

105TH CONGRESS
1ST SESSION

S. 256

To amend the Commodity Exchange Act to require the Commodity Futures Trading Commission to regulate certain cash markets, such as the National Cheese Exchange, until the Commission determines that the markets do not establish reference points for other transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 1997

Mr. KOHL (for himself and Mr. FEINGOLD) 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 require the Commodity Futures Trading Commission to regulate certain cash markets, such as the National Cheese Exchange, until the Commission determines that the markets do not establish reference points for other transactions, 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 “National Cheese Ex-
5 change Oversight and Improvement Act of 1997”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that the operation of the National
3 Cheese Exchange and other cash markets is of national
4 concern and in need of Federal oversight because of the
5 following:

6 (1) The National Cheese Exchange, located in
7 Green Bay, Wisconsin, is the dominant cash market
8 for bulk cheese in the United States.

9 (2) While less than 1 percent of the cheese pro-
10 duced in the United States is sold on the National
11 Cheese Exchange, the price determined by the Na-
12 tional Cheese Exchange acts as a reference price for
13 as much as 95 percent of the commercial cheese
14 transactions conducted in the United States.

15 (3) A 3-year federally funded investigation into
16 the activities of the National Cheese Exchange de-
17 termined that the National Cheese Exchange is very
18 thinly traded, highly concentrated, completely un-
19 regulated, and subject to manipulation.

20 (4) The Coffee, Sugar, and Cocoa Exchange in
21 New York, an exchange regulated by the Commodity
22 Futures Trading Commission, trades futures con-
23 tracts for cheese.

24 (5) The low volume in trading of cheese futures
25 contracts on the Coffee, Sugar, and Cocoa Exchange

1 is partially related to concerns about the lack of via-
 2 bility, and potential for manipulation, in the domi-
 3 nant cash market for cheese, the National Cheese
 4 Exchange.

5 (6) The National Cheese Exchange is com-
 6 pletely unregulated by any Federal or State agency.

7 (7) The Commodity Futures Trading Commis-
 8 sion claims a lack of authority to regulate or oversee
 9 the National Cheese Exchange and similar cash
 10 markets.

11 **SEC. 3. COMMODITY FUTURES TRADING COMMISSION REG-**
 12 **ULATION OF NATIONAL CHEESE EXCHANGE**
 13 **AND SIMILAR CASH MARKETS.**

14 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
 15 is amended by inserting after section 20 (7 U.S.C. 24)
 16 the following new section:

17 **“SEC. 21. COMMISSION REGULATION OF NATIONAL CHEESE**
 18 **EXCHANGE AND SIMILAR CASH MARKETS.**

19 “(a) DEFINITION OF CONCENTRATED CASH MAR-
 20 KET.—In this section, the term ‘concentrated cash mar-
 21 ket’ means—

22 “(1) the National Cheese Exchange located in
 23 Green Bay, Wisconsin; and

24 “(2) a cash market for a commodity if the
 25 Commission determines that—

1 “(A) the cash market is geographically
2 centralized in the form of a market or ex-
3 change;

4 “(B) the cash market is very thinly traded
5 or highly illiquid;

6 “(C) the price established by the cash mar-
7 ket functions as a reference price for a majority
8 of commercial transactions off the cash market
9 for the commodity being traded;

10 “(D) trading in the cash market is con-
11 centrated among relatively few buyers and sell-
12 ers;

13 “(E) the cash market is substantially un-
14 regulated by any other regulatory structure (in-
15 cluding State regulation or self-regulation);

16 “(F) a futures market regulated under this
17 Act also exists for the commodity that is being
18 traded on the cash market; and

19 “(G) the instability, illiquidity, or potential
20 for manipulation for on the cash market could
21 be a deterrent to the use of the futures market
22 for that commodity.

23 “(b) REGULATION OF CONCENTRATED CASH MAR-
24 KETS.—In consultation with the Secretary of Agriculture,
25 the Commission shall regulate a concentrated cash market

1 under this Act until such time as the Commission deter-
2 mines that the concentrated cash market is not function-
3 ing as a reference price for a majority of commercial
4 transactions off the cash market for the commodity being
5 traded on the concentrated cash market.

6 “(c) SUBMISSION AND REVIEW OF OPERATING
7 RULES.—The Commission shall require a cash market
8 that is subject to this section to—

9 “(1) SUBMISSION REQUIRED.—The Commission
10 shall require a concentrated cash market subject to
11 regulation under subsection (b) to submit to the
12 Commission for approval a set of rules governing the
13 operation of the concentrated cash market; and

14 “(2) TIME FOR SUBMISSION.—In the case of
15 the National Cheese Exchange, the operating rules
16 required under this subsection shall be submitted
17 not later than 90 days after the date of enactment
18 of this section. In the case of other concentrated
19 cash markets, the operating rules shall be submitted
20 not later than 90 days after the date on which the
21 Commission notifies the concentrated cash market
22 that it is subject to regulation under this section.

23 “(3) NOTIFICATION OF COMMISSION ACTION.—
24 The Commission shall promptly review operating
25 rules submitted by a concentrated cash market

1 under this subsection to determine whether the rules
2 are sufficient to govern the operation of the con-
3 centrated cash market. Not later than 60 days after
4 receiving the rules from a concentrated cash market,
5 the Commission shall notify the concentrated cash
6 market of the result of the review, including whether
7 the rules are approved or disapproved. If dis-
8 approved, the Commission shall provide such rec-
9 ommendations regarding changes to the rules as the
10 Commission considers necessary to secure approval
11 and provide a schedule for resubmission of the rules.

12 “(4) SUBSEQUENT RULE CHANGES.—A con-
13 centrated cash market may not change approved op-
14 erating rules unless the proposed change is also sub-
15 mitted to the Commission for review and the Com-
16 mission approves the change in the manner provided
17 in paragraph (3).

18 “(d) EFFECT OF FAILURE TO SUBMIT OR RECEIVE
19 APPROVAL OF RULES.—Beginning 1 year after the date
20 of the enactment of this section, the National Cheese Ex-
21 change may operate only in accordance with rules ap-
22 proved by the Commission under subsection (c). In the
23 case of other concentrated cash markets, beginning 1 year
24 after the date on which the concentrated cash market is
25 notified that it is subject to regulation under this section,

1 the concentrated cash market may operate only in accord-
2 ance with rules approved by the Commission under sub-
3 section (c).”.

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