

110TH CONGRESS
1ST SESSION

H. R. 4066

To amend the Commodity Exchange Act to close the Enron loophole, prevent price manipulation and excessive speculation in the trading of energy commodities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2007

Mr. WELCH of Vermont (for himself and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Commodity Exchange Act to close the Enron loophole, prevent price manipulation and excessive speculation in the trading of energy commodities, 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 “Close the Enron Loop-
5 hole Act”.

6 **SEC. 2. ENERGY TRADING FACILITIES.**

7 (a) DEFINITIONS.—Section 1a of the Commodity Ex-
8 change Act (7 U.S.C. 1a) is amended by redesignating

1 paragraphs (13) through (33) as paragraphs (15) through
2 (35), respectively, and by inserting after paragraph (12)
3 the following:

4 “(13) ENERGY COMMODITY.—The term ‘energy
5 commodity’ means a commodity (other than an ex-
6 cluded commodity, a metal, or an agricultural com-
7 modity) that—

8 “(A) is used as a source of energy, includ-
9 ing but not limited to—

10 “(i) crude oil;

11 “(ii) gasoline, diesel fuel, heating oil,
12 and any other product derived or refined
13 from crude oil;

14 “(iii) natural gas, including methane,
15 propane, and any other gas or liquid de-
16 rived from natural gas; and

17 “(iv) electricity; or

18 “(B) results from the burning of fossil
19 fuels to produce energy, including but not lim-
20 ited to carbon dioxide and sulfur dioxide.

21 “(14) ENERGY TRADING FACILITY.—The term
22 ‘energy trading facility’ means a trading facility
23 that—

24 “(A) is not a designated contract market;

25 and

1 “(B) facilitates the execution or trading of
2 agreements, contracts, or transactions in an en-
3 ergy commodity that are not spot sales of a
4 cash commodity or sales of a cash commodity
5 for deferred shipment or delivery, and that are
6 entered into on a principal-to-principal basis
7 solely between persons that are eligible commer-
8 cial entities at the time the persons enter into
9 the agreement, contract, or transaction; and

10 “(i) facilitates the clearance and set-
11 tlement of such agreements, contracts, or
12 transactions; or

13 “(ii) the Commission determines per-
14 forms a significant price discovery function
15 in relation to an energy commodity listed
16 for trading on a trading facility or in the
17 cash market for the energy commodity. In
18 making a determination whether a trading
19 facility performs a significant price dis-
20 covery function the Commission may con-
21 sider, as appropriate—

22 “(I) the extent to which the price
23 of an agreement, contract, or trans-
24 action traded or executed on the trad-
25 ing facility is derived from or linked

1 to the price of a contract in an energy
2 commodity listed for trading on a des-
3 ignated contract market;

4 “(II) the extent to which cash
5 market bids, offers, or transactions in
6 an energy commodity are directly
7 based on, or quoted at a differential
8 to, the prices generated by agree-
9 ments, contracts, or transactions in
10 the same energy commodity being
11 traded or executed on the trading fa-
12 cility;

13 “(III) the volume of agreements,
14 contracts, or transactions in the en-
15 ergy commodity being traded on the
16 trading facility;

17 “(IV) the extent to which data
18 regarding completed transactions are
19 posted, disseminated, or made avail-
20 able immediately after completion of
21 such transactions, with or without a
22 fee, to other market participants and
23 other persons;

24 “(V) the extent to which an arbi-
25 trage market exists between the

1 agreements, contracts, or transactions
2 traded or executed on the trading fa-
3 cility and a contract in an energy
4 commodity listed for trading on a des-
5 ignated contract market; and

6 “(VI) such other factors as the
7 Commission determines appropriate.”.

8 (b) COMMISSION OVERSIGHT OF ENERGY TRADING
9 FACILITIES.—Section 2(h) of such Act (7 U.S.C. 2(h)) is
10 amended—

11 (1) in paragraph (3)(B) after “an electronic
12 trading facility” by inserting “that is not an energy
13 trading facility”; and

14 (2) by adding at the end the following:

15 “(7) ENERGY TRADING FACILITIES.—Notwith-
16 standing any other provision of this Act, an energy
17 trading facility shall be subject to section 2(j).”.

