

[DISCUSSION DRAFT]

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. TABLE OF CONTENTS.

5 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.
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- 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.

6 SEC. 3. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF- 7 SHORE TRADING.

8 (a) IN GENERAL.—Section 4 of the Commodity Ex-
9 change Act (7 U.S.C. 6) is amended by adding at the end
10 the following:

11 “(e) FOREIGN BOARDS OF TRADE.—

1 “(1) IN GENERAL.—The Commission may not
2 permit a foreign board of trade to provide to the
3 members of the foreign board of trade or other par-
4 ticipants located in the United States direct access
5 to the electronic trading and order matching system
6 of the foreign board of trade with respect to an
7 agreement, contract, or transaction that settles
8 against any price (including the daily or final settle-
9 ment price) of 1 or more contracts listed for trading
10 on a registered entity, unless—

11 “(A) the foreign board of trade makes pub-
12 lic daily trading information regarding the
13 agreement, contract, or transaction that is com-
14 parable to the daily trading information pub-
15 lished by the registered entity for the 1 or more
16 contracts against which the agreement, con-
17 tract, or transaction traded on the foreign
18 board of trade settles; and

19 “(B) the foreign board of trade (or the for-
20 eign futures authority that oversees the foreign
21 board of trade)—

22 “(i) adopts position limits (including
23 related hedge exemption provisions) for the
24 agreement, contract, or transaction that
25 are comparable, taking into consideration

1 the relative sizes of the respective markets,
2 to the position limits (including related
3 hedge exemption provisions) adopted by
4 the registered entity for the 1 or more con-
5 tracts against which the agreement, con-
6 tract, or transaction traded on the foreign
7 board of trade settles;

8 “(ii) has the authority to require or
9 direct market participants to limit, reduce,
10 or liquidate any position the foreign board
11 of trade (or the foreign futures authority
12 that oversees the foreign board of trade)
13 determines to be necessary to prevent or
14 reduce the threat of price manipulation,
15 excessive speculation as described in sec-
16 tion 4a, price distortion, or disruption of
17 delivery or the cash settlement process;

18 “(iii) agrees to promptly notify the
19 Commission, with regard to the agreement,
20 contract, or transaction, of any change re-
21 garding—

22 “(I) the information that the for-
23 eign board of trade will make publicly
24 available;

1 “(II) the position limits that the
2 foreign board of trade or foreign fu-
3 tures authority will adopt and enforce;

4 “(III) the position reductions re-
5 quired to prevent manipulation, exces-
6 sive speculation as described in sec-
7 tion 4a, price distortion, or disruption
8 of delivery or the cash settlement
9 process; and

10 “(IV) any other area of interest
11 expressed by the Commission to the
12 foreign board of trade or foreign fu-
13 tures authority;

14 “(iv) provides information to the
15 Commission regarding large trader posi-
16 tions in the agreement, contract, or trans-
17 action that is comparable to the large trad-
18 er position information collected by the
19 Commission for the 1 or more contracts
20 against which the agreement, contract, or
21 transaction traded on the foreign board of
22 trade settles; and

23 “(v) provides the Commission with in-
24 formation necessary to publish reports on
25 aggregate trader positions for the agree-

1 ment, contract, or transaction traded on
2 the foreign board of trade that are com-
3 parable to such reports on aggregate trad-
4 ing positions for 1 or more contracts
5 against which the agreement, contract, or
6 transaction traded on the foreign board of
7 trade settles.

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

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

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

21 (2) Section 4 of such Act (7 U.S.C. 6) is fur-
22 ther amended by adding at the end the following:

23 “(f)(1) A person registered with the Commission, or
24 exempt from registration by the Commission, under this
25 Act may not be found to have violated subsection (a) with

1 respect to a transaction in, or in connection with, a con-
2 tract of sale of a commodity for future delivery if the per-
3 son—

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

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

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

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

13 “(B) has not been determined by the Commis-
14 sion to be operating in violation of subsection (a).

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

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

23 “(5) A contract of sale of a commodity for fu-
24 ture delivery traded or executed on or through the
25 facilities of a board of trade, exchange, or market lo-

1 cated outside the United States for purposes of sec-
2 tion 4(a) shall not be void, voidable, or unenforce-
3 able, and a party to such a contract shall not be en-
4 titled to rescind or recover any payment made with
5 respect to the contract, based on the failure of the
6 foreign board of trade to comply with any provision
7 of this Act.”.

