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

IN THE HOUSE OF REPRESENTATIVES

Mr. Peterson of Minnesota introduced the following bill; which was referred to the Committee on ______

A BILL

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

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Commodity Markets
5 Transparency and Accountability Act of 2008”.

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July 21, 2008 (5:33 p.m.)
SEC. 2. DEFINITION OF ENERGY COMMODITY.

(a) Definition of Energy Commodity.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (13) through (34) as paragraphs (14) through (35), respectively; and

(2) by inserting after paragraph (12) the following:

“(13) Energy Commodity.—The term ‘energy commodity’ means—

“(A) coal;

“(B) crude oil, gasoline, diesel fuel, jet fuel, heating oil, and propane;

“(C) electricity;

“(D) natural gas; and

“(E) any other substance that is used as a source of energy, as the Commission, in its discretion, deems appropriate.”.

(b) Conforming Amendments.—

(1) Section 2(c)(2)(B)(i)(II)(cc) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)(cc)) is amended—

(A) in subitem (AA), by striking “section 1a(20)” and inserting “section 1a(21)” ; and
(B) in subitem (BB), by striking “section 1a(20)” and inserting “section 1a(21)”.

(2) Section 13106(b)(1) of the Food, Conservation, and Energy Act of 2008 is amended by striking “section 1a(32)” and inserting “section 1a”.

(3) Section 402 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27) is amended—

(A) in subsection (a)(7), by striking “section 1a(20)” and inserting “section 1a”; and

(B) in subsection (d)—

(i) in paragraph (1)(B), by striking “section 1a(33)” and inserting “section 1a”; and

(ii) in paragraph (2)(D), by striking “section 1a(13)” and inserting “section 1a”.

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

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 par-
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 in an energy or
agricultural commodity that settles against any price
(including the daily or final settlement price) of 1 or
more contracts listed for trading on a registered ent-
ity, unless—

“(A) the foreign board of trade—

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

“(ii) promptly notifies the Commission
of any change regarding—

“(I) the information that the for-
egn board of trade will make publicly
available;

“(II) the position limits and posi-
tion accountability provisions that the
5 foreign board of trade will adopt and
enforce;

“(III) the position reductions re-
quired to prevent manipulation; and

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

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

“(i) adopts position limits (including
related hedge exemption provisions) or po-
sition accountability provisions for specu-
lators for the agreement, contract, or
transaction that are comparable to the po-
sition limits (including related hedge ex-
emption provisions) or position account-
ability provisions adopted by the registered
tity for the 1 or more contracts against
which the foreign board of trade settles;
and

“(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, price distortion, or disruption of delivery or the cash settlement process.

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

SEC. 4. DISAGGREGATION OF INDEX FUNDS AND OTHER DATA IN ENERGY AND AGRICULTURE MARKETS.

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:

“(f) DISAGGREGATION OF INDEX FUNDS AND OTHER DATA IN ENERGY AND AGRICULTURE MARKETS.—Subject to section 8, the Commission shall disaggregate and make public monthly—
“(1) the number of positions and total value of
index funds and other passive, long-only positions
(as defined by the Commission) in energy and agri-
cultural markets; and
“(2) data on speculative positions relative to
bona fide physical hedgers in those markets.”.

SEC. 5. DETAILED REPORTING FROM INDEX TRADERS AND
SWAP DEALERS.

Section 4 of the Commodity Exchange 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:
“(g) INDEX TRADERS AND SWAP DEALERS REPORT-
ing.—The Commission shall issue a proposed rule defin-
ing and classifying index traders and swap dealers (as
those terms are defined by the Commission) for purposes
of data reporting requirements and setting routine de-
tailed reporting requirements for such entities in futures
markets for exempt and agricultural commodities not later
than 60 days after the enactment of this subsection, and
issue a final rule within 120 days after the enactment of
this subsection.”.”

SEC. 6. REPORTING; RECORDKEEPING.

(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 (g), (h)(1), or (h)(2) 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.—Section 4i of such Act (7 U.S.C. 6i) is amended—

(1) in the first sentence—

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

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

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

“(b) With respect to agricultural and energy commodities, 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)(2) 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.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 2(g) of such Act (7 U.S.C. 2(g)) is amended—
(A) by inserting “4(g)(a), 4i,” before “5a
(to”; and
(B) by inserting “, and the regulations of
the Commission pursuant to section 4c(b) re-
quiring reporting in connection with commodity
option transactions,” before “shall apply”.
(2) 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(c)(2)(B), and the regulations of the Com-
mission pursuant to section 4c(b) requiring re-
porting in connection with commodity option
transactions;”.