18 (c) STANDARDS APPLICABLE TO ENERGY TRADING
19 FACILITIES.—Section 2 of such Act (7 U.S.C. 2) is
20 amended by adding at the end the following:

21 “(j) REGISTRATION OF ENERGY TRADING FACILI-
22 TIES.—

23 “(1) IN GENERAL.—It shall be unlawful for any
24 person to enter into an agreement, contract, or
25 transaction for future delivery of an energy com-

1 modity that is not a spot sale of a cash commodity
2 or a sale of a cash commodity for deferred shipment
3 or delivery, on or through an energy trading facility
4 unless such facility is registered with the Commis-
5 sion as an energy trading facility.

6 “(2) APPLICATIONS.—Any trading facility ap-
7 plying to the Commission for registration as an en-
8 ergy trading facility shall submit an application to
9 the Commission that includes any relevant materials
10 and records, consistent with the Act, that the Com-
11 mission may require.

12 “(3) COMMISSION ACTION.—The Commission
13 shall make a determination whether to approve an
14 application for registration as an energy trading fa-
15 cility within 120 days after such application is sub-
16 mitted.

17 “(4) CRITERIA FOR REGISTRATION.—To be reg-
18 istered as an energy trading facility, the applicant
19 shall demonstrate to the Commission that the trad-
20 ing facility meets the criteria specified in this para-
21 graph.

22 “(A) PREVENTION OF PRICE MANIPULA-
23 TION AND EXCESSIVE SPECULATION.—The
24 trading facility shall have the capacity to pre-
25 vent price manipulation, excessive speculation,

1 price distortion, and disruption of the delivery
2 or cash-settlement process through market sur-
3 veillance, compliance, and enforcement practices
4 and procedures, including methods for con-
5 ducting real-time monitoring of trading and
6 comprehensive and accurate trade reconstruc-
7 tions.

8 “(B) MONITORING OF TRADING.—The
9 trading facility shall monitor trading to prevent
10 price manipulation, excessive speculation, price
11 distortion, and disruption of the delivery or
12 cash-settlement process.

13 “(C) CONTRACTS NOT READILY SUSCEP-
14 TIBLE TO MANIPULATION.—The trading facility
15 shall list for trading only contracts that are not
16 readily susceptible to manipulation.

17 “(D) FINANCIAL INTEGRITY OF TRANS-
18 ACTIONS.—A trading facility that facilitates the
19 clearance and settlement of agreements, con-
20 tracts, or transactions by a derivatives clearing
21 organization shall establish and enforce rules
22 and procedures for ensuring the financial integ-
23 rity of such agreements, contracts, and trans-
24 actions.

1 “(E) ABILITY TO OBTAIN INFORMATION.—
2 The trading facility shall establish and enforce
3 rules that will allow the trading facility to ob-
4 tain any necessary information to perform any
5 of the functions described in this subsection, in-
6 cluding the capacity to carry out such inter-
7 national information-sharing agreements as the
8 Commission may require.

9 “(F) POSITION LIMITS OR ACCOUNT-
10 ABILITY LEVELS.—To reduce the threat of
11 price manipulation, excessive speculation, price
12 distortion, or disruption of the delivery or cash-
13 settlement process, the trading facility shall
14 adopt position limits or position accountability
15 levels for speculators, where necessary and ap-
16 propriate.

17 “(G) EMERGENCY AUTHORITY.—The trad-
18 ing facility shall adopt rules to provide for the
19 exercise of emergency authority, in consultation
20 and cooperation with the Commission, where
21 necessary and appropriate, including the au-
22 thority to—

23 “(i) liquidate open positions in any
24 contract;

1 “(ii) suspend or curtail trading in any
2 contract; and

3 “(iii) require market participants in
4 any contract to meet special margin re-
5 quirements.

6 “(H) DAILY PUBLICATION OF TRADING IN-
7 FORMATION.—The trading facility shall make
8 public daily information on settlement prices,
9 volume, open interest, and opening and closing
10 ranges for actively traded contracts on the facil-
11 ity.

