

110TH CONGRESS  
1ST SESSION

# H. R. 4626

To reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2007

Mr. ETHERIDGE (for himself, Mr. MORAN of Kansas, Mr. GOODLATTE, and Mr. PETERSON of Minnesota) introduced the following bill; which was referred to the Committee on Agriculture

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## A BILL

To reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, 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 “CFTC Reauthorization  
5       Act of 2007”.

1 **TITLE I—GENERAL PROVISIONS**

2 **SEC. 101. COMMISSION AUTHORITY OVER AGREEMENTS,**  
3 **CONTRACTS OR TRANSACTIONS IN FOREIGN**  
4 **CURRENCY.**

5 (a) IN GENERAL.—Section 2(e)(2) of the Commodity  
6 Exchange Act (7 U.S.C. 2(e)(2)) is amended by striking  
7 subparagraphs (B) and (C) and inserting the following:

8 “(B) AGREEMENTS, CONTRACTS, AND  
9 TRANSACTIONS IN RETAIL FOREIGN CUR-  
10 RENCY.—

11 “(i) This Act applies to, and the Com-  
12 mission shall have jurisdiction over, an  
13 agreement, contract, or transaction in for-  
14 eign currency that—

15 “(I) is a contract of sale of a  
16 commodity for future delivery (or an  
17 option on such a contract) or an op-  
18 tion (other than an option executed or  
19 traded on a national securities ex-  
20 change registered pursuant to section  
21 6(a) of the Securities Exchange Act of  
22 1934 (15 U.S.C. 78f(a)); and

23 “(II) is offered to, or entered  
24 into with, a person that is not an eli-  
25 gible contract participant, unless the

1                    counterparty, or the person offering to  
2                    be the counterparty, of the person  
3                    is—

4                               “(aa) a financial institution;

5                               “(bb)(AA) a broker or deal-  
6                               er registered under section 15(b)  
7                               (except paragraph (11) thereof)  
8                               or 15C of the Securities Ex-  
9                               change Act of 1934 (15 U.S.C.  
10                              78o(b), 78o–5); or

11                              “(BB) an associated person  
12                              of a broker or dealer registered  
13                              under section 15(b) (except para-  
14                              graph (11) thereof) or 15C of the  
15                              Securities Exchange Act of 1934  
16                              (15 U.S.C. 78o(b), 78o–5) con-  
17                              cerning the financial or securities  
18                              activities of which the broker or  
19                              dealer makes and keeps records  
20                              under section 15C(b) or 17(h) of  
21                              the Securities Exchange Act of  
22                              1934 (15 U.S.C. 78o–5(b),  
23                              78q(h));

24                              “(cc)(AA) a futures commis-  
25                              sion merchant that is primarily

1 or substantially engaged in the  
2 business activities described in  
3 section 1a(20) of this Act, is reg-  
4 istered under this Act, is not a  
5 person described in item (bb) of  
6 this subclause, and maintains ad-  
7 justed net capital equal to or in  
8 excess of \$20,000,000; or

9 “(BB) an affiliated person  
10 of a futures commission mer-  
11 chant that is primarily or sub-  
12 stantially engaged in the business  
13 activities described in section  
14 1a(20) of this Act, is registered  
15 under this Act, and is not a per-  
16 son described in item (bb) of this  
17 subclause, if the affiliated person  
18 maintains adjusted net capital  
19 equal to or in excess of  
20 \$20,000,000 and is not a person  
21 described in such item (bb), and  
22 the futures commission merchant  
23 makes and keeps records under  
24 section 4f(e)(2)(B) of this Act  
25 concerning the futures and other

1 financial activities of the affili-  
2 ated person;

3 “(dd) an insurance company  
4 described in section 1a(12)(A)(ii)  
5 of this Act, or a regulated sub-  
6 sidiary or affiliate of such an in-  
7 surance company;

8 “(ee) a financial holding  
9 company (as defined in section 2  
10 of the Bank Holding Company  
11 Act of 1956);

12 “(ff) an investment bank  
13 holding company (as defined in  
14 section 17(i) of the Securities  
15 Exchange Act of 1934 (15  
16 U.S.C. 78q(i)); or

17 “(gg) a retail foreign ex-  
18 change dealer that maintains ad-  
19 justed net capital equal to or in  
20 excess of \$20,000,000 and is reg-  
21 istered in such capacity with the  
22 Commission, subject to such  
23 terms and conditions as the Com-  
24 mission shall prescribe.

