation at a level no higher than the Commission-established limitation.”.

#### SEC. 7. CFTC ADMINISTRATION.

Section 2(a)(7) of the Commodity Exchange Act (7 U.S.C. 2(a)(7)) is amended by adding at the end the following:

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

- “(i) to increase the public transparency of operations in markets;
- “(ii) to improve the enforcement of this Act in those markets;
- “(iii) to enhance oversight of the trading and clearing of contracts, agreements, and transactions; and
- “(iv) to carry out the provisions of the Derivatives Markets Transparency and Accountability Act of 2009 and such other duties as are prescribed by the Commission.”.

#### SEC. 8. REVIEW OF PRIOR ACTIONS.

Notwithstanding any other provision of the Commodity Exchange Act, the Commodity Futures Trading Commission shall review, as appropriate, all regulations, rules, exemptions, exclusions, guidance, no action letters, orders, other actions taken by or on behalf of the Commission, and any action taken pursuant to the Commodity Exchange Act by an exchange, self-regulatory organization, or any other registered entity, that are currently in effect, to ensure that such prior actions are in compliance with the provisions of this Act.

#### SEC. 9. REVIEW OF OVER-THE-COUNTER MARKETS.

(a) STUDY.—The Commodity Futures Trading Commission shall conduct a study—

(1) to determine the efficacy, practicality, and consequences of establishing limits on the size of a position, other than bona fide hedge positions, that may be held by any person with respect to agreements, contracts, or transactions involving an agricultural or energy commodity, conducted in reliance on section 2(g) or 2(h) of the Commodity Exchange Act and of any exemption issued by the Commission by rule, regulation or order, that are fungible (as defined by the Commission) with agreements, contracts, or transactions traded on or subject to the rules of any board of trade or of any electronic trading facility with respect to a significant price discovery contract, as a means to deter and prevent price manipulation or any other disruption to market integrity or to diminish, eliminate, or prevent excessive speculation as described in section 4a of such Act for physical-based agricultural or energy commodities; and

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

- (A) on designated contract markets;
- (B) on derivatives transaction execution facilities; and
- (C) in reliance on such section 2(g) or 2(h) and of any exemption issued by the Commission by rule, regulation or order.

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

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

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

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

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

(B) a description of the resources that the Commission considers to be necessary to implement the recommendations.

**SEC. 10. STUDY RELATING TO INTERNATIONAL REGULATION OF ENERGY COMMODITY MARKETS.**

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the international regime for regulating the trading of energy commodity futures and derivatives.

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

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

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

(3) variations in practices regarding the differentiation of commercial and noncommercial trading;

(4) agreements and practices for sharing market and trading data among futures authorities and between futures authorities and the entities that the futures authorities oversee; and

(5) agreements and practices for facilitating international cooperation on market oversight, compliance, and enforcement.

(c) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that—

(1) describes the results of the study;

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

(3) provides recommendations to improve openness, transparency, and other necessary elements of a properly functioning market in a manner that protects consumers in the United States.

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

(a) **IN GENERAL.**—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:

“(j) **OVER-THE-COUNTER AUTHORITY.**—

“(1) Notwithstanding subsections (d), (g), (h)(1), and (h)(3) of section 2, and any exemption issued by the Commission by rule, regulation, or order, the Commission shall assess and issue a finding on whether agreements, contracts, or transactions entered into in reliance on subsection (d), (g), (h)(1), or (h)(3) of section 2 or any other exemption issued by the Commission by rule, regulation, or order, that are fungible (as defined by the Commission) with agreements, contracts, or transactions traded on or subject to the rules of any board of trade or electronic trading facility with respect to a significant price discovery contract, alone or in conjunction with other similar agreements, contracts, or transactions, have the potential to—

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

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

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

“(2) If the Commission makes a finding pursuant to paragraph (1) of this subsection, the Commission may, in its discretion, utilize its authority under section 8a(9) to impose position limits (including, as appropriate and in its discretion, related hedge exemption provisions for bona fide hedging comparable to bona fide hedge provisions of section 4a(c)(2)) on agreements, contracts, or transactions involved, and take corrective actions to enforce the limits.”

(b) **CONFORMING AMENDMENTS.**—

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

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

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

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

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

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

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

(B) by striking “action.” and inserting “action; and (B) to direct any person to abide by any position limits to agreements, contracts, or transactions subject to section 2(j)(1) that are imposed pursuant to section 2(j)(2).”.

#### SEC. 12. EXPEDITED PROCESS.

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

#### SEC. 13. CERTAIN EXCLUSIONS AND EXEMPTIONS AVAILABLE ONLY FOR CERTAIN TRANSACTIONS SETTLED AND CLEARED THROUGH REGISTERED DERIVATIVES CLEARING ORGANIZATIONS.

(a) IN GENERAL.—

(1) EXCLUSION OF CERTAIN DERIVATIVE TRANSACTIONS.—

(A) Section 2(d)(1) of the Commodity Exchange Act (7 U.S.C. 2(d)(1)) is amended—

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

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

(iii) by adding at the end the following:

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

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

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

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

(iii) by adding at the end the following:

“(D) except as provided in section 4(h), the agreement, contract, or transaction is settled and cleared through a derivatives clearing organization registered with the Commission.”.

(2) EXCLUSION FOR CERTAIN SWAP TRANSACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g)) is amended—

(A) by striking “and” at the end of paragraph (2);

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

(C) by adding at the end the following:

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

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

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

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

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

(iii) by adding at the end the following:

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

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

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

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

(iii) by adding at the end the following:

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

(4) GENERAL EXEMPTIVE AUTHORITY.—Section 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is amended by inserting “the agreement, contract, or transaction, except as provided in section 4(h), will be settled and cleared through a derivatives



clearing organization registered with the Commission and” before “the Commission determines”.

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

“(h) ALTERNATIVES TO CLEARING THROUGH DERIVATIVES CLEARING ORGANIZATIONS.—

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

“(A) An agreement, contract, or transaction, or class thereof, relating to an excluded commodity, that would otherwise be required to be settled and cleared by section 2(d)(1)(C), 2(d)(2)(D), or 2(g)(4) of this Act, or subsection (c)(1) of this section may be settled and cleared through an entity listed in section 409(b)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991.

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

“(2) WAIVER OF CLEARING REQUIREMENT.—

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

“(B) In granting exemptions pursuant to subparagraph (A), the Commission shall consult with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System regarding exemptions that relate to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator.

“(C) Before granting an exemption pursuant to subparagraph (A), the Commission shall find that the agreement, contract, or transaction, or class thereof—

“(i) is highly customized as to its material terms and conditions;

“(ii) is transacted infrequently;

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

“(iv) is being entered into by parties who can demonstrate the financial integrity of the agreement, contract, or transaction and their own financial integrity, as such terms and standards are determined by the Commission. The standards shall include a net capital requirement associated with any agreement, contract, or transaction subject to an exemption from the clearing requirement that recognizes the risks associated with the absence of clearing.

“(D) Any agreement, contract, or transaction, or class thereof, which is exempted pursuant to subparagraph (A) shall be reported in a manner designated by the Commission to the Commission, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or such other entity the Commission deems appropriate.

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

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

“(O) DISCLOSURE OF GENERAL INFORMATION.—The applicant shall disclose publicly and to the Commission information concerning—

“(i) the terms and conditions of contracts, agreements, and transactions cleared and settled by the applicant;

“(ii) the conventions, mechanisms, and practices applicable to the contracts, agreements, and transactions;

“(iii) the margin-setting methodology and the size and composition of the financial resource package of the applicant; and

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

“(P) DAILY PUBLICATION OF TRADING INFORMATION.—The applicant shall make public daily information on settlement prices, volume, and open interest for contracts settled or cleared pursuant to the requirements of section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C) or 4(c)(1) of this Act by the applicant if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

“(Q) FITNESS STANDARDS.—The applicant shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, and members of the applicant, and any other persons with direct access to the settlement or clearing activities of the applicant, including any parties affiliated with any of the persons described in this subparagraph.”.

(d) AMENDMENTS.—

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

(A) in subsection (a), by inserting after “Federal Reserve Act” the following: “, and the person is registered as a clearing agency under the Securities Exchange Act of 1934 or as a derivatives clearing organization under the Commodity Exchange Act”; and

(B) in subsection (b)(3), by striking “the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation,”.

(2) Section 407 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27e) is amended by inserting “and the settlement and clearing requirements of sections 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such Act” after “the clearing of covered swap agreements”.

(3) Section 10 of the Federal Reserve Act is amended by adding at the end the following new provision:

“The Board shall have no power to issue any rule, regulation, or order, or otherwise to establish the standards of regulation of any entity in its capacity as a multilateral clearing organization as defined in section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991.”.

