AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS
2D SESSION

S. 3671

To amend the Commodity Exchange Act to require the Commodity Futures Trading Commission to develop and impose aggregate position limits on certain large over-the-counter transactions and classes of large over-the-counter transactions.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

Mrs. FEINSTEIN 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 develop and impose aggregate position limits on certain large over-the-counter transactions and classes of large over-the-counter transactions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Over-the-Counter Swaps Speculation Limit Act''.

SEC. 2. AGGREGATE POSITION LIMITS.

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

"(j) AGGREGATE POSITION LIMITS.—

"(1) DEFINITION OF BONA FIDE HEDGING TRANSACTION.—In this subsection:

"(A) IN GENERAL.—The term 'bona fide hedging transaction' means a transaction that—

"(i) is a substitute for a transaction to be made or a position to be taken at a later time in a physical marketing channel;

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

"(iii) arises from a potential change in the value of—

"(I) assets that a person owns, produces, manufactures, possesses, or merchandises (or anticipates owning, producing, manufacturing, possessing, or merchandising);

"(II) liabilities that a person incurs or anticipates incurring; or

"(III) services that a person provides or purchases (or anticipates providing or purchasing).

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

"(2) AGGREGATE POSITION LIMITS.—

"(A) DEVELOPMENT; IMPOSITION.—Notwithstanding any other provision of this Act, in accordance with subparagraph (B), to reduce the potential threat of market manipulation, excessive speculation, or congestion in any contract listed for trading on a registered entity or a contract that the Commission has determined to provide a price discovery role, the Commission shall impose aggregate position limits on positions held on registered entities, foreign boards of trade, and each large over-the-counter transaction or class of large over-the-counter transactions that the Commission determines to be appropriate to assist the Commission in pro-

tecting the price discovery function of contracts under the jurisdiction of the Commission.

"(B) REQUIREMENTS FOR DEVELOPMENT AND IMPOSITION OF AGGREGATE POSITION LIMITS.—

"(i) EVALUATION SYSTEM.—In developing aggregate position limits under subparagraph (A), the Commission shall establish a system for evaluating the degree to which—

"(I) each large over-the-counter transaction and class of large over-the-counter transactions are equivalent to positions in contracts on registered entities; and

"(II) contracts on registered entities are equivalent to contracts on other registered entities.

"(ii) MAXIMUM LEVEL OF AGGREGATE POSITION LIMITS.—In developing aggregate position limits under subparagraph (A), the Commission shall set the aggregate position limits at the minimum level practicable to ensure sufficient market li-

quidity for the conduct of bona fide hedging transactions.

"(C) CONSIDERATION OF FACTORS FOR DETERMINATION.—

"(i) IN GENERAL.—In making a determination under subparagraph (A) with respect to the imposition of aggregate position limits on appropriate large over-the-counter transactions and classes of large over-the-counter transactions, the Commission may determine not to impose aggregate position limits on any large over-the-counter transaction or class of large over-the-counter transactions if the Commission determines that the large over-the-counter transaction or class of large over-the-counter transactions does not meet any of the factors described in clause (ii).

"(ii) FACTORS.—The factors described in clause (i) include—

"(I) whether a standardized agreement is used to execute the large over-the-counter transaction or class of large over-the-counter transactions;

"(II) whether the large over-the-counter transaction or class of large over-the-counter transactions settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity;

"(III) whether the price of the large over-the-counter transaction or class of large over-the-counter transactions is reported to a third party, published, or otherwise disseminated;

"(IV) whether the price of the large over-the-counter transaction or class of large over-the-counter transactions is referenced in any other transaction;

"(V) whether there is a significant volume of the large over-the-counter transaction or class of large over-the-counter transactions; and

"(VI) any other factor that the Commission determines to be appropriate.

"(D) EXEMPTION FOR BONA FIDE HEDGING TRANSACTIONS.—The Commission may exempt any large over-the-counter transaction or class of large over-the-counter transactions from any aggregate position limit developed and imposed by the Commission under subparagraph (A) if the Commission determines that the large over-the-counter transaction or class of large over-the-counter transactions is a bona fide hedging transaction.

"(E) NET SUM OF POSITIONS.—The aggregate position limits developed and imposed by the Commission under subparagraph (A) shall apply to the net sum of the like positions held by a person on or in—

"(i) registered entities;

"(ii) foreign boards of trade; and

"(iii) over-the-counter commodity derivatives.

"(F) ENFORCEMENT.—

"(i) IN GENERAL.—Subject to clause (ii), in enforcing each aggregate position limit developed and imposed by the Commission under subparagraph (A), the Com-

mission may order a person to reduce any position of the person.

"(ii) MAINTENANCE OF POSITION; CIVIL PENALTY.—

"(I) MAINTENANCE OF POSITION.—If the Commission determines that the reduction of a position of a person under clause (i) would be disruptive to the price discovery function, the Commission may allow the person to maintain the position.

"(II) CIVIL PENALTY.—The Commission shall impose on the person described in subclause (I) a civil penalty in an amount not greater than—

"(aa) $1,000,000 for each violation committed by the person; or

"(bb) with respect to each violation committed by the person, the market value of the position in excess of the appropriate aggregate position limit.

"(iii) EFFECT OF VIOLATION.—A violation of an aggregate position limit developed and imposed by the Commission under subparagraph (A) shall be determined to be a violation of this Act.".

○