1           “(ii) Notwithstanding items (cc) and  
2           (gg) of clause (i)(II) of this subparagraph,  
3           agreements, contracts, or transactions de-  
4           scribed in clause (i) of this subparagraph  
5           shall be subject to subsection (a)(1)(B) of  
6           this section and sections 4(b), 4b, 4e(b),  
7           4o, 6(c) and 6(d) (except to the extent that  
8           sections 6(c) and 6(d) prohibit manipula-  
9           tion of the market price of any commodity  
10          in interstate commerce, or for future deliv-  
11          ery on or subject to the rules of any mar-  
12          ket), 6e, 6d, 8(a), 13(a), and 13(b) if the  
13          agreements, contracts, or transactions are  
14          offered, or entered into, by a person that  
15          is registered as a futures commission mer-  
16          chant or retail foreign exchange dealer, or  
17          an affiliated person of a futures commis-  
18          sion merchant registered under this Act  
19          that is not also a person described in any  
20          of item (aa), (bb), (dd), (ee), or (ff) of  
21          clause (i) of this subparagraph.

22          “(iii)(I) Notwithstanding items (cc)  
23          and (gg) of clause (i)(II), a person, unless  
24          registered in such capacity as the Commis-  
25          sion by rule, regulation, or order shall de-

1           termine and a member of a futures asso-  
2           ciation registered under section 17, shall  
3           not—

4                   “(aa) solicit or accept orders  
5                   from any person that is not an eligible  
6                   contract participant in connection  
7                   with agreements, contracts, or trans-  
8                   actions described in clause (i) entered  
9                   into with or to be entered into with a  
10                  person who is not described in item  
11                  (aa), (bb), (dd), (ee), or (ff) of clause  
12                  (i);

13                   “(bb) exercise discretionary trad-  
14                   ing authority or obtain written au-  
15                   thorization to exercise discretionary  
16                   trading authority over any account for  
17                   or on behalf of any person that is not  
18                   an eligible contract participant in con-  
19                   nection with agreements, contracts, or  
20                   transactions described in clause (i) en-  
21                   tered into with or to be entered into  
22                   with a person who is not described in  
23                   item (aa), (bb), (dd), (ee), or (ff) of  
24                   clause (i); or

1           “(cc) operate or solicit funds, se-  
2           curities, or property for any pooled in-  
3           vestment vehicle that is not an eligible  
4           contract participant in connection  
5           with agreements, contracts, or trans-  
6           actions described in clause (i) entered  
7           into with or to be entered into with a  
8           person who is not described in item  
9           (aa), (bb), (dd), (ee), or (ff) of clause  
10          (i).

11          “(II) Subclause (I) shall not apply  
12          to—

13                 “(aa) any person described in  
14                 any of item (aa), (bb), (dd), (ee), or  
15                 (ff) of subparagraph (B)(i)(II);

16                 “(bb) any such person’s associ-  
17                 ated persons; or

18                 “(cc) any person who would be  
19                 exempt from registration if engaging  
20                 in the same activities in connection  
21                 with transactions conducted on or  
22                 subject to the rules of a contract mar-  
23                 ket or a derivatives transaction execu-  
24                 tion facility.

1           “(III) Notwithstanding items (cc) and  
2           (gg) of clause (i)(II), the Commission may  
3           make, promulgate, and enforce such rules  
4           and regulations as, in the judgment of the  
5           Commission, are reasonably necessary to  
6           effectuate any of the provisions of, or to  
7           accomplish any of the purposes of, this Act  
8           in connection with the activities of persons  
9           subject to subclause (I).

10           “(IV) Subclause (III) shall not apply  
11           to—

12                   “(aa) any person described in  
13                   any of item (aa) through (ff) of sub-  
14                   paragraph (B)(i)(II);

15                   “(bb) any such person’s associ-  
16                   ated persons; or

17                   “(cc) any person who would be  
18                   exempt from registration if engaging  
19                   in the same activities in connection  
20                   with transactions conducted on or  
21                   subject to the rules of a contract mar-  
22                   ket or a derivatives transaction execu-  
23                   tion facility.

24           “(iv) Notwithstanding items (cc) and  
25           (gg) of clause (i)(II), the Commission may

1 make, promulgate, and enforce such rules  
2 and regulations as, in the judgment of the  
3 Commission, are reasonably necessary to  
4 effectuate any of the provisions of, or to  
5 accomplish any of the purposes of, this Act  
6 in connection with agreements, contracts,  
7 or transactions described in clause (i)  
8 which are offered, or entered into, by a  
9 person described in item (cc) or (gg) of  
10 clause (i)(II).

