To amend the Commodity Exchange Act to clarify the treatment of purchases of certain commodity futures contracts and financial instruments with respect to limits established by the Commodity Futures Trading Commission relating to excessive speculation, and for other purposes.


IN THE SENATE OF THE UNITED STATES

JULY 10 (legislative day, JULY 9), 2008

Mr. Lieberman (for himself, Ms. Collins, and Ms. Cantwell) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

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Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commodity Specula-

tion Reform Act of 2008”.

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5 tion Reform Act of 2008”.
SEC. 2. AUTHORITY OF COMMODITY FUTURES TRADING

COMMISSION TO ISSUE NO ACTION LETTERS.

Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

“(G) AUTHORITY TO ISSUE NO ACTION LETTERS TO FOREIGN BOARDS OF TRADE.—

“(i) IN GENERAL.—Except as provided in clause (ii), the Commission may not issue a no action letter to any foreign board of trade that lists a contract the price of which settles on the price of a contract traded on an exchange regulated by the Commission.

“(ii) EXCEPTION.—The Commission may issue a no action letter to a foreign board of trade described in clause (i) if the foreign board of trade provides to the Commission information and data accessibility the scope of which is comparable to the information and data accessibility provided to the Commission by entities under the jurisdiction of the Commission.”.
SEC. 3. ADDITIONAL EMPLOYEES.

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) to assist in carrying out section 4a(a)(2).”.

SEC. 4. TREATMENT OF PURCHASES OF CERTAIN COMMODITY FUTURES CONTRACTS AND FINANCIAL INSTRUMENTS.

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

(1) by striking “SEC. 4a. (a) Excessive speculation” and inserting the following:

“SEC. 4a. EXCESSIVE SPECULATION.

“(a) BURDEN ON INTERSTATE COMMERCE; TRADING OR POSITION LIMITS.—

“(1) IN GENERAL.—Excessive speculation and”;

and

(2) in subsection (a) (as amended by paragraph (1)), by adding at the end the following:
“(2) Treatment of purchases of certain commodity futures contracts and financial instruments.—

“(A) Definitions.—In this paragraph:

“(i) Bona fide hedging transaction.—

“(I) In general.—The term ‘bona fide hedging transaction’ means a transaction that—

“(aa) represents a substitute for a transaction to be made or a position to be taken at a later time in a physical marketing channel;

“(bb) is economically appropriate for the reduction of risks in the conduct and management of a commercial enterprise; and

“(cc) arises from the potential change in the value of—

“(AA) assets that a person owns, produces, manufactures, possesses, or merchandises (or anticipates owning, producing, manufac-
turing, possessing, or merchandising);

“(BB) liabilities that a person incurs or anticipates incurring; or

“(CC) services that a person provides or purchases (or anticipates providing or purchasing).

“(II) EXCLUSION.—The term ‘bona fide hedging transaction’ does not include a transaction entered into on a designated contract market for the purpose of offsetting a financial risk arising from an over-the-counter commodity derivative.

“(ii) OVER-THE-COUNTER COMMODITY DERIVATIVE.—The term ‘over-the-counter commodity derivative’ means any agreement, contract, or transaction that—

“(I)(aa) is traded or executed in the United States; or

“(bb) is held by a person located in the United States;
“(II) is not traded on a designated contract market or derivatives transaction execution facility; and

“(III)(aa) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or substantially based on the value of, 1 or more qualifying commodities or an economic or financial index or measure of economic or financial risk primarily associated with 1 or more qualifying commodities;

“(bb) provides on an executory basis for the applicable transaction, on a fixed or contingent basis, of 1 or more payments substantially based on the value of 1 or more qualifying commodities or an economic or financial index or measure of economic or financial risk primarily associated with 1 or more qualifying commodities, and that transfers between the parties to the transaction, in whole or in part, the economic or financial risk associated with a future change in any such
value without also conveying a current or future direct or indirect ownership interest in an asset or liability that incorporates the financial risk that is transferred; or

“(cc) is any combination or permutation of, or option on, any agreement, contract, or transaction described in item (aa) or (bb).