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

(A) by striking “(b) VOLUNTARY REGISTRATION.—A derivatives clearing organization” and inserting the following:

“(b) VOLUNTARY REGISTRATION.—

“(1) A derivatives clearing organization”; and

(B) by adding at the end the following:

“(2)(A) A national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act may register with the Commission as a derivatives clearing organization.

“(B) The Commission shall expedite the application of any institution referred to in subparagraph (A) to the extent that, as of the date of enactment of this paragraph, the institution had received the approval of the Board of Governors of the Federal Reserve System to act as a multilateral clearing organization.”.

(e) EFFECTIVE DATE.—

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

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

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

**SEC. 14. TREATMENT OF EMISSION ALLOWANCES AND OFFSET CREDITS.**

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

(b) Within 180 days after the date of the enactment of this section, the Commodity Futures Trading Commission shall enter into a memorandum of understanding with the Secretary of Agriculture which shall include provisions, consistent with section 1245 of the Food Security Act of 1985, ensuring that the development of any procedures and protocols for a market-based greenhouse gas contract on a board of trade designated as a contract market under section 5 of the Commodity Exchange Act are properly constructed and coordinated to maximize credits for carbon sequestration.

**SEC. 15. INSPECTOR GENERAL OF THE COMMODITY FUTURES TRADING COMMISSION.**

(a) ELEVATION OF OFFICE.—

(1) INCLUSION OF CFTC IN DEFINITION OF ESTABLISHMENT.—

(A) Section 12(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;” and inserting “the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; or the Chairman of the Commodity Futures Trading Commission;”.

(B) Section 12(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “or the Commissions established under section 15301 of title 40, United States Code;” and inserting “the Commissions established under section 15301 of title 40, United States Code, or the Commodity Futures Trading Commission;”.

(2) EXCLUSION OF CFTC FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “the Commodity Futures Trading Commission;”.

(b) EFFECTIVE DATE; TRANSITION RULE.—

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

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

(A) may continue so serving until the President makes an appointment under section 3(a) of such Act consistent with the amendments made by this section; and

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

**SEC. 16. AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION TO SUSPEND TRADING IN CREDIT DEFAULT SWAPS.**

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

“(h) AUTHORITY OF COMMISSION TO SUSPEND TRADING OF CREDIT DEFAULT SWAPS.—

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

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

“(B) summarily suspend all trading on any contract market, derivatives transaction execution facility, or otherwise, in credit default swaps.

“(2) LIMITATION.—An action described in paragraph (1) shall—

“(A) not take effect unless the Commission notifies the President of its decision, and the President notifies the Commission that the President does not disapprove of the decision;

“(B) only apply to credit default swaps that are related to securities subject to a short selling suspension order by the Securities and Exchange Commission, and such action must terminate when such suspension order terminates; and

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

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

“(34) CREDIT DEFAULT SWAP.—The term ‘credit default swap’ means a contract which hedges a party to the contract against the risk that an entity may experience a loss of value as a result of an event specified in the contract, such as a default or credit downgrade. A credit default swap that is proposed to be traded or is traded on or proposed to be or is cleared by a registered entity pursuant to this Act shall be excluded from the definition of a security as defined in this Act and in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, except as necessary solely for purposes of enforcing prohibitions against insider trading in sections 10 and 16 of the Securities Exchange Act of 1934.”.

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall be effective for credit default swaps entered into after 90 days after the date of the enactment of this section.

**SEC. 17. AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION TO PROSECUTE CRIMINAL VIOLATIONS OF THE COMMODITY EXCHANGE ACT.**

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

“(f) Notwithstanding section 516 of title 28, United States Code, the Commission may initiate and conduct criminal litigation relating to a violation of this Act, and secure evidence therefor, if the Attorney General has declined to do so.”.

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

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

“(19) DIVERSITY OF BOARDS OF DIRECTORS.—The board of trade of a publicly traded company shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of such bodies reflect, a broad and culturally diverse pool of qualified candidates.”.

### BRIEF EXPLANATION

The bill requires that over-the-counter transactions—as a condition for eligibility for exceptions to Commodity Exchange Act requirements—be settled and cleared through a Commodity Futures Trading Commission (CFTC)-regulated designated clearing organization, unless exempted by the CFTC in accordance with specified criteria. In some cases, the clearing requirement could be met through a Securities and Exchange Commission (SEC) regulated clearing agency or a properly regulated foreign clearinghouse. The bill also gives CFTC the authority, with the President’s consent, to suspend naked credit default swap trading whenever a SEC short selling suspension order is in effect. The bill also requires foreign boards of trade that offer direct electronic access to U.S. traders to share trading data and adopt speculative position limits on certain contracts. The bill further requires CFTC to set trading limits for physical commodities other than excluded commodities. The bill also provides CFTC authority to criminally prosecute people who violate commodities legislation. It also limits eligibility for hedge exemptions to bona-fide hedgers, improves transparency by requiring that CFTC disaggregate and separately report the trading activity of index funds and swap dealers in agriculture and energy markets, authorizes new CFTC employees to enforce manipulation and prevent fraud, and authorizes CFTC to take corrective action if it finds disruption in over-the-counter markets for energy and gas.

### PURPOSE AND NEED

Exchange-traded and over-the-counter derivatives markets are crucial components of the nation’s financial system. Ensuring that the structure of the regulatory system reflects market growth and

changes in the practices of participants is crucial to safeguarding the national interest.

During the 110th Congress, the Committee became increasingly concerned about the dramatic rise in the price of oil, gasoline, and other energy commodities traded on regulated U.S. futures exchanges. From 2002 to 2006, inflation-adjusted energy prices in both the futures and physical markets for crude oil, gasoline, and heating oil increased by over 200 percent and for natural gas over 140 percent. Volatility in these markets was also above historical averages. At a 2007 hearing before the Subcommittee on General Farm Commodities and Risk Management, the U.S. Government Accounting Office (GAO) testified it observed that at the same time that prices were rising and that volatility was generally above or near long-term averages, futures markets saw an increase in the number of noncommercial traders such as managed money traders, including hedge funds, participating in the regulated markets. GAO also testified to an apparently significant, though difficult to quantify, increase in the amount of energy derivatives traded outside exchanges.

One segment of this off-exchange trading became the focus of legislation during the Committee's recent work to reauthorize the Commodity Futures Trading Commission (CFTC). In December of 2007, the Committee recommended a draft bill, which ultimately became H.R. 4626. This legislation contained provisions amending the Commodity Exchange Act (CEA) to provide for greater regulation and oversight by the CFTC over "exempt commercial markets" where energy commodities could be traded between sophisticated traders outside the more retail-focused regulated exchanges. A modified version of that legislation was ultimately included as part of P.L. 110-246, the 2008 farm bill.

During 2007 and into 2008, commodity prices for both energy and now agriculture products experienced record breaking heights. West Texas Intermediate Crude Oil trading in the \$50 range in January 2007 was around \$90 by December and hit a record \$147 during the summer of 2008. Hard red spring wheat hit \$25 a bushel; soybeans almost \$16 a bushel; corn—\$6.77 a bushel. The Committee and its General Farm Commodities Subcommittee together held six hearings with 44 witnesses to look into these developments. Members heard from the airline industry, industrial energy users, farmers and other consumers how spiking energy prices were affecting their ability to transport, manufacture, and grow for America. Agriculture interests testified that producers were not benefitting from high futures prices for agricultural commodities because farmgate prices were much lower.

Out of these hearings came a general concern that new sources of funding for investments in commodity markets are having a negative impact on the price discovery function of U.S. futures markets. These inflows were presented by witnesses as primarily coming from index investors, hedge funds, pension funds and other sources which were looking at the commodity markets as new investment alternatives to the poorly performing equity markets.

While the 2008 farm bill addressed some witnesses' concerns by bringing transparency and oversight to one segment of the over-the-counter (OTC) market, there were objections to other so-called "loopholes" to allow for trading in commodities outside the regu-

lated exchange-traded environment. One was the “London Loop-hole”: there was concern that a U.S. commodity could be traded on an overseas exchange without limit or oversight. Another was the “Swaps Loophole”: commodities could be traded with a swap dealer without limit or oversight. There was also concern that the speculative position limit regime, designed to prevent manipulation of futures markets, had become riddled with holes through the granting of exemptions. These loopholes allowed funding to pour into commodity markets without limit. Advocates of reform sought to eliminate all loopholes by prohibiting any form of OTC trading and requiring commodity trading to take place only on U.S. regulated futures markets. Absent that, they called for aggregate speculative position limits for commodities, regardless of the market on which trading takes place—regulated, OTC, or foreign—with exemptions to those limits being granted to only bona fide hedgers, (i.e. those who have an underlying interest in the commodity being traded).