11 “(C)(i)(I) This subparagraph shall apply to  
12 any agreement, contract, or transaction in for-  
13 eign currency that is—

14 “(aa) offered to, or entered into  
15 with, a person that is not an eligible  
16 contract participant (except that this  
17 subparagraph shall not apply if the  
18 counterparty, or the person offering to  
19 be the counterparty, of the person  
20 that is not an eligible contract partici-  
21 pant is a person described in any of  
22 item (aa), (bb), (dd), (ee), or (ff) of  
23 subparagraph (B)(i)(II)); and

24 “(bb) offered, or entered into, on  
25 a leveraged or margined basis, or fi-

1                   nanced by the offeror, the  
2                   counterparty, or a person acting in  
3                   concert with the offeror or  
4                   counterparty on a similar basis.

5                   “(II) Subclause (I) shall not apply to—

6                   ““(aa) a security that is not a security  
7                   futures product; or

8                   ““(bb) a contract of sale that—

9                   ““(AA) results in actual delivery  
10                  within 2 days; or

11                  ““(BB) creates an enforceable ob-  
12                  ligation to deliver between a seller and  
13                  buyer that have the ability to deliver  
14                  and accept delivery, respectively, in  
15                  connection with their line of business.

16                  “(ii)(I) Agreements, contracts, or trans-  
17                  actions described in clause (i) of this subpara-  
18                  graph shall be subject to subsection (a)(1)(B)  
19                  of this section and sections 4(b), 4b, 4c(b), 4o,  
20                  6(e) and 6(d) (except to the extent that sections  
21                  6(e) and 6(d) prohibit manipulation of the mar-  
22                  ket price of any commodity in interstate com-  
23                  merce, or for future delivery on or subject to  
24                  the rules of any market), 6c, 6d, 8(a), 13(a),  
25                  and 13(b).

1           “(II) Subclause (I) of this clause shall not  
2 apply to—

3           “(aa) any person described in any of  
4 item (aa), (bb), (dd), (ee), or (ff) of sub-  
5 paragraph (B)(i)(II); or

6           “(bb) any such person’s associated  
7 persons.

8           “(III) The Commission may make, promul-  
9 gate, and enforce such rules and regulations as,  
10 in the judgment of the Commission, are reason-  
11 ably necessary to effectuate any of the provi-  
12 sions of or to accomplish any of the purposes  
13 of this Act in connection with agreements, con-  
14 tracts, or transactions described in clause (i) of  
15 this subparagraph if the agreements, contracts,  
16 or transactions are offered, or entered into, by  
17 a person that is not described in item (aa)  
18 through (ff) of subparagraph (B)(i)(II).

19           “(iii)(I) A person, unless registered in such  
20 capacity as the Commission by rule, regulation,  
21 or order shall determine and a member of a fu-  
22 tures association registered under section 17,  
23 shall not—

24           “(aa) solicit or accept orders from any  
25 person that is not an eligible contract par-

1 participant in connection with agreements,  
2 contracts, or transactions described in  
3 clause (i) of this subparagraph entered  
4 into with or to be entered into with a per-  
5 son who is not described in item (aa), (bb),  
6 (dd), (ee), or (ff) of subparagraph (B)(i);

7 “(bb) exercise discretionary trading  
8 authority or obtain written authorization  
9 to exercise written trading authority over  
10 any account for or on behalf of any person  
11 that is not an eligible contract participant  
12 in connection with agreements, contracts,  
13 or transactions described in clause (i) of  
14 this subparagraph entered into with or to  
15 be entered into with a person who is not  
16 described in item (aa), (bb), (dd), (ee), or  
17 (ff) of subparagraph (B)(i); or

18 “(cc) operate or solicit funds, securi-  
19 ties, or property for any pooled investment  
20 vehicle that is not an eligible contract par-  
21 ticipant in connection with agreements,  
22 contracts, or transactions described in  
23 clause (i) of this subparagraph entered  
24 into with or to be entered into with a per-

1 son who is not described in item (aa), (bb),  
2 (dd), (ee), or (ff) of subparagraph (B)(i).

3 “(II) Subclause (I) shall not apply to—

4 “(aa) any person described in item  
5 (aa), (bb), (dd), (ee), or (ff) of subpara-  
6 graph (B)(i)(II);

7 “(bb) any such person’s associated  
8 persons; or

9 “(cc) any person who would be ex-  
10 empt from registration if engaging in the  
11 same activities in connection with trans-  
12 actions conducted on or subject to the  
13 rules of a contract market or a derivatives  
14 transaction execution facility.