8 **SEC. 4. DETAILED REPORTING AND DISAGGREGATION OF**
9 **MARKET DATA.**

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

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

15 “(1) INDEX TRADERS AND SWAP DEALERS RE-
16 PORTING.—The Commission shall issue a proposed
17 rule defining and classifying index traders and swap
18 dealers (as those terms are defined by the Commis-
19 sion) for purposes of data reporting requirements
20 and setting routine detailed reporting requirements
21 for any positions of such entities in contracts traded
22 on designated contract markets, derivatives trans-
23 action execution facilities, foreign boards of trade
24 subject to section 4(e), and electronic trading facili-
25 ties with respect to significant price discovery con-

1 tracts not later than 90 days after the date of the
2 enactment of this subsection, and issue a final rule
3 within 180 days after such date of enactment.

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

9 “(A) the number of positions and total no-
10 tional value of index funds and other passive,
11 long-only and short-only positions (as defined
12 by the Commission) in all markets to the extent
13 such information is available; and

14 “(B) data on speculative positions relative
15 to bona fide hedgers in those markets to the ex-
16 tent such information is available.”.

17 **SEC. 5. TRANSPARENCY AND RECORDKEEPING AUTHORI-**
18 **TIES.**

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

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

23 (2) by inserting “and transactions and positions
24 traded pursuant to subsection (d), (g), (h)(1), or
25 (h)(3) of section 2, or any exemption issued by the

1 Commission by rule, regulation or order,” after
2 “United States or elsewhere,”.

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

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

7 (A) in the first sentence—

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

10 (ii) by inserting “in the United States
11 or elsewhere, and of transactions and posi-
12 tions in any such commodity entered into
13 pursuant to subsection (d), (g), (h)(1), or
14 (h)(3) of section 2, or any exemption
15 issued by the Commission by rule, regula-
16 tion or order” before “, and of cash or
17 spot”; and

18 (B) by striking all that follows the 1st sen-
19 tence and inserting the following:

20 “(b) Upon special call by the Commission, any person
21 shall provide to the Commission, in a form and manner
22 and within the period specified in the special call, books
23 and records of all transactions and positions traded on or
24 subject to the rules of any board of trade or electronic
25 trading facility in the United States or elsewhere, or pur-

1 suant to subsection (d), (g), (h)(1), or (h)(3) of section
2 2, or any exemption issued by the Commission by rule,
3 regulation, or order, as the Commission may determine
4 appropriate to deter and prevent price manipulation or
5 any other disruption to market integrity or to diminish,
6 eliminate, or prevent excessive speculation as described in
7 section 4a(a).

8 “(c) Such books and records described in subsections
9 (a) and (b) shall show complete details concerning all such
10 transactions, positions, inventories, and commitments, in-
11 cluding the names and addresses of all persons having any
12 interest therein, shall be kept for a period of 5 years, and
13 shall be open at all times to inspection by any representa-
14 tive of the Commission or the Department of Justice. For
15 the purposes of this section, the futures and cash or spot
16 transactions and positions of any person shall include such
17 transactions and positions of any persons directly or indi-
18 rectly controlled by the person.”.

19 (2) NOTICE AND COMMENT.—Within 60 days
20 after the date of the enactment of this subsection,
21 the Commodity Futures Trading Commission shall
22 conduct rulemaking, including an opportunity for
23 notice and comment, on implementing the amend-
24 ments made by paragraph (1).

25 (c) CONFORMING AMENDMENTS.—

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

7 (2) Section 2(d)(2) of such Act (7 U.S.C.
8 2(d)(2)) is amended—

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

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

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

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

19 (B) by inserting “, and the regulations of
20 the Commission pursuant to section 4i(b) re-
21 quiring reporting in connection with commodity
22 option transactions” after “12(e)(2)”. .

23 (4) Section 2(h)(2)(A) of such Act (7 U.S.C.
24 2(h)(2)(A)) is amended to read as follows:

1 “(A) sections 4g(a), 4i, 5b and
2 12(e)(2)(B), and the regulations of the Com-
3 mission pursuant to section 4i(b) requiring re-
4 porting in connection with commodity option
5 transactions;”.

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

8 “(A) sections 4g(a), 4i, 5a (to the extent
9 provided in section 5a(g)), 5b, 5d, and
10 12(e)(2)(B), and the regulations of the Com-
11 mission pursuant to section 4i(b) requiring re-
12 porting in connection with commodity option
13 transactions;”.