12 “(I) DETERRENCE OF ABUSES.—The trad-
13 ing facility shall establish and enforce trading
14 and participation rules that will deter abuses
15 and shall have the capacity to detect, inves-
16 tigate violations of, and enforce those rules, in-
17 cluding means to—

18 “(i) obtain information necessary to
19 perform the functions required under this
20 section; or

21 “(ii) use technological means to cap-
22 ture information that may be used in es-
23 tablishing whether rule violations have oc-
24 curred.

1 “(J) TRADE INFORMATION.—The trading
2 facility shall maintain rules and procedures to
3 provide for the recording and safe storage of all
4 identifying trade information in a manner that
5 enables the facility to use the information for
6 the purposes of assisting in the prevention of
7 price manipulation, excessive speculation, price
8 distortion, or disruption of the delivery or cash-
9 settlement process, and providing evidence of
10 any violations of the rules of the facility.

11 “(K) TRADING PROCEDURES.—The trad-
12 ing facility shall establish and enforce rules or
13 terms and conditions defining, or specifications
14 detailing, trading procedures to be used in en-
15 tering and executing orders traded on the facil-
16 ity, including procedures to provide participants
17 with impartial access to the trading facility.

18 “(L) COMPLIANCE WITH RULES.—The
19 trading facility shall monitor and enforce the
20 rules of the facility, including any terms and
21 conditions of any contracts traded on or
22 through the facility and any limitations on ac-
23 cess to the facility.

24 “(M) DISCLOSURE OF GENERAL INFORMA-
25 TION.—The trading facility shall disclose pub-

1 likely and to the Commission information con-
2 cerning—

3 “(i) contract terms and conditions;

4 “(ii) trading conventions, mechanisms,
5 and practices;

6 “(iii) financial integrity protections;

7 and

8 “(iv) other information relevant to
9 participation in trading on the facility.

10 “(N) FITNESS STANDARDS.—The trading
11 facility shall establish and enforce appropriate
12 fitness standards for directors, members of any
13 disciplinary committee, and any other persons
14 with direct access to the facility, including any
15 parties affiliated with any of the persons de-
16 scribed in this paragraph.

17 “(O) CONFLICTS OF INTEREST.—The
18 trading facility shall establish and enforce rules
19 to minimize conflicts of interest in the decision
20 making process of the facility and establish a
21 process for resolving such conflicts of interest.

22 “(P) RECORDKEEPING.—The trading facil-
23 ity shall maintain records of all activities re-
24 lated to the business of the facility in a form

1 and manner acceptable to the Commission for a
2 period of 5 years.

3 “(Q) ANTITRUST CONSIDERATIONS.—Un-
4 less necessary or appropriate to achieve the
5 purposes of this Act, the trading facility shall
6 endeavor to avoid—

7 “(i) adopting any rules or taking any
8 actions that result in any unreasonable re-
9 straint of trade; or

10 “(ii) imposing any material anti-
11 competitive burden on trading on the facil-
12 ity.

13 “(5) CRITERIA FOR ENERGY TRADING FACILI-
14 TIES.—To maintain the registration as an energy
15 trading facility, the trading facility shall comply with
16 all of the criteria in paragraph (4). Failure to com-
17 ply with any of these criteria shall constitute a viola-
18 tion of this Act. The trading facility shall have rea-
19 sonable discretion in establishing the manner in
20 which it complies with the criteria in paragraph (4).

21 “(6) POSITION LIMITS AND ACCOUNTABILITY
22 LEVELS.—

23 “(A) DUTY OF COMMISSION.—The Com-
24 mission shall ensure that the position limits and
25 accountability levels applicable to contracts in

1 an energy commodity listed for trading on a
2 designated contract market and the position
3 limits and accountability levels applicable to
4 similar contracts in the same energy commodity
5 listed for trading on an energy trading facil-
6 ity—

7 “(i) appropriately prevent price ma-
8 nipulation, excessive speculation, price dis-
9 tortion, and disruption of the delivery or
10 cash-settlement process; and

11 “(ii) are on a parity with each other
12 and applied in a functionally equivalent
13 manner.