15 “(III) The Commission may make, promul-  
16 gate, and enforce such rules and regulations as,  
17 in the judgment of the Commission, are reason-  
18 ably necessary to effectuate any of the provi-  
19 sions of, or to accomplish any of the purposes  
20 of, this Act in connection with the activities of  
21 persons subject to subclause (I).

22 “(IV) Subclause (III) shall not apply to—

23 “(aa) any person described in item  
24 (aa) through (ff) of subparagraph  
25 (B)(i)(II);

1           “(bb) any such person’s associated  
2           persons; or

3           “(cc) any person who would be ex-  
4           empt from registration if engaging in the  
5           same activities in connection with trans-  
6           actions conducted on or subject to the  
7           rules of a contract market or a derivatives  
8           transaction execution facility.

9           “(iv) Sections 4(b) and 4b shall apply to  
10          any agreement, contract, or transaction de-  
11          scribed in clause (i) of this subparagraph as if  
12          the agreement, contract, or transaction were a  
13          contract of sale of a commodity for future deliv-  
14          ery.

15          “(v) This subparagraph shall not be con-  
16          strued to limit any jurisdiction that the Com-  
17          mission may otherwise have under any other  
18          provision of this Act over an agreement, con-  
19          tract, or transaction that is a contract of sale  
20          of a commodity for future delivery.

21          “(vi) This subparagraph shall not be con-  
22          strued to limit any jurisdiction that the Com-  
23          mission or the Securities and Exchange Com-  
24          mission may otherwise have under any other  
25          provision of this Act with respect to security fu-

1           tures products and persons effecting trans-  
2           actions in security futures products.”.

3           (b) **EFFECTIVE DATE.**—The following provisions of  
4 the Commodity Exchange Act, as amended by subsection  
5 (a) of this section, shall be effective 120 days after the  
6 date of the enactment of this Act or at such other time  
7 as the Commodity Futures Trading Commission shall de-  
8 termine:

9           (1) Subparagraphs (B)(i)(II)(gg), (B)(iii), and  
10          (C)(iii) of section 2(c)(2).

11          (2)       The       provisions       of       section  
12          2(c)(2)(B)(i)(II)(cc) that set forth adjusted net cap-  
13          ital requirements, and the provisions of such section  
14          that require a futures commission merchant to be  
15          primarily or substantially engaged in certain busi-  
16          ness activities.

17 **SEC. 102. ANTIFRAUD AUTHORITY.**

18       Section 4b of the Commodity Exchange Act (7 U.S.C.  
19 6b) is amended—

20           (1) by redesignating subsections (b) and (c) as  
21          subsections (c) and (d), respectively; and

22           (2) by striking “SEC. 4b.” and all that follows  
23          through the end of subsection (a) and inserting the  
24          following:

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

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

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

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

18 “(A) to cheat or defraud or attempt to  
19 cheat or defraud the other person;

20 “(B) willfully to make or cause to be made  
21 to the other person any false report or state-  
22 ment or willfully to enter or cause to be entered  
23 for the other person any false record;

24 “(C) willfully to deceive or attempt to de-  
25 ceive the other person by any means whatsoever  
26 in regard to any order or contract or the dis-

1 position or execution of any order or contract,  
2 or in regard to any act of agency performed,  
3 with respect to any order or contract for or, in  
4 the case of paragraph (2), with the other per-  
5 son; or

6 “(D)(i) to bucket an order if the order is  
7 represented by the person as an order to be ex-  
8 ecuted, or is required to be executed, on or sub-  
9 ject to the rules of a designated contract mar-  
10 ket; or

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

23 “(b) CLARIFICATION.—Subsection (a)(2) of this sec-  
24 tion shall not obligate any person, in or in connection with  
25 a transaction in a contract of sale of a commodity for fu-

1 ture delivery, or other agreement, contract or transaction  
2 subject to paragraphs (1) and (2) of section 5a(g), with  
3 another person, to disclose to the other person nonpublic  
4 information that may be material to the market price,  
5 rate, or level of the commodity or transaction, except as  
6 necessary to make any statement made to the other person  
7 in or in connection with the transaction, not misleading  
8 in any material respect.”.