14 **SEC. 6. TRADING LIMITS TO PREVENT EXCESSIVE SPECU-**
15 **LATION.**

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

18 (1) in subsection (a)—

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

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

22 “(2)(A) In accordance with the standards set forth
23 in paragraph (1) of this subsection and consistent with
24 the good faith exception cited in subsection (b)(2),with re-
25 spect to physical commodities other than excluded com-

1 modities as defined by the Commission, the Commission
2 shall by rule, regulation, or order establish limits on the
3 amount of positions, as appropriate, other than bona fide
4 hedge positions, that may be held by any person with re-
5 spect to contracts of sale for future delivery or with re-
6 spect to options on such contracts or commodities traded
7 on or subject to the rules of a contract market or deriva-
8 tives transaction execution facility, or on an electronic
9 trading facility as a significant price discovery contract.

10 “(B)(i) For exempt commodities, the limits shall be
11 established within 180 days after the date of the enact-
12 ment of this paragraph.

13 “(ii) For agricultural commodities, the limits shall be
14 established within 270 days after the date of the enact-
15 ment of this paragraph.

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

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

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

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

4 “(ii) to deter and prevent market manipu-
5 lation, squeezes, and corners;

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

8 “(iv) to ensure that the price discovery
9 function of the underlying market is not dis-
10 rupted; and

11 “(C) to the maximum extent practicable, in its
12 discretion, take into account the total number of po-
13 sitions in fungible agreements, contracts, or trans-
14 actions that a person can hold in other markets.

15 “(4)(A) Not later than 150 days after the establish-
16 ment of position limits pursuant to paragraph (2), and
17 biannually thereafter, the Commission shall hold 2 public
18 hearings, 1 for agriculture commodities and 1 for energy
19 commodities as such terms are defined by the Commission,
20 in order to receive recommendations regarding the posi-
21 tion limits to be established in paragraph (2).

22 “(B) Each public hearing held pursuant to subpara-
23 graph (A) shall, at a minimum providing there is sufficient
24 interest, receive recommendations from—

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

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

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

7 “(iv) each designated contract market or de-
8 rivatives transaction execution facility upon which a
9 contract in the commodity for future delivery is
10 traded, and each electronic trading facility that has
11 a significant price discovery contract in the com-
12 modity.

13 “(C) Within 60 days after each public hearing held
14 pursuant to subparagraph (A), the Commission shall pub-
15 lish in the Federal Register its response to the rec-
16 ommendations regarding position limits heard at the hear-
17 ing.”; and

18 (2) in subsection (c)—

19 (A) by inserting “(1)” after “(c)”; and

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

22 “(2) For the purposes of implementation of sub-
23 section (a)(2) for contracts of sale for future delivery and
24 options on such contracts or commodities, the Commission

1 shall define what constitutes a bona fide hedging trans-
2 action or position as a transaction or position that—

3 “(A)(i) represents a substitute for transactions
4 made or to be made or positions taken or to be
5 taken at a later time in a physical marketing chan-
6 nel;

7 “(ii) is economically appropriate to the reduc-
8 tion of risks in the conduct and management of a
9 commercial enterprise; and

10 “(iii) arises from the potential change in the
11 value of—

12 “(I) assets that a person owns, produces,
13 manufactures, processes, or merchandises or
14 anticipates owning, producing, manufacturing,
15 processing, or merchandising;

16 “(II) liabilities that a person owns or an-
17 ticipates incurring; or

18 “(III) services that a person provides, pur-
19 chases, or anticipates providing or purchasing;
20 or

21 “(B) reduces risks attendant to a position re-
22 sulting from a transaction that—

23 “(i) was executed pursuant to subsection
24 (g), (h)(1), or (h)(3) of section 2, or an exemp-

1 tion issued by the Commission by rule, regula-
2 tion or order; and

3 “(ii)(I) was executed opposite a
4 counterparty for which the transaction would
5 qualify as a bona fide hedging transaction pur-
6 suant to subparagraph (A); or

7 “(II) meets the requirements of subpara-
8 graph (A).”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Section 5(d)(5) of such Act (7 U.S.C.
11 7(d)(5)) is amended to read as follows:

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

22 (2) Section 5a(d)(4) of such Act (7 U.S.C.
23 7a(d)(4)) is amended to read as follows:

24 “(4) To reduce the potential threat of market
25 manipulation or congestion, especially during trading

1 in the delivery month, the board of trade shall adopt
2 for each of its contracts, where necessary and appro-
3 priate, position limitations or position accountability
4 standards for speculators. For any contract that is
5 subject to a position limitation established by the
6 Commission pursuant to section 4a(a), the board of
7 trade shall set its position limitation at a level no
8 higher than the Commission-established limitation.”.