“(iii) OVER-THE-COUNTER COMMODITY DERIVATIVE DEALER.—The term ‘over-the-counter commodity derivative dealer’ means a person that regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in over-the-counter commodity derivatives with customers in the ordinary course of a trade or business of the person.

“(iv) QUALIFYING COMMODITY.—The term ‘qualifying commodity’ means—

“(I) an agricultural commodity;

and

“(II) an energy commodity.

“(B) REGULATIONS.—
“(i) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, in accordance with clauses (ii) and (iii), the Commission shall promulgate regulations to establish and enforce—

“(I) speculative position limits for qualifying commodities;

“(II) a methodology—

“(aa) to enable persons to aggregate the positions held or controlled by the persons on designated contract markets, on derivatives transaction execution facilities, and in over-the-counter commodity derivatives; and

“(bb) to ensure, to the maximum extent practicable, that the determinations made by the Commission with respect to each person examined under subparagraph (C) accurately reflect the net long and net short positions held or controlled by the person in the underlying qualifying commodity; and
“(III) information reporting rules to facilitate the monitoring and enforcement by the Commission of the speculative position limits established under subclause (I), including the monitoring of positions held in over-the-counter commodity derivatives.

“(ii) APPLICABILITY.—

“(I) POSITION LIMITS.—The speculative position limits established under clause (i)(I) shall apply to position limits that, with respect to each applicable position limit, expire during—

“(aa) the spot month;

“(bb) each separate futures trading month (other than the spot month); or

“(cc) the sum of each trading month (including the spot month).

“(II) SUM OF POSITIONS.—The speculative position limits established under clause (i)(I) shall apply to the
sum of the positions held by a person—

“(aa) on designated contract markets;

“(bb) on derivatives transaction execution facilities; and

“(cc) in over-the-counter commodity derivatives.

“(iii) Maximum level of position limits.—In establishing the speculative position limits under clause (i)(I), the Commission shall set the speculative position limits at the minimum level practicable to ensure sufficient market liquidity for the conduct of bona fide hedging activities.

“(C) Prohibition relating to certain positions.—

“(i) In general.—Notwithstanding any other provision of this Act, no person may hold or control a position, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, any option, or an over-the-counter
commodity derivative that exceeds a speculative position limit established by the Commission under subparagraph (B)(i)(I).

“(ii) BONA FIDE HEDGING TRANSACTIONS.—In determining whether the sum of a position held or controlled by a person has exceeded the applicable speculative position limit established by the Commission under subparagraph (B)(i)(I), the Commission shall not consider positions attributable to a bona fide hedging transaction.

“(iii) DETERMINATION OF POSITION LIMITS FOR OVER-THE-COUNTER COMMODITY DERIVATIVE DEALERS.—To determine the position of an over-the-counter commodity derivative dealer, the sum of the positions held or controlled by the over-the-counter commodity derivative dealer shall be—

“(I) calculated on the last day of each month; and

“(II) considered, for the monthly period covered by the determination, to be the average daily net position
held or controlled by the over-the-counter commodity derivative dealer for the period beginning on the first day of the month and ending on the last day of the month.”.

(b) Reports.—

(1) Necessary Additional Funding.—Not later than 45 days after the date of enactment of this Act, the Commodity Futures Trading Commission (referred to in this subsection as the “Commission”) shall submit to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate a report providing the recommendations of the Commission for any additional funding that the Commission considers to be necessary to carry out the amendments made by subsection (a), including funding for additional staffing and technological needs.

(2) Speculative Activity Trends.—

(A) Study.—The Commission shall conduct a study—

(i) to identify trends in speculative activity relating to metals; and

(ii) to determine whether the authority of the Commission under section
4a(a)(2) of the Commodity Exchange Act (7 U.S.C. 6a(a)(2)) (as added by subsection (a)(2)) should be extended to cover the trading of metals.

(B) REPORT.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit a report containing the results of the study conducted under subparagraph (A) to—

(i) the Committee on Agriculture of the House of Representatives;

(ii) the Committee on Agriculture, Nutrition, and Forestry of the Senate; and

(iii) the Committee on Homeland Security and Governmental Affairs of the Senate.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.