9 **SEC. 103. AUTHORIZATION OF APPROPRIATIONS.**

10 Section 12(d) of the Commodity Exchange Act (7  
11 U.S.C. 16(d)) is amended to read as follows:

12 “(d) There are authorized to be appropriated such  
13 sums as are necessary to carry out this Act for each of  
14 the fiscal years 2008 through 2013.”.

15 **SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.**

16 (a) Section 4a(e) of the Commodity Exchange Act (7  
17 U.S.C. 6a(e)) is amended in the last proviso by striking  
18 “section 9(c)” and inserting “section 9(a)(5)”.

19 (b) Section 4f(c)(4)(B)(i) of such Act (7 U.S.C.  
20 6f(c)(4)(B)(i)) is amended by striking “compiled” and in-  
21 serting “complied”.

22 (c) Section 4k of such Act (7 U.S.C. 6k) is amended  
23 by redesignating the second paragraph (5) as paragraph  
24 (6).

25 (d) The Commodity Exchange Act is amended—

1           (1) by redesignating the first section 4p (7  
2           U.S.C. 6o–1), as added by section 121 of the Com-  
3           modity Futures Modernization Act of 2000, as sec-  
4           tion 4q; and

5           (2) by moving such section to after the second  
6           section 4p, as added by section 206 of Public Law  
7           93–446.

8           (e) Subsections (a)(1) and (d)(1) of section 5c of such  
9           Act (7 U.S.C. 7a–2(a)(1), (d)(1)) are each amended by  
10          striking “5b(d)(2)” and inserting “5b(c)(2)”.

11          (f) Sections 5c(f) and 17(r) of such Act (7 U.S.C.  
12          7a–2(f), 21(r)) are each amended by striking “4d(3)” and  
13          inserting “4d(c)”.

14          (g) Section 8(a)(1) of such Act (7 U.S.C. 12(a)(1))  
15          is amended in the matter following subparagraph (B)—

16               (1) by striking “commenced” the 2nd place it  
17               appears; and

18               (2) by inserting “commenced” after “in a judi-  
19               cial proceeding”.

20          (h) Section 9 of such Act (7 U.S.C. 13) is amended—

21               (1) in subsection (f)(1), by striking the period  
22               and inserting “; or”; and

23               (2) by redesignating subsection (f) as sub-  
24               section (e).

1 (i) Section 22(a)(2) of such Act (7 U.S.C. 25(a)(2))  
2 is amended by striking “5b(b)(1)(E)” and inserting  
3 “5b(c)(2)(H)”.

4 **SEC. 105. CRIMINAL AND CIVIL PENALTIES.**

5 (a) ENFORCEMENT POWERS OF THE COMMISSION.—  
6 Section 6(c) of the Commodity Exchange Act (7 U.S.C.  
7 9, 15) is amended in clause (3) of the 10th sentence—

8 (1) by inserting “(A)” after “assess such per-  
9 son”; and

10 (2) by inserting after “each such violation” the  
11 following: “or (B) in any case of manipulation or at-  
12 tempted manipulation in violation of this subsection,  
13 subsection (d) of this section, or section 9(a)(2), a  
14 civil penalty of not more than the greater of  
15 \$1,000,000 or triple the monetary gain to such per-  
16 son for each such violation,”.

17 (b) NONENFORCEMENT OF RULES OF GOVERNMENT  
18 OR OTHER VIOLATIONS.—Section 6b of such Act (7  
19 U.S.C. 13a) is amended—

20 (1) in the 1st sentence, by inserting “, or, in  
21 any case of manipulation or attempted manipulation  
22 in violation of section 6(c), 6(d), or 9(a)(2), a civil  
23 penalty of not more than \$1,000,000 for each such  
24 violation” before the period; and

1           (2) in the 2nd sentence, by inserting “, except  
2           that if the failure or refusal to obey or comply with  
3           the order involved any offense under section 9(a)(2),  
4           the registered entity, director, officer, agent, or em-  
5           ployee shall be guilty of a felony and, on conviction,  
6           shall be subject to penalties under section 9(a)(2)”  
7           before the period.

8           (c) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—  
9           Section 6c(d) of such Act (7 U.S.C. 13a–1(d)) is amended  
10          by striking “(d)” and all that follows through the end of  
11          the paragraph (1) and inserting the following:

12          “(d) CIVIL PENALTIES.—(1) In any action brought  
13          under this section, the Commission may seek and the  
14          court shall have jurisdiction to impose, on a proper show-  
15          ing, on any person found in the action to have committed  
16          any violation—

17                 “(A) a civil penalty in the amount of not more  
18                 than the greater of \$100,000 or triple the monetary  
19                 gain to the person for each violation; or

20                 “(B) in any case of manipulation or attempted  
21                 manipulation in violation of section 6(c), 6(d), or  
22                 9(a)(2), a civil penalty in the amount of not more  
23                 than the greater of \$1,000,000 or triple the mone-  
24                 etary gain to the person for each violation.”.