9 (3) Section 2(h)(7)(C)(ii)(IV) of such Act (7
10 U.S.C. 2(h)(7)(C)(ii)(IV)) is amended to read as fol-
11 lows:

12 “(IV) The electronic trading fa-
13 cility shall adopt, where necessary and
14 appropriate, position limitations or
15 position accountability standards for
16 speculators in significant price dis-
17 covery contracts, taking into account
18 positions in other agreements, con-
19 tracts, and transactions that are
20 treated by a derivatives clearing orga-
21 nization, whether registered or not
22 registered, as fungible with such sig-
23 nificant price discovery contracts to
24 reduce the potential threat of market
25 manipulation or congestion, especially

1 during trading in the delivery month.
2 For any contract that is subject to a
3 position limitation established by the
4 Commission pursuant to section
5 4a(a), the electronic trading facility
6 shall set its position limitation at a
7 level no higher than the Commission-
8 established limitation.”.

9 **SEC. 7. CFTC ADMINISTRATION.**

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

13 “(D) **ADDITIONAL EMPLOYEES.**—As soon
14 as practicable after the date of the enactment
15 of this subparagraph, subject to appropriations,
16 the Commission shall appoint a sufficient num-
17 ber of full-time employees (in addition to the
18 employees employed by the Commission as of
19 the date of the enactment of this subpara-
20 graph)—

21 “(i) to increase the public trans-
22 parency of operations in markets;

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

1 “(iii) to enhance oversight of the trad-
2 ing and clearing of contracts, agreements,
3 and transactions; and

4 “(iv) to carry out the provisions of the
5 Derivatives Markets Transparency and Ac-
6 countability Act of 2009 and such other
7 duties as are prescribed by the Commis-
8 sion.”.

9 **SEC. 8. REVIEW OF PRIOR ACTIONS.**

10 Notwithstanding any other provision of the Com-
11 modity Exchange Act, the Commodity Futures Trading
12 Commission shall review, as appropriate, all regulations,
13 rules, exemptions, exclusions, guidance, no action letters,
14 orders, other actions taken by or on behalf of the Commis-
15 sion, and any action taken pursuant to the Commodity
16 Exchange Act by an exchange, self-regulatory organiza-
17 tion, or any other registered entity, that are currently in
18 effect, to ensure that such prior actions are in compliance
19 with the provisions of this Act.

20 **SEC. 9. REVIEW OF OVER-THE-COUNTER MARKETS.**

21 (a) **STUDY.**—The Commodity Futures Trading Com-
22 mission shall conduct a study—

23 (1) to determine the efficacy, practicality, and
24 consequences of establishing limits on the size of a
25 position, other than bona fide hedge positions, that

1 may be held by any person with respect to agree-
2 ments, contracts, or transactions involving an agri-
3 cultural or energy commodity, conducted in reliance
4 on section 2(g) or 2(h) of the Commodity Exchange
5 Act and of any exemption issued by the Commission
6 by rule, regulation or order, that are fungible (as de-
7 fined by the Commission) with agreements, con-
8 tracts, or transactions traded on or subject to the
9 rules of any board of trade or of any electronic trad-
10 ing facility with respect to a significant price dis-
11 covery contract, as a means to deter and prevent
12 price manipulation or any other disruption to mar-
13 ket integrity or to diminish, eliminate, or prevent ex-
14 cessive speculation as described in section 4a of such
15 Act for physical-based agricultural or energy com-
16 modities; and

17 (2) to determine the efficacy, practicality, and
18 consequences of establishing aggregate position lim-
19 its for similar agreements, contracts, or transactions
20 for physical-based agricultural or energy commod-
21 ities traded—

22 (A) on designated contract markets;

23 (B) on derivatives transaction execution fa-
24 cilities; and

1 (C) in reliance on such section 2(g) or 2(h)
2 and of any exemption issued by the Commission
3 by rule, regulation or order.

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

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

14 (1) describes the results of the study; and
15 (2) provides recommendations on any actions
16 necessary to deter and prevent price manipulation or
17 any other disruption to market integrity or to dimin-
18 ish, eliminate, or prevent excessive speculation as de-
19 scribed in section 4a of the Commodity Exchange
20 Act for physical-based commodities, including—

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

1 (B) a description of the resources that the
2 Commission considers to be necessary to imple-
3 ment the recommendations.

4 **SEC. 10. STUDY RELATING TO INTERNATIONAL REGULA-**
5 **TION OF ENERGY COMMODITY MARKETS.**

6 (a) IN GENERAL.—The Comptroller General of the
7 United States shall conduct a study of the international
8 regime for regulating the trading of energy commodity fu-
9 tures and derivatives.