14 “(B) COMMISSION REVIEW.—Upon learn-
15 ing that a person has exceeded an applicable
16 position limit or accountability level in an en-
17 ergy commodity, the Commission shall obtain
18 such information as it determines to be nec-
19 essary and appropriate regarding all of the po-
20 sitions held by such person in such energy com-
21 modity and take such action as may be nec-
22 essary and appropriate, in addition to any ac-
23 tion taken by an energy trading facility or a
24 designated contract market, to require, or direct
25 an energy trading facility or a designated con-

1 tract market to require, such person to limit,
2 reduce, or liquidate any position to prevent or
3 reduce the threat of price manipulation, exces-
4 sive speculation, price distortion, or disruption
5 of the delivery or cash-settlement process.

6 “(C) INFORMATION TO COMMISSION.—In
7 order to make any determination required
8 under this section, the Commission may request
9 all relevant information regarding all of the po-
10 sitions held by any person in the energy com-
11 modity for which the person has exceeded a po-
12 sition limit or accountability level, including po-
13 sitions held or controlled or transactions exe-
14 cuted—

15 “(i) on or through—

16 “(I) a designated contract mar-
17 ket;

18 “(II) an energy trading facility;

19 “(III) an electronic trading facil-
20 ity operating pursuant to paragraphs
21 (3) through (5) of section 2(h);

22 “(IV) an exempt board of trade
23 operating pursuant to section 5d;

24 “(V) a derivative transaction exe-
25 cution facility; or

1 “(VI) a foreign board of trade;

2 “(ii) within the scope of section 2(g),

3 or paragraphs (1) and (2) of section 2(h);

4 or

5 “(iii) in the cash market for the com-

6 modity.

7 “(D) REQUIREMENT TO RETAIN AND PRO-

8 VIDE POSITION INFORMATION.—

9 “(i) IN GENERAL.—Any person enter-

10 ing into or executing an agreement, con-

11 tract, or transaction with respect to an en-

12 ergy commodity on a designated contract

13 market or on an energy trading facility

14 shall retain such books and records as the

15 Commission may require in order to pro-

16 vide such information upon request, and

17 upon request shall promptly provide such

18 information to the Commission or the De-

19 partment of Justice.

20 “(ii) ALTERNATE MEANS OF OBTAIN-

21 ING POSITION INFORMATION.—Notwith-

22 standing this requirement to retain and

23 provide position information, the Commis-

24 sion may alternatively choose to obtain any

25 of the position information specified in this

1 paragraph from the trading facility at
2 which such positions are maintained.

3 “(E) CRITERIA FOR COMMISSION DETER-
4 MINATION.—In making any determination to
5 require a limitation, reduction, or liquidation of
6 any position with respect to an energy com-
7 modity, the Commission may consider, as ap-
8 propriate—

9 “(i) the person’s open interest in a
10 contract, agreement, or transaction involv-
11 ing an energy commodity relative to the
12 total open interest in such contracts,
13 agreements, or transactions;

14 “(ii) the daily volume of trading in
15 such contracts, agreements or transactions;

16 “(iii) the person’s overall position in
17 related contracts, including options, and
18 the overall open interest or liquidity in
19 such related contracts and options;

20 “(iv) the potential for such positions
21 to cause or allow price manipulation, exces-
22 sive speculation, price distortion, or disrupt-
23 tion of the delivery or cash-settlement
24 process;

1 “(v) the person’s record of compliance
2 with rules, regulations, and orders of the
3 Commission, a designated contract market,
4 or an energy trading facility, as appro-
5 priate;

6 “(vi) the person’s financial ability to
7 support such positions on an ongoing
8 basis;

9 “(vii) any justification provided by the
10 person for such positions; and

11 “(viii) other such factors determined
12 to be appropriate by the Commission.”.

13 (d) INFORMATION FOR PRICE DISCOVERY DETER-
14 MINATION.—

15 (1) Section 2(h)(5)(B) of such Act (7 U.S.C.
16 2(h)(5)(B)) is amended—

17 (A) by striking “and” at the end of clause
18 (ii)(II);

19 (B) by adding “and” at the end of clause
20 (iii)(III); and

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

22 “(iv) to the extent that the electronic
23 trading facility provides for the trading of
24 agreements, contracts, or transactions in
25 an energy commodity, provide the Commis-

1 sion with such information as the Commis-
2 sion determines necessary to evaluate
3 whether the energy trading facility per-
4 forms a significant price discovery function
5 in relation to a contract in an energy com-
6 modity listed for trading on a trading facil-
7 ity or in the cash market for the energy
8 commodity, including the provision of such
9 requested information on a continuous
10 basis;”.