1 (d) VIOLATIONS GENERALLY.—Section 9(a) of such  
2 Act (7 U.S.C. 13(a)) is amended—

3 (1) by striking “(or \$500,000 in the case of a  
4 person who is an individual)”; and

5 (2) by striking “five years” and inserting “10  
6 years”.

## 7 **TITLE II—EXEMPT COMMERCIAL** 8 **MARKETS**

### 9 **SEC. 201. SIGNIFICANT PRICE DISCOVERY CONTRACTS.**

10 (a) DEFINITION.—Section 1a of the Commodity Ex-  
11 change Act (7 U.S.C. 1a) is amended by redesignating  
12 paragraph (33) as paragraph (34) and by inserting after  
13 paragraph (32) the following:

14 “(33) SIGNIFICANT PRICE DISCOVERY CON-  
15 TRACT.—The term ‘significant price discovery con-  
16 tract’ means an agreement, contract, or transaction  
17 subject to section 2(h)(7).”.

18 (b) STANDARDS APPLICABLE TO SIGNIFICANT PRICE  
19 DISCOVERY CONTRACTS.—Section 2(h) of such Act (7  
20 U.S.C. 2(h)) is amended by adding at the end the fol-  
21 lowing:

22 “(7) SIGNIFICANT PRICE DISCOVERY CON-  
23 TRACTS.—

24 “(A) IN GENERAL.—An agreement, con-  
25 tract, or transaction conducted in reliance on

1 the exemption provided in paragraph (3) shall  
2 be subject to subparagraphs (B) through (D) of  
3 this paragraph, under such rules and regula-  
4 tions as the Commission shall promulgate if the  
5 Commission determines that the agreement,  
6 contract, or transaction performs a significant  
7 price discovery function as described in sub-  
8 paragraph (B) of this paragraph.

9 “(B) SIGNIFICANT PRICE DISCOVERY DE-  
10 TERMINATION.—In determining whether an  
11 agreement, contract, or transaction performs a  
12 significant price discovery function, the Com-  
13 mission shall consider, as appropriate, the fol-  
14 lowing:

15 “(i) PRICE LINKAGE.—

16 “(I) Whether the agreement, con-  
17 tract, or transaction uses or otherwise  
18 relies on a daily or final settlement  
19 price, or other major price parameter,  
20 of a contract listed for trading on or  
21 subject to the rules of a designated  
22 contract market or a derivatives  
23 transaction execution facility, or a sig-  
24 nificant price discovery contract trad-  
25 ed on an electronic trading facility, to

1 value a position, transfer or convert a  
2 position, cash or financially settle a  
3 position, or close out a position.

4 “(II) Whether the price for the  
5 agreement, contract, or transaction is  
6 sufficiently related to the price of a  
7 contract listed for trading on or sub-  
8 ject to the rules of a designated con-  
9 tract market or derivatives trans-  
10 action execution facility so as to per-  
11 mit market participants to effectively  
12 arbitrage between the markets by si-  
13 multaneously maintaining positions or  
14 executing trades in the contracts on  
15 the electronic trading facility and the  
16 designated contract market or deriva-  
17 tives transaction execution facility on  
18 a frequent and recurring basis.

19 “(ii) MATERIAL PRICE REFERENCE.—  
20 Whether, on a frequent and recurring  
21 basis, bids, offers, or transactions in a  
22 commodity are directly based on, or are de-  
23 termined by referencing, the prices gen-  
24 erated by agreements, contracts, or trans-

1 actions being traded or executed on the  
2 electronic trading facility.

3 “(iii) MATERIAL LIQUIDITY.—Wheth-  
4 er the volume of agreements, contracts, or  
5 transactions in the commodity being traded  
6 on the electronic trading facility is suffi-  
7 cient to have a material effect on other  
8 agreements, contracts, or transactions list-  
9 ed for trading on or subject to the rules of  
10 a designated contract market, a derivatives  
11 transaction execution facility, or an elec-  
12 tronic trading facility operating in reliance  
13 on the exemption provided in paragraph  
14 (3).