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

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

16 (2) variations among countries with respect to
17 the use of position limits, position accountability lev-
18 els, or other thresholds to detect and prevent price
19 manipulation, excessive speculation as described in
20 section 4a of the Commodity Exchange Act, or other
21 unfair trading practices;

22 (3) variations in practices regarding the dif-
23 ferentiation of commercial and noncommercial trad-
24 ing;

1 (4) agreements and practices for sharing mar-
2 ket and trading data among futures authorities and
3 between futures authorities and the entities that the
4 futures authorities oversee; and

5 (5) agreements and practices for facilitating
6 international cooperation on market oversight, com-
7 pliance, and enforcement.

8 (c) REPORT.—Not later than 1 year after the date
9 of the enactment of this Act, the Comptroller General shall
10 submit to the Committee on Agriculture of the House of
11 Representatives and the Committee on Agriculture, Nutri-
12 tion, and Forestry of the Senate a report that—

13 (1) describes the results of the study;

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

17 (3) provides recommendations to improve open-
18 ness, transparency, and other necessary elements of
19 a properly functioning market in a manner that pro-
20 tects consumers in the United States.

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

22 (a) IN GENERAL.—Section 2 of the Commodity Ex-
23 change Act (7 U.S.C. 2) is amended by adding at the end
24 the following:

25 “(j) OVER-THE-COUNTER AUTHORITY.—

1 “(1) Notwithstanding subsections (d), (g),
2 (h)(1), and (h)(3) of section 2, and any exemption
3 issued by the Commission by rule, regulation, or
4 order, the Commission shall assess and issue a find-
5 ing on whether agreements, contracts, or trans-
6 actions entered into in reliance on subsection (d),
7 (g), (h)(1), or (h)(3) of section 2 or any other ex-
8 emption issued by the Commission by rule, regula-
9 tion, or order, that are fungible (as defined by the
10 Commission) with agreements, contracts, or trans-
11 actions traded on or subject to the rules of any
12 board of trade or electronic trading facility with re-
13 spect to a significant price discovery contract, alone
14 or in conjunction with other similar agreements, con-
15 tracts, or transactions, have the potential to—

16 “(A) disrupt the liquidity or price dis-
17 covery function on a registered entity;

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

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

24 “(2) If the Commission makes a finding pursu-
25 ant to paragraph (1) of this subsection, the Commis-

1 sion may, in its discretion, utilize its authority under
2 section 8a(9) to impose position limits (including, as
3 appropriate and in its discretion, related hedge ex-
4 emption provisions for bona fide hedging comparable
5 to bona fide hedge provisions of section 4a(c)(2)) on
6 agreements, contracts, or transactions involved, and
7 take corrective actions to enforce the limits.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 2(d)(1) of such Act (7 U.S.C.
10 2(d)(1)) is amended by inserting “subsection (j) of
11 this section, and” after “(other than”.

12 (2) Section 2(d)(2) of such Act (7 U.S.C.
13 2(d)(2)) is amended by inserting “subsection (j) of
14 this section, and” after “(other than”.

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

18 (4) Section 2(h)(2)(A) of such Act (7 U.S.C.
19 2(h)(2)(A)), as amended by section 5(c)(3) of this
20 Act, is amended by inserting “subsection (j) of this
21 section and” before “sections”.

22 (5) Section 2(h)(4)(A) of such Act (7 U.S.C.
23 2(h)(4)(A)), as amended by section 5(c)(4) of this
24 Act, is amended by inserting “subsection (j) of this
25 section and” before “sections”.

1 (6) Section 8a(9) of such Act (7 U.S.C.
2 12a(a)(9)) is amended—

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

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

10 **SEC. 12. EXPEDITED PROCESS.**

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

16 **SEC. 13. CERTAIN EXCLUSIONS AND EXEMPTIONS AVAIL-**
17 **ABLE ONLY FOR CERTAIN TRANSACTIONS**
18 **SETTLED AND CLEARED THROUGH REG-**
19 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
20 **TIONS.**

21 (a) IN GENERAL.—

22 (1) EXCLUSION OF CERTAIN DERIVATIVE
23 TRANSACTIONS.—

24 (A) Section 2(d)(1) of the Commodity Ex-
25 change Act (7 U.S.C. 2(d)(1)) is amended—

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

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

6 (iii) by adding at the end the fol-
7 lowing:

8 “(C) except as provided in section 4(h), the
9 agreement, contract, or transaction is settled
10 and cleared through a derivatives clearing orga-
11 nization registered with the Commission.”.

12 (B) Section 2(d)(2) of such Act (7 U.S.C.
13 2(d)(2)) is amended—

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

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

19 (iii) by adding at the end the fol-
20 lowing:

21 “(D) except as provided in section 4(h),
22 the agreement, contract, or transaction is set-
23 tled and cleared through a derivatives clearing
24 organization registered with the Commission.”.