Some of the testimony heard at these hearings challenged this notion that investor money was harming commodity markets. Witnesses testified that supply and demand only were the culprits responsible for the dramatic move in commodity prices. They opposed all the proposals from the advocates of reform and warned against legislation that would drive commodity trading to overseas markets, outside the jurisdiction of the Commodity Futures Trading Commission (CFTC). They advocated primarily for greater transparency of markets.

Ultimately, the Committee responded to witness testimony and high commodity prices in July of 2008 by passing the Commodity Markets Transparency and Accountability Act. The U.S. House of Representatives followed in September by passing the bill, H.R. 6604, by a vote of 283 to 133. Among other things, this legislation would have:

- Prohibited the CFTC from permitting a foreign board of trade (FBOT) from providing its members or participants located in the U.S. direct access to its electronic trading system with respect to energy or agricultural transactions linked to contracts for U.S. commodities on a U.S. futures exchange unless the FBOT:
  - publicly provided daily trading information that is comparable to that published by the U.S. exchange,
  - adopted position limits that are comparable to those adopted by the U.S. exchange,
  - provided information to the CFTC regarding large trader positions in the FBOT transactions comparable to large trader position information provided by the U.S. exchange, and
  - provided information on aggregate trader positions on the FBOT comparable to that provided in reports for the U.S.-listed contract.
- Required the CFTC to disaggregate and publicly provide the number of positions and total value of index funds—and other passive, long-only and short-only investors—in energy and agriculture markets, and data on speculative positions relative to their bona fide physical hedgers.
- Required the CFTC to define and classify index traders and swap dealers for data reporting requirements.

- Subjected excluded swap transactions and transactions for agricultural and energy commodities to reporting and recordkeeping requirements.
- Mandated the CFTC to set speculative position limits for trading in agricultural and energy commodities and establish conditions for the granting of hedge exemptions from such limits.
- Required the CFTC to determine whether such fungible agriculture and energy OTC agreements have the potential to disrupt market liquidity and price discovery functions, cause severe, market disturbance or prevent prices from reflecting supply and demand.
- Authorized the Commission, if it found any of the above, to impose and enforce speculative position limits on the involved agreements.

It was in September of 2008, as the House of Representatives was considering H.R. 6604, that another crisis struck with equal, if not greater, harm to the U.S. economy. The nation's financial system started teetering on the brink of collapse. Wall Street institutions, from banks to investment houses, started experiencing a major credit crunch. One potential culprit for this calamity was identified as credit derivatives, specifically credit default swaps (CDSs). A CDS is contract, like other credit derivatives, whose value is based on underlying debt obligations. By their very nature, CDSs transfer risk rather than directly raise capital in the way a bond or stock does. In a CDS contract, the buyer is seeking protection and the seller is willing to provide protection in exchange for a series of payments from the buyer. The protection being transacted is against a default or other credit event with respect to the underlying obligation. Like most OTC transactions, CDSs are bilateral contracts and unregulated by any Federal government agency. As multiple financial markets deteriorated, CDSs became payable. As more firms had to either pay out or put up additional collateral for their CDS holdings, their own financial stability was threatened. Ultimately, some firms could not meet their obligations and were forced into bankruptcy, government receivership, or into accepting loans or other assistance from the Federal government.

The Committee held three hearings on the topic of credit derivatives in the late fall of 2008, hearing from government and industry witnesses. The hearings revealed that many market observers did not consider the CDSs the ultimate cause of the nation's financial crisis. The underlying problem started with the housing market. For years, a significant portion of the nation's banking system became involved with subprime loans, mortgages to individuals with questionable ability to repay the loans. Banks, not wanting to keep such loans on their balance sheets, merged these loans with higher quality loans, securitized the package at a high credit rating, then sold the package to investors. To help market these collateralized debt obligations (CDOs), dealers sold credit default swaps so investors would believe their investment was protected.

For at least three years, there has been growing concern about the growth of the CDS market, particularly in the light that many holders and sellers of CDS did not have a full understanding of all the CDSs they entered into. This led to a realization that many participants in the CDS market might not fully appreciate the level of their counterparties' risk. In addition, it was apparent that mar-

ket-making firms were better at marketing CDS contracts than they were at completing routine necessary documentation and settlement steps. A troubling settlement backlog had developed as a result. Consequently, interest in establishing a central counterparty (CCP) or clearinghouse for these instruments arose both within the market and within the Federal Reserve System (FRS). Much of the testimony gathered at the hearings was from witnesses in support of a clearing solution. In fact, most of the sell-side CDS institutions wanted to create a CCP under Federal Reserve oversight. However, there was disagreement as to whether the clearing of CDSs would need to be mandatory or not and just how much of the CDS market was appropriate for clearing.

From the information gathered in the hearings, the Committee became greatly concerned about the prospect of a Federal Reserve (Fed) regulated CCP. The Committee questioned whether it was appropriate for an organization with a self-admitted lack of experience in overseeing institutions that clear derivative instruments to have such a responsibility when other regulators—the CFTC and the Securities and Exchange Commission (SEC)—have substantial experience regulating such entities. At the Committee’s hearing on November 20, 2008, a representative of the FRS testified that while it has never been the primary regulatory of a central counterparty clearing service, the dealers backing the ICE US Trust (which is a special purpose bank for the purpose of clearing derivatives) proposal are organized as banks and have a long history of dealing with the Federal Reserve. It is not an appealing argument to the Committee that the Fed should enter into a new activity—one that is already carried out by a Federal regulator—merely because the entity to be regulated would like it to do so. Additionally, there is concern that a CCP overseen by the Fed would create the impression that it has Federal Reserve backing and would be bailed out if defaults occur, giving the CCP an advantage over other clearing institutions regulated by other government agencies, and creating the concern that taxpayers are directly exposed to its operation. The Committee also questioned whether a completely voluntary clearing system would succeed, although it did appreciate the concern of some witnesses that not every CDS is appropriate for clearing.

On February 12, 2009, after two hearings to review the legislative draft, the Committee considered H.R. 977, the Derivatives Markets Transparency and Accountability Act. This Act was modeled after the provisions in H.R. 6604 from the previous Congress. It contained almost the identical provisions of that Act with regard to foreign boards of trade; transparency, recording-keeping, and reporting requirements; and oversight of fungible OTC transactions. The primary difference between these provisions in H.R. 977 and H.R. 6604 is that the provisions in H.R. 977 apply to all commodities, not just those pertaining to agriculture and energy. With regard to provisions authorizing the CFTC to establish position limits and implement a revised hedge exemption regime, the two bills are very similar. The primary differences are that H.R. 977’s application is broader than H.R. 6604 in that it now applies to all physical commodities, not just agriculture and energy. In addition, the Advisory Committee structure that was included in H.R. 6604 has been replaced with a CFTC hearing process.



The Committee fully understands and is appreciative of the intent of the advisory committees as a vehicle for consumer, producer, user, and other groups to comment to the CFTC in its role as the setter of speculative position limits. However, the Committee is concerned, given the history advisory committees operating under the Federal Advisory Committee Act, these advisory committees may never get off the ground. Given the nation's fiscal constraints, it is feared that funding for the advisory committees may never be provided, making this provision a hollow promise to the organizations and individuals seeking to provide input to the speculative position limit process. Additionally, the Committee had concerns that the make-up of the advisory committees could hinder recommendations to the CFTC given that only one or two parties interested in a particular commodity could serve on a committee. It was viewed a more democratic approach to establish a CFTC hearing process whereby a much larger number of participants could provide comments and suggestions than the committee process. The requirement that the CFTC respond to the views expressed collectively at the hearing serves not only as a means to prevent suggestions from being ignored, but also provide interested parties with insight into the CFTC's views on where and how speculative position limits should be set.

H.R. 977 also includes several new provisions not included in H.R. 6604. Among other things, the legislation:

- Requires that all prospective over-the-counter transactions must be settled and cleared through a CFTC-regulated derivative clearing organization (DCO) in order to qualify for exceptions to provisions of the CEA that would otherwise apply.
- Allows OTC transactions relating to an excluded commodity (i.e. financials) to be settled and cleared through a SEC-regulated clearing agency.
- Denies the Board of Governors of the Federal Reserve System the authority to establish regulations or rules with regard to clearing OTC transactions. The bill directs the CFTC to expedite the application for derivatives clearing organization registration of any bank that has received the approval of the Fed to act as a central counterparty.
- Allows, as an alternative to clearing, parties to seek an exemption from the clearing requirement from the CFTC.
- Provides that trading in futures contracts on greenhouse gases, and any credit authorized under law for a reduction in greenhouse gas emissions or increase in carbon sequestration may only occur on a designated contract market.
- Makes the Inspector General position at the CFTC a Presidential appointment, confirmed by the Senate.
- Grants the CFTC the authority to suspend "naked" credit default swap trading, with the concurrence of the President, and only with respect to securities that are subject to a short selling suspension ordered by the SEC.
- Defines credit defaults swaps traded or cleared by registered entity as shall not be considered securities except as necessary for enforcing insider trading prohibitions.
- Grants the CFTC the authority to initiate and conduct criminal litigation relating to violations of the Act if the Attorney General has declined such litigation.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 provides that the short title of the bill is the “Derivatives Markets Transparency and Accountability Act of 2009.”