15 “(iv) OTHER MATERIAL FACTORS.—  
16 Such other material factors as the Com-  
17 mission specifies in its rules and regula-  
18 tions as relevant to the determination.

19 “(C) CORE PRINCIPLES APPLICABLE TO  
20 SIGNIFICANT PRICE DISCOVERY CONTRACTS.—  
21 An electronic trading facility on which signifi-  
22 cant price discovery contracts are traded or exe-  
23 cuted shall, with respect to the contracts, com-  
24 ply with the core principles specified in this  
25 subparagraph. The electronic trading facility

1 shall have reasonable discretion in establishing  
2 the manner in which it complies with the fol-  
3 lowing core principles:

4 “(i) CONTRACTS NOT READILY SUS-  
5 CEPTIBLE TO MANIPULATION.—The elec-  
6 tronic trading facility shall list only signifi-  
7 cant price discovery contracts that are not  
8 readily susceptible to manipulation.

9 “(ii) MONITORING OF TRADING.—The  
10 electronic trading facility shall monitor  
11 trading in significant price discovery con-  
12 tracts to prevent market manipulation,  
13 price distortion, and disruptions of the de-  
14 livery or cash-settlement process through  
15 market surveillance, compliance, and dis-  
16 ciplinary practices and procedures, includ-  
17 ing methods for conducting real-time moni-  
18 toring of trading and comprehensive and  
19 accurate trade reconstructions.

20 “(iii) ABILITY TO OBTAIN INFORMA-  
21 TION.—The electronic trading facility shall  
22 establish and enforce rules that will allow  
23 the electronic trading facility to obtain any  
24 necessary information to perform any of  
25 the functions described in this subpara-

1 graph, shall provide such information to  
2 the Commission on request, and shall have  
3 the capacity to carry out such international  
4 information-sharing agreements as the  
5 Commission may require.

6 “(iv) POSITION LIMITATIONS OR AC-  
7 COUNTABILITY.—The electronic trading fa-  
8 cility shall adopt position limitations or po-  
9 sition accountability for speculators in sig-  
10 nificant price discovery contracts, where  
11 necessary and appropriate to reduce the  
12 potential threat of market manipulation or  
13 congestion, especially during trading in the  
14 delivery month.

15 “(v) EMERGENCY AUTHORITY.—The  
16 electronic trading facility shall adopt rules  
17 to provide for the exercise of emergency  
18 authority, in consultation or cooperation  
19 with the Commission, where necessary and  
20 appropriate, including the authority to—

21 “(I) liquidate open positions in a  
22 significant price discovery contract;  
23 and

1                   “(II) suspend or curtail trading  
2                   in a significant price discovery con-  
3                   tract.

4                   “(vi) DAILY PUBLICATION OF TRAD-  
5                   ING INFORMATION.—The electronic trading  
6                   facility shall make public daily information  
7                   on price, trading volume, and other trading  
8                   data to the extent appropriate for signifi-  
9                   cant price discovery contracts.

10                   “(vii) COMPLIANCE WITH RULES.—  
11                   The electronic trading facility shall mon-  
12                   itor and enforce compliance with any rules  
13                   of the electronic trading facility applicable  
14                   to significant price discovery contracts, in-  
15                   cluding the terms and conditions of the  
16                   contracts and any limitations on access to  
17                   the electronic trading facility with respect  
18                   to the contracts.

19                   “(viii) CONFLICT OF INTEREST.—The  
20                   electronic trading facility shall establish  
21                   and enforce rules to minimize conflicts of  
22                   interest in its decision-making process, and  
23                   establish a process for resolving the con-  
24                   flicts.

25                   “(D) IMPLEMENTATION.—

1           “(i) An electronic trading facility may  
2           implement any rule or rule amendment re-  
3           lating to a significant price discovery con-  
4           tract, including the terms and conditions  
5           of such a contract, by providing to the  
6           Commission a written certification that the  
7           rule or rule amendment complies with the  
8           requirements of this subsection (including  
9           regulations under this subsection).

10           “(ii) With respect to the core prin-  
11           ciples described in clauses (iv) and (v) of  
12           subparagraph (C), the Commission shall  
13           take into account the differences between  
14           cleared and non-cleared significant price  
15           discovery contracts.”.

16 **SEC. 202. LARGE TRADER REPORTING.**

17           (a) Section 4g(a) of the Commodity Exchange Act (7  
18 U.S.C. 6g(a)) is amended by striking “elsewhere” and in-  
19 serting “elsewhere, and in any significant price discovery  
20 contract traded or executed on an electronic trading facil-  
21 ity”.