1 (2) EXCLUSION FOR CERTAIN SWAP TRANS-
2 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))
3 is amended—

4 (A) by striking “and” at the end of para-
5 graph (2);

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

8 (C) by adding at the end the following:

9 “(4) except as provided in section 4(h), settled
10 and cleared through a derivatives clearing organiza-
11 tion registered with the Commission.”.

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

14 (A) Section 2(h)(1) of such Act (7 U.S.C.
15 2(h)(1)) is amended—

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

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

21 (iii) by adding at the end the fol-
22 lowing:

23 “(C) except as provided in section 4(h), is
24 settled and cleared through a derivatives clear-

1 ing organization registered with the Commis-
2 sion.”.

3 (B) Section 2(h)(3) of such Act (7 U.S.C.
4 2(h)(3)) is amended—

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

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

10 (iii) by adding at the end the fol-
11 lowing:

12 “(C) except as provided in section 4(h),
13 settled and cleared through a derivatives clear-
14 ing organization registered with the Commis-
15 sion.”.

16 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-
17 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is
18 amended by inserting “the agreement, contract, or
19 transaction, except as provided in section 4(h), will
20 be settled and cleared through a derivatives clearing
21 organization registered with the Commission and”
22 before “the Commission determines”.

23 (b) ALTERNATIVES TO CLEARING THROUGH DERIVA-
24 TIVES CLEARING ORGANIZATIONS.—Section 4 of such Act

1 (7 U.S.C. 6), as amended by sections 3 and 4 of this Act,
2 is amended by adding at the end the following:

3 “(h) ALTERNATIVES TO CLEARING THROUGH DE-
4 RIVATIVES CLEARING ORGANIZATIONS.—

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

7 “(A) An agreement, contract, or trans-
8 action, or class thereof, relating to an excluded
9 commodity, that would otherwise be required to
10 be settled and cleared by section 2(d)(1)(C),
11 2(d)(2)(D), or 2(g)(4) of this Act, or subsection
12 (e)(1) of this section may be settled and cleared
13 through an entity listed in section 409(b)(1) of
14 the Federal Deposit Insurance Corporation Im-
15 provement Act of 1991.

16 “(B) An agreement, contract, or trans-
17 action, or class thereof, that would otherwise be
18 required to be settled and cleared by section
19 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or
20 2(h)(3)(C) of this Act, or subsection (e)(1) of
21 this section may be settled and cleared through
22 an entity listed in section 409(b)(3) of the Fed-
23 eral Deposit Insurance Corporation Improve-
24 ment Act of 1991.

25 “(2) WAIVER OF CLEARING REQUIREMENT.—

1 “(A) The Commission, in its discretion,
2 may exempt an agreement, contract, or trans-
3 action, or class thereof, that would otherwise be
4 required by section 2(d)(1)(C), 2(d)(2)(D),
5 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,
6 or subsection (c)(1) of this section to be settled
7 and cleared through a derivatives clearing orga-
8 nization registered with the Commission from
9 such requirement.

10 “(B) In granting exemptions pursuant to
11 subparagraph (A), the Commission shall consult
12 with the Securities and Exchange Commission
13 and the Board of Governors of the Federal Re-
14 serve System regarding exemptions that relate
15 to excluded commodities or entities for which
16 the Securities Exchange Commission or the
17 Board of Governors of the Federal Reserve Sys-
18 tem serve as the primary regulator.

19 “(C) Before granting an exemption pursu-
20 ant to subparagraph (A), the Commission shall
21 find that the agreement, contract, or trans-
22 action, or class thereof—

23 “(i) is highly customized as to its ma-
24 terial terms and conditions;

25 “(ii) is transacted infrequently;

1 “(iii) does not serve a significant
2 price-discovery function in the market-
3 place; and

4 “(iv) is being entered into by parties
5 who can demonstrate the financial integ-
6 rity of the agreement, contract, or trans-
7 action and their own financial integrity, as
8 such terms and standards are determined
9 by the Commission. The standards shall
10 include a net capital requirement associ-
11 ated with any agreement, contract, or
12 transaction subject to an exemption from
13 the clearing requirement that recognizes
14 the risks associated with the absence of
15 clearing.

16 “(D) Any agreement, contract, or trans-
17 action, or class thereof, which is exempted pur-
18 suant to subparagraph (A) shall be reported in
19 a manner designated by the Commission to the
20 Commission, the Securities and Exchange Com-
21 mission, the Board of Governors of the Federal
22 Reserve System, or such other entity the Com-
23 mission deems appropriate.

