

109TH CONGRESS
1ST SESSION

H. R. 4473

AN ACT

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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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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “CFTC Reauthorization
3 Act of 2005”.

4 **TITLE I—GENERAL PROVISIONS**

5 **SEC. 101. COMMISSION AUTHORITY OVER AGREEMENTS,
6 CONTRACTS OR TRANSACTIONS IN FOREIGN
7 CURRENCY.**

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

11 “(B) AGREEMENTS, CONTRACTS, AND
12 TRANSACTIONS IN RETAIL FOREIGN CUR-
13 RENCY.—

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

18 “(I) is a contract of sale of a
19 commodity for future delivery (or an
20 option on such a contract) or an op-
21 tion (other than an option executed or
22 traded on a national securities ex-
23 change registered pursuant to section
24 6(a) of the Securities Exchange Act of
25 1934 (15 U.S.C. 78f(a))); and

1 “(II) is offered to, or entered
2 into with, a person that is not an eli-
3 gible contract participant, unless the
4 counterparty, or the person offering to
5 be the counterparty, of the person
6 is—

7 “(aa) a financial institution;

8 “(bb)(AA) a broker or deal-
9 er registered under section 15(b)
10 (except paragraph (11) thereof)
11 or 15C of the Securities Ex-
12 change Act of 1934 (15 U.S.C.
13 78o(b), 78o-5); or

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

1 1934 (15 U.S.C. 78o–5(b),
2 78q(h));

3 “(cc) a futures commission
4 merchant registered under this
5 Act (that is not also a person de-
6 scribed in item (bb)), or an affili-
7 ated person of such a futures
8 commission merchant (that is not
9 also a person described in item
10 (bb)) if such futures commission
11 merchant makes and keeps
12 records under section 4f(c)(2)(B)
13 of this Act concerning the futures
14 and other financial activities of
15 such affiliated person;

16 “(dd) an insurance company
17 described in section 1a(12)(A)(ii)
18 of this Act, or a regulated sub-
19 sidiary or affiliate of such an in-
20 surance company;

21 “(ee) a financial holding
22 company (as defined in section 2
23 of the Bank Holding Company
24 Act of 1956); or

1 “(ff) an investment bank
2 holding company (as defined in
3 section 17(i) of the Securities
4 Exchange Act of 1934 (15
5 U.S.C. 78q(i)).

6 “(ii) Notwithstanding item (cc) of
7 clause (i)(II) of this subparagraph, agree-
8 ments, contracts, or transactions described
9 in clause (i) of this subparagraph shall be
10 subject to subsection (a)(1)(B) of this sec-
11 tion and sections 4(b), 4b, 4c(b), 4o, 6(c)
12 and 6(d) (except to the extent that sections
13 6(c) and 6(d) prohibit manipulation of the
14 market price of any commodity in inter-
15 state commerce, or for future delivery on
16 or subject to the rules of any market), 6c,
17 6d, 8(a), 13(a), and 13(b) if the agree-
18 ments, contracts, or transactions are of-
19 fered, or entered into, by a person that is
20 registered as a futures commission mer-
21 chant or an affiliated person of a futures
22 commission merchant registered under this
23 Act that is not also a person described in
24 any of item (aa), (bb), (dd), (ee), or (ff) of
25 clause (i) of this subparagraph.

1 “(iii)(I) Notwithstanding item (cc) of
2 clause (i)(II), a particular person shall not
3 participate in the solicitation or rec-
4 ommendation of any agreement, contract,
5 or transaction described in clause (i) en-
6 tered into with or to be entered into with
7 a person described in such item, unless the
8 particular person—

9 “(aa) is registered in such capac-
10 ity as the Commission by rule, regula-
11 tion, or order shall determine; and

12 “(bb) is a member of a futures
13 association registered under section
14 17.

15 “(II) Subclause (I) shall not apply
16 to—

17 “(aa) any person described in
18 any of item (aa), (bb), (dd), (ee), or
19 (ff) of subparagraph (B)(i)(II); or

20 “(bb) any such person’s associ-
21 ated persons.

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

1 “(aa) offered to, or entered into
2 with, a person that is not an eligible
3 contract participant (except that this
4 subparagraph shall not apply if the
5 counterparty, or the person offering to
6 be the counterparty, of the person
7 that is not an eligible contract partici-
8 pant is a person described in any of
9 item (aa), (bb), (dd), (ee), or (ff) of
10 subparagraph (B)(i)(II)); and

11 “(bb) offered, or entered into, on
12 a leveraged or margined basis, or fi-
13 nanced by the offeror, the
14 counterparty, or a person acting in
15 concert with the offeror or
16 counterparty on a similar basis.

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

18 “(aa) a security that is not a security
19 futures product; or

20 “(bb) a contract of sale that—

21 “(AA) results in actual delivery
22 within 2 days; or

23 “(BB) creates an enforceable ob-
24 ligation to deliver between a seller and
25 buyer that have the ability to deliver

1 and accept delivery, respectively, in
2 connection with their line of business.

3 “(ii)(I) