

110TH CONGRESS
2D SESSION

S. 3248

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

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.

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 Specula-
5 tion Reform Act of 2008”.

1 **SEC. 2. AUTHORITY OF COMMODITY FUTURES TRADING**
2 **COMMISSION TO ISSUE NO ACTION LETTERS.**

3 Section 2(a)(1) of the Commodity Exchange Act (7
4 U.S.C. 2(a)(1)) is amended by adding at the end the fol-
5 lowing:

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

8 “(i) **IN GENERAL.—**Except as pro-
9 vided in clause (ii), the Commission may
10 not issue a no action letter to any foreign
11 board of trade that lists a contract the
12 price of which settles on the price of a con-
13 tract traded on an exchange regulated by
14 the Commission.

15 “(ii) **EXCEPTION.—**The Commission
16 may issue a no action letter to a foreign
17 board of trade described in clause (i) if the
18 foreign board of trade provides to the
19 Commission information and data accessi-
20 bility the scope of which is comparable to
21 the information and data accessibility pro-
22 vided to the Commission by entities under
23 the jurisdiction of the Commission.”.

1 **SEC. 3. ADDITIONAL EMPLOYEES.**

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

5 “(D) **ADDITIONAL EMPLOYEES.**—As soon
6 as practicable after the date of enactment of
7 this subparagraph, the Commission shall ap-
8 point at least 100 full-time employees (in addi-
9 tion to the employees employed by the Commis-
10 sion as of the date of enactment of this sub-
11 paragraph) to assist in carrying out section
12 4a(a)(2).”.

13 **SEC. 4. TREATMENT OF PURCHASES OF CERTAIN COM-**
14 **MODITY FUTURES CONTRACTS AND FINAN-**
15 **CIAL INSTRUMENTS.**

16 (a) **IN GENERAL.**—Section 4a of the Commodity Ex-
17 change Act (7 U.S.C. 6a) is amended—

18 (1) by striking “SEC. 4a. (a) Excessive specula-
19 tion” and inserting the following:

20 **“SEC. 4a. EXCESSIVE SPECULATION.**

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

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

25 **(2) in subsection (a) (as amended by paragraph**
26 **(1)), by adding at the end the following:**

1 “(2) TREATMENT OF PURCHASES OF CERTAIN
2 COMMODITY FUTURES CONTRACTS AND FINANCIAL
3 INSTRUMENTS.—

4 “(A) DEFINITIONS.—In this paragraph:

5 “(i) BONA FIDE HEDGING TRANS-
6 ACTION.—

7 “(I) IN GENERAL.—The term
8 ‘bona fide hedging transaction’ means
9 a transaction that—

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

15 “(bb) is economically appro-
16 priate for the reduction of risks
17 in the conduct and management
18 of a commercial enterprise; and

19 “(cc) arises from the poten-
20 tial change in the value of—

21 “(AA) assets that a
22 person owns, produces, man-
23 ufactures, possesses, or mer-
24 chandises (or anticipates
25 owning, producing, manufac-

1 turing, possessing, or mer-
2 chandising);

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

6 “(CC) services that a
7 person provides or purchases
8 (or anticipates providing or
9 purchasing).

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

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

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

23 “(bb) is held by a person located
24 in the United States;

1 “(II) is not traded on a des-
2 ignated contract market or derivatives
3 transaction execution facility; and

4 “(III)(aa) is a put, call, cap,
5 floor, collar, or similar option of any
6 kind for the purchase or sale of, or
7 substantially based on the value of, 1
8 or more qualifying commodities or an
9 economic or financial index or meas-
10 ure of economic or financial risk pri-
11 marily associated with 1 or more
12 qualifying commodities;

13 “(bb) provides on an executory
14 basis for the applicable transaction,
15 on a fixed or contingent basis, of 1 or
16 more payments substantially based on
17 the value of 1 or more qualifying com-
18 modities or an economic or financial
19 index or measure of economic or fi-
20 nancial risk primarily associated with
21 1 or more qualifying commodities, and
22 that transfers between the parties to
23 the transaction, in whole or in part,
24 the economic or financial risk associ-
25 ated with a future change in any such

1 value without also conveying a current
 2 or future direct or indirect ownership
 3 interest in an asset or liability that in-
 4 corporates the financial risk that is
 5 transferred; or

6 “(cc) is any combination or per-
 7 mutation of, or option on, any agree-
 8 ment, contract, or transaction de-
 9 scribed in item (aa) or (bb).

10 “(iii) OVER-THE-COUNTER COM-
 11 MODITY DERIVATIVE DEALER.—The term
 12 ‘over-the-counter commodity derivative
 13 dealer’ means a person that regularly of-
 14 fers to enter into, assume, offset, assign,
 15 or otherwise terminate positions in over-
 16 the-counter commodity derivatives with
 17 customers in the ordinary course of a trade
 18 or business of the person.

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

21 “(I) an agricultural commodity;

22 and

23 “(II) an energy commodity.