11 (2) Section 5a(b) of the Commodity Exchange
12 Act (7 U.S.C. 7a(b)) is amended by adding the fol-
13 lowing:

14 “(5) PRICE DISCOVERY FOR ENERGY COM-
15 MODITY.—A registered derivatives transaction execu-
16 tion facility shall, to the extent that it provides for
17 the trading of any contract of sale of a commodity
18 for future delivery (or option on such contract)
19 based on an energy commodity, provide the Commis-
20 sion with such information as the Commission deter-
21 mines necessary to evaluate whether the registered
22 derivatives transaction execution facility performs a
23 significant price discovery function in relation to a
24 contract in an energy commodity listed for trading
25 on a trading facility or in the cash market for the

1 energy commodity, including the provision of such
2 requested information on a continuous basis.”.

3 (e) CONFORMING AMENDMENTS.—The Commodity
4 Exchange Act is amended—

5 (1) in section 1a(29) (7 U.S.C. 1a(29))—

6 (A) in subparagraph (C), by striking
7 “and”;

8 (B) in subparagraph (D), by striking the
9 period and inserting “; and”; and

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

11 “(E) an energy trading facility registered
12 under section 2(j).”;

13 (2) in section 4(a) (7 U.S.C. 6(a))—

14 (A) in paragraph (1), by inserting “reg-
15 istered energy trading facility or a” after “sub-
16 ject to the rules of a”; and

17 (B) in paragraph (3), by striking “or de-
18 rivatives transaction execution facility” and in-
19 serting “, derivatives transaction execution fa-
20 cility, or energy trading facility”;

21 (3) in section 4(c) (7 U.S.C. 6(c)), by inserting
22 “registered energy trading facility or” in the par-
23 entetical after “including any”;

24 (4) in section 4a(a) (7 U.S.C. 6a(a))—

1 (A) in the 1st sentence, by striking “or de-
2 rivatives transaction execution facilities” and
3 inserting “, derivatives transaction execution fa-
4 cilities, or energy trading facilities”; and

5 (B) in the 2nd sentence, by striking “or
6 derivatives transaction execution facility” and
7 inserting “, derivatives transaction execution fa-
8 cility, or energy trading facility”;

9 (5) in section 4a(b) (7 U.S.C. 6a(b))—

10 (A) in paragraph (1), by striking “or de-
11 rivatives transaction execution facility or facili-
12 ties” and inserting “derivatives transaction exe-
13 cution facility or facilities, or energy trading fa-
14 cility or facilities”;

15 (B) in paragraph (2), by striking “or de-
16 rivatives transaction execution facility” and in-
17 serting “, derivatives transaction execution fa-
18 cility, or energy trading facility”;

19 (6) in section 4a(e) (7 U.S.C. 6a(e))—

20 (A) in the 1st sentence—

21 (i) by inserting “or by any energy
22 trading facility” after “registered by the
23 Commission”;

24 (ii) by striking “or derivatives trans-
25 action execution facility” and inserting “,

1 derivatives transaction execution facility,
2 or energy trading facility”; and

3 (iii) by inserting “energy trading facil-
4 ity,” before “or such board of trade” each
5 time it appears; and

6 (B) in the 2nd sentence, by inserting “or
7 energy trading facility” after “registered by the
8 Commission”;

9 (7) in each of sections 4e, 4i, paragraphs (1),
10 (2), and (3) of section 5c(b), and 6(b) (7 U.S.C. 6e,
11 6i, 7a–2(b)(1), (2), and (3), and 8(b)), by striking
12 “or derivatives transaction execution facility” and
13 inserting “, derivatives transaction execution facility,
14 or energy trading facility” each place it appears;

15 (8) in each of paragraphs (2) and (3) of section
16 4l (7 U.S.C. 6l(2) and (3)), by striking “or deriva-
17 tives transaction execution facilities” and inserting
18 “derivatives transaction execution facilities, or en-
19 ergy trading facilities”;

20 (9) in section 6(b) (7 U.S.C. 8(b)), by striking
21 “sections 5 through 5b” and inserting “section 2(j),
22 sections 5 through 5b,”; and

23 (10) in section 6d(1) (7 U.S.C. 13a–2(1)), by
24 inserting “energy trading facility,” after “derivatives
25 transaction execution facility,”.