SEC. 7. TRADING LIMITS TO PREVENT EXCESSIVE SPECU-
LATION.

(a) Establishment of 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) In accordance with the standards set forth in
paragraph (1), with respect to agricultural and energy
commodities, the Commission shall by rule, regulation, or
order establish limits on the amount of positions that may
be held by any person under contracts of sale for future
delivery or under 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 elec-
tronic trading facility as a significant price discovery con-
tract.

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

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

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

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

“(ii) to deter and prevent market manipu-
lation, 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 dis-
rupted.
“(4)(A) Not later than 210 days after the date of the enactment of this paragraph, the Commission shall convene advisory groups, as appropriate for each agricultural and energy commodity, consisting of representatives from—

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

“(ii) 2 commercial long hedgers of the actual physical commodity for future delivery;

“(iii) 2 non-commercial participants in markets for commodities for future delivery; and

“(iv) a designated contract market or a derivatives transaction execution facility upon which the commodity for future delivery is traded, or an electronic trading facility that has a significant price discovery contract in the commodity.

“(B) Not later than 60 days after the date on which the advisory groups are convened under subparagraph (A), and annually thereafter, the advisory groups shall submit to the Commission advisory recommendations regarding the position limits to be established in paragraph (2) and a recommendation as to whether the position limits should be administered directly by the Commission, or by the contract market on which the commodity is listed (with en-
forcement by both the contract market and the Commission).”; and

(2) in subsection (e)—

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

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

“(2) With respect to agricultural and energy commodities, for the purposes of contracts of sale for future delivery and options on such contracts or commodities, a bona fide hedging transaction or position is a transaction or position that—

“(A)(i) represents a substitute for transactions to be made or positions 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)(2) of section 2, or an exemption issued by the Commission by rule, regulation or order; and

“(ii) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to paragraph (2)(A) of this subsection.”.

(b) EXPEDITED PROCEDURE.—The Commodity Futures Trading Commission shall use emergency and expedited procedures (including any administrative or other procedure as appropriate) to carry out this section.

SEC. 8. MODIFICATIONS TO CORE PRINCIPLES APPLICABLE TO POSITION LIMITS FOR CONTRACTS IN AGRICULTURAL AND ENERGY COMMODITIES.

(a) CONTRACTS TRADED ON CONTRACT MARKETS.—Section 5(d)(5) of the Commodity Exchange Act (7 U.S.C. 7(d)(5)) is amended by striking all that follows “adopt” and inserting “, for speculators, position limitations with respect to agricultural or energy commodities, and position
limitations or position accountability with respect to other commodities, where necessary and appropriate.”.

(b) Contracts Traded on Derivatives Transaction Execution Facilities.—Section 5a(d)(4) of such Act (7 U.S.C. 7a(d)(4)) is amended by striking all that follows “adopt” and inserting “, for speculators, position limitations with respect to agricultural and energy commodities, and position limitations or position accountability with respect to other commodities, where necessary and appropriate for a contract, agreement or transaction with an underlying commodity that has a physically deliverable supply.”.

(e) Significant Price Discovery Contracts.—Section 2(h)(7)(C)(ii)(IV) of such Act (7 U.S.C. 2(h)(7)(C)(ii)(IV)) is amended by striking “where necessary” and all that follows through “in significant price discovery contracts” and inserting “for speculators, position limitations with respect to significant price discovery contracts in energy commodities, and position limitations or position accountability with respect to significant price discovery contracts in other commodities”.

SEC. 9. CFTC Administration.

(a) Additional Commodity Futures Trading Commission Employees for Improved Enforcement.—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 enactment of this subparagraph, the Commission shall appoint at least 100 full-time employees (in addition to the employees employed by the Commission as of the date of enactment of this subparagraph)—

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

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

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

(b) INSPECTOR GENERAL OF COMMODITY FUTURES TRADING COMMISSION.—

(1) ELEVATION OF OFFICE.—

(A) INCLUSION OF CFTC IN DEFINITION OF ESTABLISHMENT.—Section 11(2) of the Inspector General Act of 1878 (5 U.S.C. App.) is amended by striking “or the Export-Import Bank,” and inserting “, the Export-Import
Bank, or the Commodity Futures Trading
Commission,”.

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

(2) TRANSITION.—Until such time as the Inspector General of the Commodity Futures Trading Commission is appointed in accordance with section 3 of the Inspector General Act of 1978, the Office of Inspector General of the Commission shall continue in effect as provided in such Act before the date of the enactment of this Act.