24 “(i) SPOT AND FORWARD EXCLUSION.—The settle-
25 ment and clearing requirements of section 2(d)(1)(C),

1 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(e)(1)
2 shall not apply to an agreement, contract, or transaction
3 of any cash commodity for immediate or deferred ship-
4 ment or delivery, as defined by the Commission.”.

5 (c) ADDITIONAL REQUIREMENTS APPLICABLE TO
6 APPLICANTS FOR REGISTRATION AS A DERIVATIVES
7 CLEARING ORGANIZATION.—Section 5b(e)(2) of such Act
8 (7 U.S.C. 7a–1(c)(2)) is amended by adding at the end
9 the following:

10 “(O) DISCLOSURE OF GENERAL INFORMA-
11 TION.—The applicant shall disclose publicly and
12 to the Commission information concerning—

13 “(i) the terms and conditions of con-
14 tracts, agreements, and transactions
15 cleared and settled by the applicant;

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

19 “(iii) the margin-setting methodology
20 and the size and composition of the finan-
21 cial resource package of the applicant; and

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

1 “(P) DAILY PUBLICATION OF TRADING IN-
2 FORMATION.—The applicant shall make public
3 daily information on settlement prices, volume,
4 and open interest for contracts settled or
5 cleared pursuant to the requirements of
6 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),
7 2(h)(3)(C) or 4(c)(1) of this Act by the appli-
8 cant if the Commission determines that the
9 contracts perform a significant price discovery
10 function for transactions in the cash market for
11 the commodity underlying the contracts.

12 “(Q) FITNESS STANDARDS.—The applicant
13 shall establish and enforce appropriate fitness
14 standards for directors, members of any dis-
15 ciplinary committee, and members of the appli-
16 cant, and any other persons with direct access
17 to the settlement or clearing activities of the
18 applicant, including any parties affiliated with
19 any of the persons described in this subpara-
20 graph.”.

21 (d) AMENDMENTS.—

22 (1) Section 409 of the Federal Deposit Insur-
23 ance Corporation Improvement Act of 1991 (12
24 U.S.C. 4422) is amended—

1 (A) in subsection (a), by inserting after
2 “Federal Reserve Act” the following: “, and the
3 person is registered as a clearing agency under
4 the Securities Exchange Act of 1934 or as a de-
5 rivatives clearing organization under the Com-
6 modity Exchange Act”; and

7 (B) in subsection (b)(3), by striking “the
8 Comptroller of the Currency, the Board of Gov-
9 ernors of the Federal Reserve System, the Fed-
10 eral Deposit Insurance Corporation”.

11 (2) Section 407 of the Legal Certainty for
12 Bank Products Act of 2000 (7 U.S.C. 27e) is
13 amended by inserting “and the settlement and clear-
14 ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),
15 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such
16 Act” after “the clearing of covered swap agree-
17 ments”.

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

21 “The Board shall have no power to issue any rule, regula-
22 tion, or order, or otherwise to establish the standards of
23 regulation of any entity in its capacity as a multilateral
24 clearing organization as defined in section 408 of the Fed-

1 eral Deposit Insurance Corporation Improvement Act of
2 1991.”.

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

5 (A) by striking “(b) VOLUNTARY REG-
6 ISTRATION.—A derivatives clearing organiza-
7 tion” and inserting the following:

8 “(b) VOLUNTARY REGISTRATION.—

9 “(1) A derivatives clearing organization”; and.

10 (B) by adding at the end the following:

11 “(2)(A) A national bank, a State member bank,
12 an insured State nonmember bank, an affiliate of a
13 national bank, a State member bank, an insured
14 State nonmember bank, or a corporation chartered
15 under section 25A of the Federal Reserve Act may
16 register with the Commission as a derivatives clear-
17 ing organization.

18 “(B) The Commission shall expedite the appli-
19 cation of any institution referred to in subparagraph
20 (A) to the extent that, as of the date of enactment
21 of this paragraph, the institution had received the
22 approval of the Board of Governors of the Federal
23 Reserve System to act as a multilateral clearing or-
24 ganization.”.

25 (e) EFFECTIVE DATE.—

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

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

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

1 **SEC. 14. TREATMENT OF EMISSION ALLOWANCES AND OFF-**
2 **SET CREDITS.**

3 (a) Section 1a(14) of the Commodity Exchange Act
4 (7 U.S.C. 1a(14)) is amended by striking “or an agricul-
5 tural commodity” and inserting “, an agricultural com-
6 modity, any allowance authorized under law to emit a
7 greenhouse gas, and any credit authorized under law to-
8 ward the reduction in greenhouse gas emissions or an in-
9 crease in carbon sequestration”.