22           (b) Section 4i of such Act (7 U.S.C. 6i) is amended—  
23           (1) by inserting “, or any significant price dis-  
24           covery contract on an electronic trading facility” be-  
25           fore “—” ; and

1           (2) by inserting after “board of trade” the fol-  
2           lowing: “or electronic trading facility”.

3 **SEC. 203. COMMISSION EMERGENCY AUTHORITY.**

4           Section 8a of the Commodity Exchange Act (7 U.S.C.  
5 12a) is amended—

6           (1) in paragraph (6)—

7                 (A) by inserting after “registered entity”  
8                 the first place it appears the following: “or,  
9                 with respect to a significant price discovery con-  
10                tract, an electronic trading facility,”; and

11                (B) by inserting after “registered entity”  
12                the second place it appears the following: “,  
13                electronic trading facility”;

14           (2) in paragraph (7)—

15                 (A) by inserting after “registered entity”  
16                 the first place it appears the following: “or,  
17                 with respect to a significant price discovery con-  
18                 tract, an electronic trading facility”; and

19                (B) by inserting after “registered entity”  
20                each other place it appears, the following: “or  
21                electronic trading facility”; and

22           (3) in paragraph (9)—

23                 (A) by inserting after “to direct the reg-  
24                 istered entity,” the following: “or, with respect

1 to a significant price discovery contract, an  
2 electronic trading facility,”; and

3 (B) by inserting after “meaning or inter-  
4 pretation given by a registered entity” the fol-  
5 lowing: “or electronic trading facility”.

6 **SEC. 204. CONFORMING AMENDMENTS.**

7 (a) Section 2(a)(1)(A) of the Commodity Exchange  
8 Act (7 U.S.C. 2(a)(1)(A)) is amended by striking “of this  
9 Act” and inserting “, and significant price discovery con-  
10 tracts traded or executed on an electronic trading facil-  
11 ity”.

12 (b) Section 2(h)(3) of such Act (7 U.S.C. 2(h)(3))  
13 is amended by striking “paragraph (4)” and inserting  
14 “paragraphs (4) and (7)”.

15 (c) Section 2(h)(4) of such Act (7 U.S.C. 2(h)(4))  
16 is amended—

17 (1) in subparagraph (B), by inserting “and”  
18 after the semicolon;

19 (2) in subparagraph (C), by striking “; and”  
20 and inserting a period; and

21 (3) by striking subparagraph (D).

22 (d) Section 2(h)(5)(B)(iii)(I) of such Act (7 U.S.C.  
23 2(h)(5)(B)(iii)(I)) is amended by inserting “or to make  
24 the determination described in paragraph (7)(B)” before  
25 the semicolon.

1 (e) Section 5c(a)(1) of such Act (7 U.S.C. 7a–  
2 2(a)(1)), as amended by section 104(e) of this Act, is  
3 amended by inserting after “5b(c)(2)” the following: “,  
4 and section 2(h)(7) with respect to significant price dis-  
5 covery contracts,”.

6 (f) Section 5c(b) of such Act (7 U.S.C. 7a–2(b)) is  
7 amended—

8 (1) in paragraph (1), by striking “or derivatives  
9 transaction execution facility” and inserting “, de-  
10 rivatives transaction execution facility or, with re-  
11 spect to a significant price discovery contract, an  
12 electronic trading facility”; and

13 (2) in each of paragraphs (2) and (3), by strik-  
14 ing “or derivatives transaction execution facility”  
15 and inserting “, derivatives transaction execution fa-  
16 cility, or electronic trading facility”.

17 (g) Section 5c(d) of such Act (7 U.S.C. 7a–2(d)), as  
18 amended by section 104(e) of this Act, is amended—

19 (1) in paragraph (1)—

20 (A) by inserting after “registered entity”  
21 the first place it appears the following: “or,  
22 with respect to a significant price discovery con-  
23 tract, an electronic trading facility”;

1 (B) by inserting after “registered entity”  
2 each other place it appears the following: “or  
3 electronic trading facility”; and

4 (C) by inserting after “5b(c)(2),” the fol-  
5 lowing: “or section 2(h)(7)(C) with respect to a  
6 significant price discovery contract traded or  
7 executed on an electronic trading facility,”; and

8 (2) in paragraph (2), by inserting after “reg-  
9 istered entity” the following: “or electronic trading  
10 facility”.

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