1 **SEC. 3. REPORTING OF UNITED STATES ENERGY TRADES.**

2 Section 2 of the Commodity Exchange Act (7 U.S.C.
3 1a), as amended by section 2(c) of this Act, is amended
4 by adding at the end the following:

5 “(k) DOMESTIC ENERGY TRADES ON A FOREIGN
6 BOARD OF TRADE.—

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) DOMESTIC TERMINAL.—The term
9 ‘domestic terminal’ means a technology, soft-
10 ware, or other means of providing electronic ac-
11 cess within the United States to a contract,
12 agreement, or transaction traded on a foreign
13 board of trade.

14 “(B) REPORTABLE CONTRACT.—The term
15 ‘reportable contract’ means a contract, agree-
16 ment, or transaction for future delivery of an
17 energy commodity (or option thereon), or an
18 option on an energy commodity, for which the
19 underlying commodity has a physical delivery
20 point within the United States and that is exe-
21 cuted through a domestic terminal.

22 “(2) RECORD KEEPING.—The Commission, by
23 rule, shall require any person holding, maintaining,
24 or controlling any position in any reportable contract
25 under this section—

1 “(A) to maintain such records as directed
2 by the Commission for a period of 5 years, or
3 longer, if directed by the Commission; and

4 “(B) to provide such records upon request
5 to the Commission or the Department of Jus-
6 tice.

7 “(3) REPORTING.—The Commission shall pre-
8 scribe rules requiring such regular or continuous re-
9 porting of positions in a reportable contract in ac-
10 cordance with such requirements regarding size lim-
11 its for reportable contracts and the form, timing,
12 and manner of filing such reports under this para-
13 graph, as the Commission shall determine.

14 “(4) EQUIVALENT MEANS OF OBTAINING IN-
15 FORMATION.—The Commission may waive the re-
16 quirement under paragraph (3) if the Commission
17 determines that the foreign board of trade is pro-
18 viding the Commission with equivalent information
19 in a usable format pursuant to an agreement be-
20 tween the Commission and the foreign board of
21 trade or a foreign futures authority, department or
22 agency of a foreign government, or political subdivi-
23 sion thereof.

24 “(5) OTHER RULES NOT AFFECTED.—

1 “(A) IN GENERAL.—Except as provided in
2 clause (ii), this paragraph does not prohibit or
3 impair the adoption by any board of trade or
4 energy trading facility licensed, designated, or
5 registered by the Commission of any bylaw,
6 rule, regulation, or resolution requiring reports
7 of positions in any agreement, contract, or
8 transaction for future delivery of an energy
9 commodity (or option thereon), or option on an
10 energy commodity, including any bylaw, rule,
11 regulation, or resolution pertaining to filing or
12 recordkeeping, which may be held by any per-
13 son subject to the rules of the board of trade
14 or energy trading facility.

15 “(B) EXCEPTION.—Any bylaw, rule, regu-
16 lation, or resolution established by a board of
17 trade or energy trading facility described in
18 clause (i) shall not be inconsistent with any re-
19 quirement prescribed by the Commission under
20 this paragraph.”.

21 **SEC. 4. ANTIFRAUD AUTHORITY.**

22 Section 4b of the Commodity Exchange Act (7 U.S.C.
23 6b) is amended—

24 (1) by redesignating subsections (b) and (c) as
25 subsections (c) and (d), respectively; and

1 (2) by striking “**SEC. 4B.**” and all that follows
2 through the end of subsection (a) and inserting the
3 following:

4 **“SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MIS-**
5 **LEAD.**

6 “(a) UNLAWFUL ACTIONS.—It shall be unlawful—

7 “(1) for any person, in or in connection with
8 any order to make, or the making of, any contract
9 of sale of any commodity in interstate commerce or
10 for future delivery that is made, or to be made, on
11 or subject to the rules of a designated contract mar-
12 ket, for or on behalf of any other person; or