*Section 2. Table of contents**Section 3. Speculative limits and transparency of offshore trading*

Section 3(a) prohibits the CFTC from permitting a foreign board of trade (FBOT) to provide its members or participants located in the U.S. direct access to its electronic trading system with respect to all transactions that settle against any price of a contract listed on a registered entity unless the FBOT:

- Publicly provides comparable daily trading information.
- Adopts comparable position limits that take into account the relative market size.
- Has comparable authority to prevent price manipulation or distortion, excessive speculation, or the disruption of physical delivery or cash settlement.
- Agrees to notify the CFTC of any changes to the information, position limits and accountability provisions, position reductions, or any other area of interest to the CFTC.
- Provides comparable information to the CFTC regarding large trader positions.
- Provides comparable information on aggregate trader positions.

Section 3(b) provides that a person registered with the CFTC or exempt from registration shall not be found in violation of the exchange-trading requirement of the Commodity Exchange Act (CEA) if the person has reason to believe that the futures contract in question is traded on an FBOT that is authorized and regulated by a foreign futures authority and that the CFTC has not been determined by the CEA to be operating in violation of that requirement.

Section 3(c) provides that if an FBOT fails to comply with any requirements under the CEA, a futures contract executed through that facility will still be enforceable.

*Section 4. Detailed reporting and disaggregation of market data*

Section 4 requires the CFTC to issue a proposed rule defining and classifying index traders and swap dealers for data reporting requirements and setting reporting requirements for transactions in designated contracts markets, derivative transaction execution facilities, FBOTs, and electronic trading facilities with respect to significant price discovery contracts.

Section 4 also requires the CFTC to disaggregate and publicly provide the number and total value of positions of index funds, and other passive, long-only and short-only investors, in all regulated markets, and data on speculative positions relative to their bona fide hedgers.

*Section 5. Transparency and recordkeeping authorities*

Section 5(a) subjects over-the-counter transactions for all commodities to reporting and recordkeeping requirements as determined by CFTC.

Section 5(b)(1) requires rulemaking within 60 days of enactment to implement the following new requirements: inclusion of over-the-counter (OTC) contracts, as determined by CFTC, as part of large trader reporting requirements of section 4i of the CEA; CFTC special call authority to obtain any OTC market positions held by any person pursuant to exemptive provisions of the CEA; and requirement that records must be kept for 5 years.

Section 5(c) makes conforming changes.

#### *Section 6. Trading limits to prevent excessive speculation*

Section 6(a) requires the CFTC to set appropriate position limits for all physical commodities other than excluded commodities. It provides that position limit requirements shall apply to spot month, each month and aggregate positions held by a person for all months, taking into account the availability of other markets. It sets criteria for the CFTC to consider when establishing position limits.

Section 6(a) also requires CFTC to biannually hold public hearings on position limits for agriculture and energy commodities, and to publish its response to the recommendations regarding position limits heard at the hearing. It also establishes conditions for the granting of hedge exemptions from position limits to limit exemptions to bona fide hedgers of the commodity.

Section 6(b) makes conforming amendments to the core principals in the CEA.

#### *Section 7. CFTC administration*

Section 7 requires the CFTC to appoint new full time employees necessary to implement this Act.

#### *Section 8. Review of prior actions*

Section 8 requires the CFTC to review all prior actions to ensure compliance with this Act.

#### *Section 9. Review of over-the-counter markets*

Section 9 requires the CFTC to study and report on the effects of potential position limits on OTC trading and aggregate limits across the OTC market, designated contract markets, and derivative transaction execution facilities for agriculture and energy commodities.

#### *Section 10. Studies; Reports*

Section 10 requires a GAO study and report of the international regulatory regime for energy commodity futures and derivatives trading.

#### *Section 11. Over-the-counter authority*

Section 11(a) requires the CFTC to determine whether fungible OTC agreements have the potential to disrupt market liquidity and price discovery functions, cause severe market disturbance, or prevent prices from reflecting supply and demand. If the CFTC finds any of the above, it is authorized to impose and enforce position limits for speculators trading the involved agreements. Section 11(b) makes conforming amendments.

*Section 12. Expedited process*

Section 12 provides that the CFTC may use emergency and expedited procedures to carry out this Act.

*Section 13. Clearing of over-the-counter transactions*

Section 13(a) amends provisions of sections 2(d), and 2(g), and 2(h) of the CEA to add in each case a condition that the relevant exclusion or exemption only applies in cases where the prospective over-the-counter transactions are settled and cleared through a CFTC-regulated derivatives clearing organization (DCO).

Section 13(b) provides that as an alternative OTC transactions may be settled and cleared by clearinghouses supervised by foreign financial regulators, or, if they relate to an excluded commodity (generally contracts based on financial instruments), may be settled and cleared through a SEC-regulated clearing agency. The CFTC may exempt a transaction from the clearing requirement. In granting exemptions, the CFTC must consult with the SEC and Fed regarding exemptions that relate to excluded commodities or any entity for which the SEC and Fed is the primary regulator. Exemptions may be granted only for transactions for which the Commission finds that they are highly customized, transacted infrequently, do not serve a significant price discovery function in the marketplace, and are entered into by parties that can demonstrate their financial integrity. Exempted transactions must be reported to a regulator as determined by the CFTC. Clearing and reporting requirements do not apply to spot and forward transactions, as defined by CFTC.

Section 13(c) adds to the Core Principles with which DCOs must comply, including (1) daily publication of pricing, volume, and open interest information when the Commission determines that a contract performs a significant price discovery function, (2) fitness standards, and (3) disclosure of operational information.

Section 13(d) amends bank law provisions included the Commodity Futures Modernization Act to: clarify that only DCOs and SEC-regulated multilateral clearing agencies can clear OTC transactions; provide that the Federal Reserve does not have authority to establish regulations or rules or to otherwise establish the standards of regulation of any entity in its capacity as a multilateral clearing organization; and make other conforming changes. Section 13(d) also amends the CEA to: stipulate that a bank may register with the CFTC as a derivatives clearing organization; and direct the CFTC to expedite the application for such a registration submitted by a bank which has already received the approval of the Board of Governors of the Federal Reserve System to act as a multilateral clearing organization.

Section 13(e) provides that the effective date for the section is 150 days after enactment of the Act and requires the CFTC to establish guidelines on terms and conditions that must apply for an agreement, contract, or transaction to qualify for the exemption from clearing.

Section 13(f) requires that all OTC transactions in effect prior to date of enactment must be either cleared as stated above or reported to CFTC.

*Section 14. Treatment of carbon offset credits and emission allowances*

Section 14(a) amends the definition of “exempt commodity” to exclude allowances authorized under law to emit a greenhouse gas, and any credit authorized under law for a reduction in greenhouse gas emissions or increase in carbon sequestration. Any such contract could only be traded on a designated contract market.

Section 14(b) directs the CFTC to establish an MOU with USDA on development of procedures and protocols for market-based greenhouse gas contract.

*Section 15. Inspector General of CFTC*

Section 15 makes the Inspector General position at the CFTC a Presidential appointment, confirmed by the Senate.

*Section 16. CFTC authority to suspend trading in credit default swaps*

Section 16(a) grants the CFTC the authority to suspend trading of naked credit default swaps that are related to securities subject to a short selling suspension order by the SEC, with the concurrence of the President.

Section 16(b) amends the CEA to add a definition of the term “credit default swap”. Credit default swaps traded or cleared by registered entities shall not be considered securities except as necessary for enforcing insider trading prohibitions.

*Section 17. CFTC authority to prosecute criminal violations of Commodity Exchange Act*

Section 17 grants the CFTC the authority to initiate and conduct criminal litigation relating to violations of the Act if the Attorney General has declined such litigation.

*Section 18. Diversity of directors of Boards of Trade*

Section 18 amends the core principles to require publicly traded Boards of Trade regulated by the CEA to strive for cultural diversity in membership.