SEC. 10. REVIEW OF PRIOR ACTIONS.

Notwithstanding any other provision of the Commodity Exchange Act, the Commodity Futures Trading Commission shall review all appropriate regulations, rules, exemptions, exclusions, guidance, no action letters, orders, and other actions taken by or on behalf of the Commission (including any action taken pursuant to the Commodity Exchange Act by an exchange, self-regulatory organization, or any other registered entity) to ensure that such prior actions—
(1) are in compliance with the provisions of this Act; and
(2) do not promote excessive speculation as described in section 4a of the Commodity Exchange Act with regard to any agreement, contract, or transaction for future delivery of an agriculture or energy commodity.

SEC. 11. 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 position limits for agreements, contracts, or transactions conducted in reliance of sections 2(g) and 2(h) of the Commodity Exchange Act and of any exemption issued by the Commission by rule, regulation or order, 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 commodities; and

(2) to determine the efficacy, practicality, and consequences of establishing aggregate position limits for similar agreements, contracts, or transactions for physical-based commodities conducted—
(A) on designated contract markets;

(B) on derivative transaction execution fa-
cilities; and

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

(b) PUBLIC HEARINGS.—The Commission shall pro-
vide 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 18 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 prevent price manipulation or any other
disruption to market integrity or to diminish, elimi-
nate, or prevent excessive speculation as described in
section 4a of the Commodity Exchange Act for phys-
ical-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 imple-
ment the recommendations.

SEC. 12. STUDIES; REPORTS.

(a) Study Relating to International Regulation
of Energy Commodity Markets.—

(1) In General.—The Comptroller General of
the United States shall conduct a study of the inter-
national regime for regulating the trading of energy
commodity futures and derivatives.

(2) Analysis.—The study shall include an
analysis of, at a minimum—

(A) 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;

(B) variations among countries with re-
spect to the use of position limits, position ac-
countability levels, or other thresholds to detect
and prevent price manipulation, excessive spec-
ulation, or other unfair trading practices;
(C) variations in practices regarding the
differentiation of commercial and noncommercial trading;

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

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

(3) REPORT.—Not later than 1 year after the
date of 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—

(A) describes the results of the study;

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

(C) 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.

(b) STUDY RELATING TO EFFECTS OF NONCOMMERCIAL SPECULATORS ON AGRICULTURE AND ENERGY FUTURES MARKETS AND AGRICULTURE AND ENERGY PRICES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of the effects of noncommercial speculators on agriculture and energy futures markets and agriculture energy prices.

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

(A) the effect of increased amounts of capital in agriculture and energy futures markets;

(B) the impact of the roll-over of positions by index fund traders and swap dealers on agriculture and energy futures markets and agriculture and energy prices; and

(C) the extent to which each factor described in subparagraphs (A) and (B) and non-commercial speculators—

(i) affect—

(I) the pricing of agriculture and energy commodities; and
(II) risk management functions;
and
(ii) contribute to economically efficient
price discovery.

(3) REPORT.—Not later than 2 years after the
date of enactment of this Act, the Comptroller Gen-
eral 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 describes the results of the study.

SEC. 13. PENSION LIMITS ON COMMODITY TRADING.

(a) PENSION FUNDS EXCLUDED FROM DEFINITION
OF ELIGIBLE COMMERCIAL ENTITY.—Section 1a(11) of
the Commodity Exchange Act (7 U.S.C. 1a(11)) is amend-
ed by adding after and below the end the following:

“Notwithstanding the preceding sentence, the term
‘eligible commercial entity’ does not include any
trust forming part of a pension plan (as defined in
section 3 of the Employment Retirement Income Se-
curity Act), or any entity that receives funds from
such a trust, whether foreign or domestic, in order
to engage in an agreement, contract, or transaction
in reliance of sections 2(d), 2(g), and 2(h).”.

(b) PENSION FUNDS EXCLUDED FROM DEFINITION
OF ELIGIBLE CONTRACT PARTICIPANT.—Section 1a(12)
of such Act (7 U.S.C. 1a(12)) is amended by adding after
and below the end the following:

“Notwithstanding the preceding sentence, the term
‘eligible contract participant’ does not include any
trust forming part of a pension plan (as defined in
section 3 of the Employment Retirement Income Se-
curity Act), or any entity that receives funds from
such a trust, whether foreign or domestic, in order
to engage in an agreement, contract, or transaction
in reliance of sections 2(d), 2(g), and 2(h).”.