10 (b) Within 180 days after the date of the enactment
11 of this section, the Commodity Futures Trading Commis-
12 sion shall enter into a memorandum of understanding with
13 the Secretary of Agriculture which shall include provi-
14 sions, consistent with section 1245 of the Food Security
15 Act of 1985, ensuring that the development of any proce-
16 dures and protocols for a market-based greenhouse gas
17 program are properly constructed and coordinated to
18 maximize credits for carbon sequestration.

19 **SEC. 15. INSPECTOR GENERAL OF THE COMMODITY FU-**
20 **TURES TRADING COMMISSION.**

21 (a) ELEVATION OF OFFICE.—

22 (1) INCLUSION OF CFTC IN DEFINITION OF ES-
23 TABLISHMENT.—

24 (A) Section 11(1) of the Inspector General
25 Act of 1978 (5 U.S.C. App.) is amended by
26 striking “or the Federal Cochairpersons of the

1 Commissions established under section 15301
2 of title 40, United States Code;” and inserting
3 “the Federal Cochairpersons of the Commis-
4 sions established under section 15301 of title
5 40, United States Code; or the Chairman of the
6 Commodity Futures Trading Commission;”.

7 (B) Section 11(2) of the Inspector General
8 Act of 1978 (5 U.S.C. App.) is amended by
9 striking “or the Commissions established under
10 section 15301 of title 40, United States Code,”
11 and inserting “the Commissions established
12 under section 15301 of title 40, United States
13 Code, or the Commodity Futures Trading Com-
14 mission;”.

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

20 (b) EFFECTIVE DATE; TRANSITION RULE.—

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

24 (2) TRANSITION RULE.—An individual serving
25 as Inspector General of the Commodity Futures

1 Trading Commission on the effective date of this
2 section pursuant to an appointment made under sec-
3 tion 8G of the Inspector General Act of 1978 (5
4 U.S.C. App.)—

5 (A) may continue so serving until the
6 President makes an appointment under section
7 3(a) of such Act consistent with the amend-
8 ments made by this section; and

9 (B) shall, while serving under subpara-
10 graph (A), remain subject to the provisions of
11 section 8G of such Act which apply with respect
12 to the Commodity Futures Trading Commis-
13 sion.

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

17 (a) IN GENERAL.—Section 4c of the Commodity Ex-
18 change Act (7 U.S.C. 6c) is amended by adding at the
19 end the following:

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

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

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

3 “(B) summarily suspend all trading on any
4 contract market, derivatives transaction execu-
5 tion facility, or otherwise, in credit default
6 swaps.

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

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

13 “(B) only apply to credit default swaps
14 that are related to securities subject to a short
15 selling suspension order by the Securities and
16 Exchange Commission, and such action must
17 terminate when such suspension order termi-
18 nates; and

19 “(C) only apply to credit default swaps
20 purchased by persons who are not purchasing
21 the credit default swap to reduce an existing
22 credit risk directly related to the reference enti-
23 ty or its obligations.”.

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

4 “(34) CREDIT DEFAULT SWAP.—The term
5 ‘credit default swap’ means a contract which hedges
6 a party to the contract against the risk that an enti-
7 ty may experience a loss of value as a result of an
8 event specified in the contract, such as a default or
9 credit downgrade. A credit default swap that is pro-
10 posed to be traded or is traded on or proposed to
11 be or is cleared by a registered entity pursuant to
12 this Act shall be excluded from the definition of a
13 security as defined in this Act and in section 2(a)(1)
14 of the Securities Act of 1933 or section 3(a)(10) of
15 the Securities Exchange Act of 1934, except as nec-
16 essary solely for purposes of enforcing prohibitions
17 against insider trading in sections 10 and 16 of the
18 Securities Exchange Act of 1934.”.

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

1 **SEC. 17. AUTHORITY OF COMMODITY FUTURES TRADING**
2 **COMMISSION TO PROSECUTE CRIMINAL VIO-**
3 **LATIONS OF THE COMMODITY EXCHANGE**
4 **ACT.**

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

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

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

13 Section 5(d) of the Commodity Exchange Act (7
14 U.S.C. 7(d)) is amended by adding at the end the fol-
15 lowing:

16 “(19) DIVERSITY OF BOARDS OF DIRECTORS.—
17 The board of trade of a publicly traded company
18 shall endeavor to recruit individuals to serve on the
19 board of directors and the other decision-making
20 bodies (as determined by the Commission) of the
21 board of trade from among, and to have the com-
22 position of such bodies reflect, a broad and cul-
23 turally diverse pool of qualified candidates.”.