## COMMITTEE CONSIDERATION

### I. HEARINGS

On February 3 and February 4, 2009 the Committee held hearings to review derivatives legislation. During the 110th Congress, the Committee also held a number of hearings. A series of full committee hearings in October, November, and December of 2008 was held to review the role of credit derivatives in the U.S. economy. On July 9, 10, and 11, 2008, the Committee held hearings to review legislation amending the Commodity Exchange Act. The Committee also held a hearing to review dramatic movements in agriculture and energy commodity markets on September 11, 2008, and a hearing to review trading in energy markets on June 24, 2008. On May 15, 2008, the Subcommittee on General Farm Commodities and Risk Management held a hearing to review the source of dramatic movements in commodity markets (agriculture and energy).

At the hearings the Committee heard testimony from various government agencies, academics, clearing institutions, exchanges, financial services industry associations, commercial commodity associations, commercial commodity users, and consumer protection groups. The information presented at these hearings prepared the Committee to draft a bill that would bring greater transparency and oversight to futures and OTC derivatives markets.

## II. FULL COMMITTEE CONSIDERATION

On February 12, 2009 the Committee on Agriculture met, pursuant to notice, with a quorum present to consider H.R. 977. Mr. Peterson offered an opening statement, as did Ranking Member Lucas.

The bill, H.R. 977 was placed before the Committee for consideration and without objection a first reading of the bill was waived and it was opened for amendment at any point. Counsel was recognized for a brief explanation of the bill. The chairman offered a Manager's Amendment to the bill, H.R. 977 and counsel provided a brief explanation of that amendment. By voice vote, the Manager's Amendment was adopted.

Mr. Kissell was recognized to offer and explain an amendment to strengthen CEA regarding the composition of the boards of trade. Discussion occurred and Chairman Peterson offered a secondary amendment to the amendment to clarify that it only applied to publicly traded companies. By a voice vote the Peterson secondary amendment was adopted. More discussion occurred and by voice vote the Kissell amendment was adopted as amended.

Mr. Lucas was recognized to offer and explain an amendment to provisions in the bill that require CFTC to impose position limits. The amendment would have limited application of those provisions to the spot month for physical commodities. Discussion occurred and by a roll call vote of 16 yeas to 27 nays, the amendment failed. See Roll Call Vote #1.

Mr. Moran was recognized to offer and explain an amendment to restructure how CFTC must define a bona fide hedging transaction. Discussion occurred and by a roll call vote of 16 yeas to 27 nays, the amendment failed. See Roll Call Vote #2.

Mr. Pomeroy was recognized to offer and explain an amendment requiring CFTC to hold two annual public meetings and publish in the Federal Register its response to the recommendations regarding position limits heard at those meetings. Discussion occurred and by voice vote the amendment was adopted.

Mr. Boswell was recognized to offer and explain an amendment to strike the provisions in the bill that require either the clearing or reporting of over-the-counter transactions and replaces them with provisions that require a clearing or exception from the CFTC not to clear OTC transactions. Discussion occurred and by voice vote the amendment was adopted.

Mr. Lucas moved that the bill, H.R. 977 as amended be reported favorably to the House with the recommendation that it do pass. By voice vote the Lucas motion was adopted.

During the proceedings Mr. Terry Arbit, General Counsel of CFTC was recognized to answer questions posed by a member. Without objection, the usual instructions were given to staff that consist of making such technical, clarifying or conforming changes

as are appropriate without changing the substance of the legislation.

#### ROLL CALL VOTES

In compliance with clause 3(b) of Rule XIII of the House of Representatives, the Committee sets forth the record of the following roll call votes taken with respect to H.R. 977.

##### *Roll Call No. 1*

Summary: Amendment to H.R. 977 that limits application of the requirement for CFTC to impose position limits to the spot month.

Offered By: Representative Frank D. Lucas.

Results: Amendment failed by a vote of 16 yeas, 27 nays, and 2 not voting.

##### YEAS

- |                   |                     |
|-------------------|---------------------|
| 1. Mr. Lucas      | 9. Mrs. Schmidt     |
| 2. Mr. Goodlatte  | 10. Mr. Smith       |
| 3. Mr. Moran      | 11. Mr. Latta       |
| 4. Mr. Graves     | 12. Mr. Roe         |
| 5. Mr. Rogers     | 13. Mr. Luetkemeyer |
| 6. Mr. King       | 14. Mr. Thompson    |
| 7. Mr. Neugebauer | 15. Mr. Cassidy     |
| 8. Mr. Conaway    | 16. Mrs. Lummis     |

##### NAYS

- |                        |                     |
|------------------------|---------------------|
| 1. Mr. Peterson        | 15. Mrs. Halvorson  |
| 2. Mr. Holden          | 16. Mrs. Dahlkemper |
| 3. Mr. McIntyre        | 17. Mr. Massa       |
| 4. Mr. Boswell         | 18. Mr. Bright      |
| 5. Mr. Baca            | 19. Ms. Markey      |
| 6. Mr. Scott           | 20. Mr. Kratovil    |
| 7. Mr. Marshall        | 21. Mr. Schauer     |
| 8. Ms. Herseth Sandlin | 22. Mr. Kissell     |
| 9. Mr. Cuellar         | 23. Mr. Bocchieri   |
| 10. Mr. Costa          | 24. Mr. Pomeroy     |
| 11. Mr. Ellsworth      | 25. Mr. Childers    |
| 12. Mr. Walz           | 26. Mr. Minnick     |
| 13. Mr. Kagen          | 27. Mr. Fortenberry |
| 14. Mr. Schrader       |                     |

##### NOT VOTING

- |                |                |
|----------------|----------------|
| 1. Mr. Cardoza | 2. Mr. Johnson |
|----------------|----------------|

##### *Roll Call No. 2*

Summary: Amendment to H.R. 977 that restructures how CFTC must define bona fide hedging transactions.

Offered By: Representative Jerry Moran.

Results: Amendment failed by a vote of 16 yeas, 27 nays, and 2 not voting.

##### YEAS

- |                |                 |
|----------------|-----------------|
| 1. Mr. Cuellar | 9. Mrs. Schmidt |
| 2. Mr. Lucas   | 10. Mr. Smith   |

- |                   |                     |
|-------------------|---------------------|
| 3. Mr. Goodlatte  | 11. Mr. Latta       |
| 4. Mr. Moran      | 12. Mr. Roe         |
| 5. Mr. Graves     | 13. Mr. Luetkemeyer |
| 6. Mr. King       | 14. Mr. Thompson    |
| 7. Mr. Neugebauer | 15. Mr. Cassidy     |
| 8. Mr. Conaway    | 16. Mrs. Lummis     |

NAYS

- |                        |                     |
|------------------------|---------------------|
| 1. Mr. Peterson        | 15. Mrs. Halvorson  |
| 2. Mr. Holden          | 16. Mrs. Dahlkemper |
| 3. Mr. McIntyre        | 17. Mr. Massa       |
| 4. Mr. Boswell         | 18. Mr. Bright      |
| 5. Mr. Baca            | 19. Ms. Markey      |
| 6. Mr. Cardoza         | 20. Mr. Kratovil    |
| 7. Mr. Scott           | 21. Mr. Schauer     |
| 8. Mr. Marshall        | 22. Mr. Kissell     |
| 9. Ms. Herseth Sandlin | 23. Mr. Bocchieri   |
| 10. Mr. Costa          | 24. Mr. Pomeroy     |
| 11. Mr. Ellsworth      | 25. Mr. Childers    |
| 12. Mr. Walz           | 26. Mr. Minnick     |
| 13. Mr. Kagen          | 27. Mr. Fortenberry |
| 14. Mr. Schrader       |                     |

NOT VOTING

- |                |               |
|----------------|---------------|
| 1. Mr. Johnson | 2. Mr. Rogers |
|----------------|---------------|

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 23, 2009.*

Hon. COLLIN C. PETERSON,  
*Chairman, Committee on Agriculture,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 977, the Derivatives Markets Transparency and Accountability Act of 2009.



If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

ROBERT A. SUNSHINE  
(For Douglas W. Elmendorf, Director).

Enclosure.

*H.R. 977—Derivatives Markets Transparency and Accountability Act of 2009*

Summary: H.R. 977 would expand the authority of the Commodity Futures Trading Commission (CFTC) to regulate transactions and activities of various commodity markets. It also would authorize an increase in staffing for the CFTC and require the CFTC and the Government Accountability Office (GAO) to prepare several reports.

CBO estimates that implementing the provisions of H.R. 977 would cost \$225 million over the 2009–2014 period, assuming appropriation of the necessary amounts. Enacting H.R. 977 could affect revenues because of provisions that would affect the regulation of banks by the Federal Reserve, but CBO estimates that any such impact would not be significant. Further, enacting the bill could affect both revenue and direct spending because additional criminal and civil penalties could be imposed for violations of new regulations, but we expect that any such increases also would not be significant because of the relatively small number of violations likely to occur.