24 “(B) REGULATIONS.—

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

6 “(I) speculative position limits
7 for qualifying commodities;

8 “(II) a methodology—

9 “(aa) to enable persons to
10 aggregate the positions held or
11 controlled by the persons on des-
12 ignated contract markets, on de-
13 rivatives transaction execution fa-
14 cilities, and in over-the-counter
15 commodity derivatives; and

16 “(bb) to ensure, to the max-
17 imum extent practicable, that the
18 determinations made by the
19 Commission with respect to each
20 person examined under subpara-
21 graph (C) accurately reflect the
22 net long and net short positions
23 held or controlled by the person
24 in the underlying qualifying com-
25 modity; and

1 “(III) information reporting rules
2 to facilitate the monitoring and en-
3 forcement by the Commission of the
4 speculative position limits established
5 under subclause (I), including the
6 monitoring of positions held in over-
7 the-counter commodity derivatives.

8 “(ii) APPLICABILITY.—

9 “(I) POSITION LIMITS.—The
10 speculative position limits established
11 under clause (i)(I) shall apply to posi-
12 tion limits that, with respect to each
13 applicable position limit, expire dur-
14 ing—

15 “(aa) the spot month;

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

19 “(cc) the sum of each trad-
20 ing month (including the spot
21 month).

22 “(II) SUM OF POSITIONS.—The
23 speculative position limits established
24 under clause (i)(I) shall apply to the

1 sum of the positions held by a per-
2 son—

3 “(aa) on designated contract
4 markets;

5 “(bb) on derivatives trans-
6 action execution facilities; and

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

9 “(iii) MAXIMUM LEVEL OF POSITION
10 LIMITS.—In establishing the speculative
11 position limits under clause (i)(I), the
12 Commission shall set the speculative posi-
13 tion limits at the minimum level prac-
14 ticable to ensure sufficient market liquidity
15 for the conduct of bona fide hedging activi-
16 ties.

17 “(C) PROHIBITION RELATING TO CERTAIN
18 POSITIONS.—

19 “(i) IN GENERAL.—Notwithstanding
20 any other provision of this Act, no person
21 may hold or control a position, separately
22 or in combination, net long or net short,
23 for the purchase or sale of a commodity for
24 future delivery or, on a futures-equivalent
25 basis, any option, or an over-the-counter

1 commodity derivative that exceeds a specu-
2 lative position limit established by the
3 Commission under subparagraph (B)(i)(I).

4 “(ii) BONA FIDE HEDGING TRANS-
5 ACTIONS.—In determining whether the
6 sum of a position held or controlled by a
7 person has exceeded the applicable specula-
8 tive position limit established by the Com-
9 mission under subparagraph (B)(i)(I), the
10 Commission shall not consider positions at-
11 tributable to a bona fide hedging trans-
12 action.

13 “(iii) DETERMINATION OF POSITION
14 LIMITS FOR OVER-THE-COUNTER COM-
15 MODITY DERIVATIVE DEALERS.—To deter-
16 mine the position of an over-the-counter
17 commodity derivative dealer, the sum of
18 the positions held or controlled by the over-
19 the-counter commodity derivative dealer
20 shall be—

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

23 “(II) considered, for the monthly
24 period covered by the determination,
25 to be the average daily net position

1 held or controlled by the over-the-
2 counter commodity derivative dealer
3 for the period beginning on the first
4 day of the month and ending on the
5 last day of the month.”.

6 (b) REPORTS.—

7 (1) NECESSARY ADDITIONAL FUNDING.—Not
8 later than 45 days after the date of enactment of
9 this Act, the Commodity Futures Trading Commis-
10 sion (referred to in this subsection as the “Commis-
11 sion”) shall submit to the Committee on Appropria-
12 tions of the House of Representatives and the Com-
13 mittee on Appropriations of the Senate a report pro-
14 viding the recommendations of the Commission for
15 any additional funding that the Commission con-
16 siders to be necessary to carry out the amendments
17 made by subsection (a), including funding for addi-
18 tional staffing and technological needs.

19 (2) SPECULATIVE ACTIVITY TRENDS.—

20 (A) STUDY.—The Commission shall con-
21 duct a study—

22 (i) to identify trends in speculative ac-
23 tivity relating to metals; and

24 (ii) to determine whether the author-
25 ity of the Commission under section

1 4a(a)(2) of the Commodity Exchange Act
2 (7 U.S.C. 6a(a)(2)) (as added by sub-
3 section (a)(2)) should be extended to cover
4 the trading of metals.

5 (B) REPORT.—Not later than 180 days
6 after the date of enactment of this Act, the
7 Commission shall submit a report containing
8 the results of the study conducted under sub-
9 paragraph (A) to—

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

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

14 (iii) the Committee on Homeland Se-
15 curity and Governmental Affairs of the
16 Senate.

17 (3) AUTHORIZATION OF APPROPRIATIONS.—

18 There are authorized to be appropriated such sums
19 as are necessary to carry out this subsection.

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