13 “(2) for any person, in or in connection with
14 any order to make, or the making of, any contract
15 of sale of any commodity for future delivery, or
16 other agreement, contract, or transaction subject to
17 paragraphs (1) and (2) of section 5a(g), that is
18 made, or to be made, for or on behalf of, or with,
19 any other person, other than on or subject to the
20 rules of a designated contract market—

21 “(A) to cheat or defraud or attempt to
22 cheat or defraud the other person;

23 “(B) willfully to make or cause to be made
24 to the other person any false report or state-

1 ment or willfully to enter or cause to be entered
2 for the other person any false record;

3 “(C) willfully to deceive or attempt to de-
4 ceive the other person by any means whatsoever
5 in regard to any order or contract or the dis-
6 position or execution of any order or contract,
7 or in regard to any act of agency performed,
8 with respect to any order or contract for or, in
9 the case of paragraph (2), with the other per-
10 son; or

11 “(D)(i) to bucket an order if the order is
12 represented by the person as an order to be ex-
13 ecuted, or is required to be executed, on or sub-
14 ject to the rules of a designated contract mar-
15 ket; or

16 “(ii) to fill an order by offset against the
17 order or orders of any other person, or willfully
18 and knowingly and without the prior consent of
19 the other person to become the buyer in respect
20 to any selling order of the other person, or be-
21 come the seller in respect to any buying order
22 of the other person, if the order is represented
23 by the person as an order to be executed, or is
24 required to be executed, on or subject to the
25 rules of a designated contract market unless the

1 order is executed in accordance with the rules
2 of the designated contract market.

3 “(b) CLARIFICATION.—Subsection (a)(2) of this sec-
4 tion shall not obligate any person, in or in connection with
5 a transaction in a contract of sale of a commodity for fu-
6 ture delivery, or other agreement, contract or transaction
7 subject to paragraphs (1) and (2) of section 5a(g), with
8 another person, to disclose to the other person nonpublic
9 information that may be material to the market price,
10 rate, or level of the commodity or transaction, except as
11 necessary to make any statement made to the other person
12 in or in connection with the transaction, not misleading
13 in any material respect.”.

14 **SEC. 5. COMMISSION RULEMAKING.**

15 Not later than 180 days after the date of the enact-
16 ment of this Act, the Commission shall issue a proposed
17 rule regarding the requirements for an application for reg-
18 istration for an energy trading facility, and not later than
19 270 days after such date of enactment, shall issue a final
20 rule regarding the requirements.

21 **SEC. 6. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except as provided in this section,
23 this Act shall become effective immediately upon enact-
24 ment.

1 (b) TRADING FACILITIES.—With respect to any trad-
2 ing facility operating on the date of enactment of this Act
3 in reliance upon the exemption set forth in section 2(h)(3)
4 of the Commodity Exchange Act with respect to an energy
5 commodity, the prohibition in section 2(j)(1) of the Com-
6 modity Exchange Act, as added by this Act, shall not
7 apply, if the trading facility submits an application to the
8 Commodity Futures Trading Commission (in this section
9 referred to as the “Commission”) for registration as an
10 energy trading facility within 180 days after the Commis-
11 sion promulgates a final rule regarding the requirements
12 for an application for registration for an energy trading
13 facility, prior to a determination by the Commission on
14 whether to approve such application.

15 (c) EXTENSIONS.—(1) At the time the Commission
16 approves an application by a trading facility operating on
17 the date of enactment of this Act in reliance on the exemp-
18 tion set forth in section 2(h)(3) of the Commodity Ex-
19 change Act for registration as an energy trading facility,
20 the Commission shall, upon the written request of the fa-
21 cility, grant an extension of up to 180 days to fully imple-
22 ment a requirement applicable under this Act to an energy
23 trading facility.

24 (2) The Commission may in its discretion, upon the
25 written request of the facility and for good cause, grant

1 an additional extension of up to 6 months to fully imple-
2 ment a requirement for which an initial extension has been
3 granted under paragraph (1).

4 (3) The Commission may not grant any extension
5 under paragraphs (1) or (2) for any information reporting
6 or recordkeeping requirement.

7 (d) DOMESTIC TRADING ON FOREIGN BOARDS OF
8 TRADE.—Section 3 shall take effect 180 days after the
9 date of the enactment of this Act.

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