H.R. 977 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on participants in certain commodities markets. CBO cannot determine whether the costs to comply with the mandates in the bill would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million in 2009, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 977 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—						
	2009	2010	2011	2012	2013	2014	2009–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level .....	15	34	46	46	46	47	234
Estimated Outlays .....	13	32	44	45	45	46	225

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted during fiscal year 2009, that the necessary amounts will be appropriated each year, and that spending will follow historical patterns for the CFTC.

*Spending subject to appropriation*

Section 7 would authorize the CFTC to hire a sufficient number of full-time employees to improve enforcement activities and to increase the transparency of activities in various regulated commodity markets.

With regard to transactions in over-the-counter (OTC) markets, H.R. 977 would require the CFTC to develop new reporting requirements, study the effect of setting limits on the number of contracts that can be held in OTC markets, and set limits on the number of contracts that can be held by speculators in certain situations. The bill also would require that certain OTC transactions be settled and cleared through organizations regulated by either the CFTC or, with respect to financial commodities, by the Securities and Exchange Commission (SEC).

Other sections of the bill would:

- Establish limits on certain transactions to diminish or prevent excessive speculation and market manipulation;
- Require foreign boards of trade to meet certain requirements to allow domestic participants to have direct access to the foreign trading systems;
- Require that agreements to trade allowances to emit greenhouse gas and credits for reductions in greenhouse gas emissions be executed on regulated markets;
- Authorize the CFTC to suspend trading of credit default swaps (contracts that hedge the risk borne by a party to a contract that an entity may experience a loss of value as a result of an event specified in the contract) in certain situations; and
- Authorize the CFTC to conduct criminal litigation relating to violations of the Commodity Exchange Act.

Based on information from the CFTC, CBO estimates that the agency would add an additional 190 full-time employees by fiscal year 2011 to write regulations and undertake the additional oversight and enforcement activities required in the bill. In fiscal year 2008, CFTC received an appropriation of \$111 million that funded a staff of about 450 full-time employees. Assuming appropriations of the necessary amounts, CBO estimates that implementing H.R. 977 would increase spending by \$13 million in 2009 and \$225 million over the 2009–2014 period for the cost of salaries, overhead, reports, and upgrades to the agency’s information technology systems.

#### *Revenues and direct spending*

H.R. 977 would limit the authority of the Federal Reserve to regulate banking institutions that process certain OTC transactions. Based on information from the Federal Reserve, it appears that few banks currently act as clearinghouses for such transactions. The budgetary effects of Federal Reserve activities are recorded as a change in revenues, and CBO estimates that the limitations included in the bill would not have a significant effect on revenues over the 2009–2019 period.

Enacting H.R. 977 could affect both revenue and direct spending because additional criminal and civil penalties could be imposed for violations of new regulations, but we expect that any such increases would not be significant because of the relatively small number of violations likely to occur.

Intergovernmental and private-sector impact: H.R. 977 would impose intergovernmental and private-sector mandates, as defined in UMRA, on participants in certain commodities markets. The bill would impose limits on the number of contracts that can be held (known as “position limits”), as well as transaction and reporting

requirements, with respect to energy and certain agricultural commodities, on public and private entities such as pension funds, utilities, and swap dealers. The bill also would allow the CFTC to suspend trading in credit default swaps in some circumstances and impose new requirements on exchanges and derivatives clearing organizations. Because of limited information about the transactions in the affected markets, the position limits that CFTC would establish, and the extent to which position limits would result in lower returns, CBO has no basis to estimate the cost of the mandates on public or private-sector entities. Consequently, CBO cannot determine whether the costs to comply with the mandates in the bill would exceed the annual thresholds established in UMRA for inter-governmental or private-sector mandates (\$69 million and \$139 million in 2009, respectively, adjusted annually for inflation).

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the performance goals and objections of this legislation are to bring greater transparency and accountability to commodity markets.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof.

#### COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of Rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

#### ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

EARMARK STATEMENT REQUIRED BY CLAUSE 9 OF RULE XXI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

H.R. 977 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

\* \* \* \* \*

SEC. 1a. DEFINITIONS.

As used in this Act:

(1) \* \* \*

\* \* \* \* \*

(14) EXEMPT COMMODITY.—The term “exempt commodity” means a commodity that is not an excluded commodity [or an agricultural commodity], *an agricultural commodity, any allowance authorized under law to emit a greenhouse gas, and any credit authorized under law toward the reduction in greenhouse gas emissions or an increase in carbon sequestration.*

\* \* \* \* \*

(34) CREDIT DEFAULT SWAP.—*The term “credit default swap” means a contract which hedges a party to the contract against the risk that an entity may experience a loss of value as a result of an event specified in the contract, such as a default or credit downgrade. A credit default swap that is proposed to be traded or is traded on or proposed to be or is cleared by a registered entity pursuant to this Act shall be excluded from the definition of a security as defined in this Act and in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, except as necessary solely for purposes of enforcing prohibitions against insider trading in sections 10 and 16 of the Securities Exchange Act of 1934.*

SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.

(a) JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.—

(1) \* \* \*

\* \* \* \* \*

(7) APPOINTMENT AND COMPENSATION.—

(A) \* \* \*

\* \* \* \* \*

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

(i) to increase the public transparency of operations in markets;

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

(iii) to enhance oversight of the trading and clearing of contracts, agreements, and transactions; and

(iv) to carry out the provisions of the Derivatives Markets Transparency and Accountability Act of 2009 and such other duties as are prescribed by the Commission.

\* \* \* \* \*

(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

(1) *IN GENERAL.*—Nothing in this Act (other than subsection (j) of this section, and section [5b or 12(e)(2)(B)] 4g(a), 4i, 5b, or 12(e)(2)(B), and the regulations of the Commission pursuant to section 4i(b) requiring reporting in connection with commodity option transactions) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; **[and]**

(B) the agreement, contract, or transaction is not executed or traded on a trading facility**[.]**; and

(C) except as provided in section 4(h), the agreement, contract, or transaction is settled and cleared through a derivatives clearing organization registered with the Commission.

(2) *ELECTRONIC TRADING FACILITY EXCLUSION.*—Nothing in this Act (other than subsection (j) of this section, and section 4g(a), 4i, 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B), and the regulations of the Commission pursuant to section 4i(b) requiring reporting in connection with commodity option transactions) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) \* \* \*

(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants described in subparagraph (A), (B)(ii), or (C) of section 1a(12)) at the time at which the persons enter into the agreement, contract, or transaction; **[and]**

(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility**[.]**; and

(D) except as provided in section 4(h), the agreement, contract, or transaction is settled and cleared through a de-

*derivatives clearing organization registered with the Commission.*

\* \* \* \* \*

(g) EXCLUDED SWAP TRANSACTIONS.—No provision of this Act (other than *subsection (j) of this section, and section 4g(a), 4i, 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2), and the regulations of the Commission pursuant to section 4i(b) requiring reporting in connection with commodity option transactions*) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) \* \* \*

(2) subject to individual negotiation by the parties; **[and]**

(3) not executed or traded on a trading facility**【.】**; *and*

(4) *except as provided in section 4(h), settled and cleared through a derivatives clearing organization registered with the Commission.*

(h) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

(1) Except as provided in paragraph (2), nothing in this Act shall apply to a contract, agreement, or transaction in an exempt commodity which—

(A) is entered into solely between persons that are eligible contract participants at the time the persons enter into the agreement, contract, or transaction; **[and]**

(B) is not entered into on a trading facility**【.】**; *and*

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

(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

**【(A) subsection (j) of this section and sections 5b and 12(e)(2)(B);】**

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

\* \* \* \* \*

(3) Except as provided in paragraphs (4) and (7), nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity which is—

(A) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities at the time the persons enter into the agreement, contract, or transaction; **[and]**

(B) executed or traded on an electronic trading facility**【.】**; *and*

(C) *except as provided in section 4(h), settled and cleared through a derivatives clearing organization registered with the Commission.*

(4) An agreement, contract, or transaction described in paragraph (3) of this subsection shall be subject to—

**【(A) subsection (j) of this section and sections 5a (to the extent provided in section 5a(g)), 5b, 5d, and 12(e)(2)(B);】**

*(A) subsection (j) of this section and sections 4g(a), 4i, 5a (to the extent provided in section 5a(g)), 5b, 5d, and 12(e)(2)(B), and the regulations of the Commission pursuant to section 4i(b) requiring reporting in connection with commodity option transactions;*

\* \* \* \* \*

(7) SIGNIFICANT PRICE DISCOVERY CONTRACTS.—

(A) \* \* \*

\* \* \* \* \*

(C) CORE PRINCIPLES APPLICABLE TO SIGNIFICANT PRICE DISCOVERY CONTRACTS.—

(i) \* \* \*

(ii) CORE PRINCIPLES.—The electronic trading facility shall have reasonable discretion (including discretion to account for differences between cleared and uncleared significant price discovery contracts) in establishing the manner in which it complies with the following core principles:

(I) \* \* \*

\* \* \* \* \*

**[(IV) POSITION LIMITATIONS OR ACCOUNTABILITY.—The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts, and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.]**

*(IV) The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability standards for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts, and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month. For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the electronic trading facility shall set its position limitation at a level no higher than the Commission-established limitation.*

\* \* \* \* \*

(j) OVER-THE-COUNTER AUTHORITY.—

(1) Notwithstanding subsections (d), (g), (h)(1), and (h)(3) of section 2, and any exemption issued by the Commission by rule, regulation, or order, the Commission shall assess and issue a finding on whether agreements, contracts, or transactions entered into in reliance on subsection (d), (g), (h)(1), or (h)(3) of section 2 or any other exemption issued by the Commission by rule, regulation, or order, that are fungible (as defined by the Commission) with agreements, contracts, or transactions traded on or subject to the rules of any board of trade or electronic trading facility with respect to a significant price discovery contract, alone or in conjunction with other similar agreements, contracts, or transactions, have the potential to—

(A) disrupt the liquidity or price discovery function on a registered entity;

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

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

(2) If the Commission makes a finding pursuant to paragraph (1) of this subsection, the Commission may, in its discretion, utilize its authority under section 8a(9) to impose position limits (including, as appropriate and in its discretion, related hedge exemption provisions for bona fide hedging comparable to bona fide hedge provisions of section 4a(c)(2)) on agreements, contracts, or transactions involved, and take corrective actions to enforce the limits.

\* \* \* \* \*

SEC. 4. (a) Unless exempted by the Commission pursuant to subsection (c) or by subsection (f), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) \* \* \*

\* \* \* \* \*

(c)(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the re-



quirements of subsection (a), or from any other provision of this Act (except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)), if *the agreement, contract, or transaction, except as provided in section 4(h), will be settled and cleared through a derivatives clearing organization registered with the Commission and the Commission determines that the exemption would be consistent with the public interest.*

\* \* \* \* \*

(e) *FOREIGN BOARDS OF TRADE.—*

(1) *IN GENERAL.—The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless—*

(A) *the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and*

(B) *the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—*

(i) *adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable, taking into consideration the relative sizes of the respective markets, to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;*

(ii) *has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;*

(iii) *agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction, of any change regarding—*

(I) *the information that the foreign board of trade will make publicly available;*

(II) *the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;*

(III) *the position reductions required to prevent manipulation, excessive speculation as described in*

section 4a, price distortion, or disruption of delivery or the cash settlement process; and

(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trading positions for 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

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

(f)(1) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

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

(i) legally organized under the laws of a foreign country;

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

(iii) subject to regulation by the foreign futures authority; and

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

(2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).

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

(1) **INDEX TRADERS AND SWAP DEALERS REPORTING.**—The Commission shall issue a proposed rule defining and classifying index traders and swap dealers (as those terms are defined by the Commission) for purposes of data reporting requirements and setting routine detailed reporting requirements for any positions of such entities in contracts traded on designated contract markets, derivatives transaction execution facilities, foreign boards of trade subject to section 4(e), and electronic trading facilities with respect to significant price discovery contracts not later than 90 days after the date of the en-

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

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

(A) the number of positions and total notional value of index funds and other passive, long-only and short-only positions (as defined by the Commission) in all markets to the extent such information is available; and

(B) data on speculative positions relative to bona fide hedgers in those markets to the extent such information is available.

(h) *ALTERNATIVES TO CLEARING THROUGH DERIVATIVES CLEARING ORGANIZATIONS.*—

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

(A) An agreement, contract, or transaction, or class thereof, relating to an excluded commodity, that would otherwise be required to be settled and cleared by section 2(d)(1)(C), 2(d)(2)(D), or 2(g)(4) of this Act, or subsection (c)(1) of this section may be settled and cleared through an entity listed in section 409(b)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(B) An agreement, contract, or transaction, or class thereof, that would otherwise be required to be settled and cleared by section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or subsection (c)(1) of this section may be settled and cleared through an entity listed in section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(2) *WAIVER OF CLEARING REQUIREMENT.*—

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

(B) In granting exemptions pursuant to subparagraph (A), the Commission shall consult with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System regarding exemptions that relate to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator.

(C) Before granting an exemption pursuant to subparagraph (A), the Commission shall find that the agreement, contract, or transaction, or class thereof—

(i) is highly customized as to its material terms and conditions;

(ii) is transacted infrequently;

(iii) does not serve a significant price-discovery function in the marketplace; and

*(iv) is being entered into by parties who can demonstrate the financial integrity of the agreement, contract, or transaction and their own financial integrity, as such terms and standards are determined by the Commission. The standards shall include a net capital requirement associated with any agreement, contract, or transaction subject to an exemption from the clearing requirement that recognizes the risks associated with the absence of clearing.*

*(D) Any agreement, contract, or transaction, or class thereof, which is exempted pursuant to subparagraph (A) shall be reported in a manner designated by the Commission to the Commission, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or such other entity the Commission deems appropriate.*

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

SEC. 4a. (a)(1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities, or on electronic trading facilities with respect to a significant price discovery contract causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or on an electronic trading facility with respect to a significant price discovery contract, as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations, or different limits for the purposes of paragraphs (1) and (2) of subsection (b) of this section, or from exempting transactions normally known to the trade as “spreads” or “straddles” or “arbitrage” or from fixing limits applying to such transactions or posi-

tions different from limits fixed for other transactions or positions. The word “arbitrage” in domestic markets shall be defined to mean the same as a “spread” or “straddle”. The Commission is authorized to define the term “international arbitrage”.

(2)(A) *In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on such contracts or commodities traded on or subject to the rules of a contract market or derivatives transaction execution facility, or on an electronic trading facility as a significant price discovery contract.*

(B)(i) *For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.*

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

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

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

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

(i) *to diminish, eliminate, or prevent excessive speculation as described under this section;*

(ii) *to deter and prevent market manipulation, squeezes, and corners;*

(iii) *to ensure sufficient market liquidity for bona fide hedgers; and*

(iv) *to ensure that the price discovery function of the underlying market is not disrupted; and*

(C) *to the maximum extent practicable, in its discretion, take into account the total number of positions in fungible agreements, contracts, or transactions that a person can hold in other markets.*

(4)(A) *Not later than 150 days after the establishment of position limits pursuant to paragraph (2), and biannually thereafter, the Commission shall hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).*

(B) *Each public hearing held pursuant to subparagraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from—*

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

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

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

(iv) *each designated contract market or derivatives transaction execution facility upon which a contract in the com-*

*modity for future delivery is traded, and each electronic trading facility that has a significant price discovery contract in the commodity.*

*(C) Within 60 days after each public hearing held pursuant to subparagraph (A), the Commission shall publish in the Federal Register its response to the recommendations regarding position limits heard at the hearing.*

\* \* \* \* \*

*(c)(1) No rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions, as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this Act. Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this Act and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following the date of enactment of the Futures Trading Act of 1982.*

*(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery and options on such contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—*

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

*(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and*

*(iii) arises from the potential change in the value of—*

*(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;*

*(II) liabilities that a person owns or anticipates incurring; or*

*(III) services that a person provides, purchases, or anticipates providing or purchasing; or*

*(B) reduces risks attendant to a position resulting from a transaction that—*

*(i) was executed pursuant to subsection (g), (h)(1), or (h)(3) of section 2, or an exemption issued by the Commission by rule, regulation or order; and*

*(ii)(I) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or*

*(II) meets the requirements of subparagraph (A).*

\* \* \* \* \*

**SEC. 4c. PROHIBITED TRANSACTIONS.**

(a) \* \* \*

\* \* \* \* \*

(h) *AUTHORITY OF COMMISSION TO SUSPEND TRADING OF CREDIT DEFAULT SWAPS.—*

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

(A) *summarily suspend trading in any credit default swap; and*

(B) *summarily suspend all trading on any contract market, derivatives transaction execution facility, or otherwise, in credit default swaps.*

(2) *LIMITATION.—An action described in paragraph (1) shall—*

(A) *not take effect unless the Commission notifies the President of its decision, and the President notifies the Commission that the President does not disapprove of the decision;*

(B) *only apply to credit default swaps that are related to securities subject to a short selling suspension order by the Securities and Exchange Commission, and such action must terminate when such suspension order terminates; and*

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

\* \* \* \* \*

SEC. 4g. (a) Every person registered hereunder as a futures commission merchant, introducing broker, floor broker, or floor trader shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade in the United States or elsewhere, and transactions and positions traded pursuant to subsection (d), (g), (h)(1), or (h)(3) of section 2, or any exemption issued by the Commission by rule, regulation or order, and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

\* \* \* \* \*

SEC. 4i. (a) It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives

clearing organization, whether registered or not registered, as fungible with a significant price discovery contract—

(1) \* \* \*

\* \* \* \* \*

unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade or electronic trading facility *in the United States or elsewhere, and of transactions and positions in any such commodity entered into pursuant to subsection (d), (g), (h)(1), or (h)(3) of section 2, or any exemption issued by the Commission by rule, regulation or order, and of cash or spot transactions in, and inventories and purchase and sale commitments of such commodity. [Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.]*

*(b) Upon special call by the Commission, any person shall provide to the Commission, in a form and manner and within the period specified in the special call, books and records of all transactions and positions traded on or subject to the rules of any board of trade or electronic trading facility in the United States or elsewhere, or pursuant to subsection (d), (g), (h)(1), or (h)(3) of section 2, or any exemption issued by the Commission by rule, regulation, or order, as the Commission may determine appropriate to deter and prevent price manipulation or any other disruption to market integrity or to diminish, eliminate, or prevent excessive speculation as described in section 4a(a).*

*(c) Such books and records described in subsections (a) and (b) shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, shall be kept for a period of 5 years, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by the person.*

\* \* \* \* \*

**SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.**

(a) \* \* \*

\* \* \* \* \*

(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—



(1) \* \* \*

\* \* \* \* \*

【(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.】

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

\* \* \* \* \*

(19) DIVERSITY OF BOARDS OF DIRECTORS.—The board of trade of a publicly traded company shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of such bodies reflect, a broad and culturally diverse pool of qualified candidates.

\* \* \* \* \*

**SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.**

(a) \* \* \*

\* \* \* \* \*

**(d) CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.—**

(1) \* \* \*

\* \* \* \* \*

【(4) POSITION LIMITATIONS OR ACCOUNTABILITY.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the derivatives transaction execution facility shall adopt position limits or position accountability for speculators, where necessary and appropriate for a contract, agreement or transaction with an underlying commodity that has a physically deliverable supply.】

*(4) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability standards for speculators. For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set its position limitation at a level no higher than the Commission-established limitation.*

\* \* \* \* \*

**SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.**

(a) \* \* \*

[(b) VOLUNTARY REGISTRATION.—A derivatives clearing organization]

(b) VOLUNTARY REGISTRATION.—

(1) *A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this Act by section 2(c), 2(d), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization.*

(2)(A) *A national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act may register with the Commission as a derivatives clearing organization.*

(B) *The Commission shall expedite the application of any institution referred to in subparagraph (A) to the extent that, as of the date of enactment of this paragraph, the institution had received the approval of the Board of Governors of the Federal Reserve System to act as a multilateral clearing organization.*

(c) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

(1) \* \* \*

(2) CORE PRINCIPLES.—

(A) \* \* \*

\* \* \* \* \*

(O) *DISCLOSURE OF GENERAL INFORMATION.—The applicant shall disclose publicly and to the Commission information concerning—*

(i) *the terms and conditions of contracts, agreements, and transactions cleared and settled by the applicant;*

(ii) *the conventions, mechanisms, and practices applicable to the contracts, agreements, and transactions;*

(iii) *the margin-setting methodology and the size and composition of the financial resource package of the applicant; and*

(iv) *other information relevant to participation in the settlement and clearing activities of the applicant.*

(P) *DAILY PUBLICATION OF TRADING INFORMATION.—The applicant shall make public daily information on settlement prices, volume, and open interest for contracts settled or cleared pursuant to the requirements of section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C) or 4(c)(1) of this Act by the applicant if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.*

(Q) *FITNESS STANDARDS.—The applicant shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, and members of the applicant, and any other persons with direct access to the settlement or clearing activities of the applicant, includ-*

*ing any parties affiliated with any of the persons described in this subparagraph.*

\* \* \* \* \*

SEC. 8a. The Commission is authorized—

(1) \* \* \*

\* \* \* \* \*

**[(9)]** (9)(A) to direct the registered entity, whenever it has reason to believe that an emergency exists, to take such action as in the Commission’s judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission’s **[action.]** *action; and (B) to direct any person to abide by any position limits to agreements, contracts, or transactions subject to section 2(j)(1) that are imposed pursuant to section 2(j)(2).* The term “emergency” as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all the information before the Commission at the time the determination was made. The court reviewing the Commission’s action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a registered entity to the terms “market emergency”, “emergency”, or equivalent language in its own bylaws, rules, regulations, or resolutions;

\* \* \* \* \*

SEC. 9. (a) \* \* \*

\* \* \* \* \*

*(f) Notwithstanding section 516 of title 28, United States Code, the Commission may initiate and conduct criminal litigation relating to a violation of this Act, and secure evidence therefor, if the Attorney General has declined to do so.*

\* \* \* \* \*

SEC. 22. (a)(1) \* \* \*

\* \* \* \* \*

*(5) A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of*

*section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.*

\* \* \* \* \*

**FEDERAL DEPOSIT INSURANCE CORPORATION  
IMPROVEMENT ACT OF 1991**

\* \* \* \* \*

**TITLE IV—MISCELLANEOUS  
PROVISIONS**

**Subtitle A—Payment System Risk  
Reduction**

\* \* \* \* \*

**CHAPTER 2—MULTILATERAL CLEARING  
ORGANIZATIONS**

\* \* \* \* \*

**SEC. 409. MULTILATERAL CLEARING ORGANIZATIONS.**

(a) **IN GENERAL.**—Except with respect to clearing organizations described in subsection (b), no person may operate a multilateral clearing organization for over-the-counter derivative instruments, or otherwise engage in activities that constitute such a multilateral clearing organization unless the person is a national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, or an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act, *and the person is registered as a clearing agency under the Securities Exchange Act of 1934 or as a derivatives clearing organization under the Commodity Exchange Act.*

(b) **CLEARING ORGANIZATIONS.**—Subsection (a) shall not apply to any clearing organization that—

(1) \* \* \*

\* \* \* \* \*

(3) is supervised by a foreign financial regulator that [the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation,] the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as applicable, has determined satisfies appropriate standards.

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**LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000**

\* \* \* \* \*

**TITLE IV—REGULATORY  
RESPONSIBILITY FOR BANK PRODUCTS**

\* \* \* \* \*

**SEC. 407. EXCLUSION OF COVERED SWAP AGREEMENTS.**

No provision of the Commodity Exchange Act (other than section 5b of such Act with respect to the clearing of covered swap agreements *and the settlement and clearing requirements of sections 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such Act*) shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a covered swap agreement offered, entered into, or provided by a bank.

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**FEDERAL RESERVE ACT**

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

SEC. 10. The Board of Governors of the Federal Reserve System (hereinafter referred to as the “Board”) shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after the date of enactment of the Banking Act of 1935, for terms of fourteen years except as hereinafter provided, but each appointive member of the Federal Reserve Board in office on such date shall continue to serve as a member of the Board until February 1, 1936, and the Secretary of the Treasury and the Comptroller of the Currency shall continue to serve as members of the Board until February 1, 1936. In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country. The members of the Board shall devote their entire time to the business of the Board and shall each receive an annual salary of \$15,000, payable monthly, together with actual necessary traveling expenses.

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*The Board shall have no power to issue any rule, regulation, or order, or otherwise to establish the standards of regulation of any entity in its capacity as a multilateral clearing organization as defined in section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991.*

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**INSPECTOR GENERAL ACT OF 1978**

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REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL  
ENTITIES

SEC. 8G. (a) Notwithstanding section 12 of this Act, as used in this section—

(1) \* \* \*

(2) the term “designated Federal entity” means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, [the Commodity Futures Trading Commission,] the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service;

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DEFINITIONS

SEC. 12. As used in this Act—

(1) the term “head of the establishment” means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, Homeland Security, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans’ Affairs; the Director of the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; the chief executive officer of the Resolution Trust Corporation; the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; the Director of the Federal Housing Finance Agency; the Board of Directors of the Tennessee Valley Authority; the President of the Export-Import Bank; [or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;] *the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United*

*States Code; or the Chairman of the Commodity Futures Trading Commission; as the case may be;*

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, Homeland Security, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, or the Veterans' Administration, the Social Security Administration, the Federal Housing Finance Agency, the Tennessee Valley Authority, the Export-Import Bank, [or the Commissions established under section 15301 of title 40, United States Code,] *the Commissions established under section 15301 of title 40, United States Code, or the Commodity Futures Trading Commission, as the case may be;*

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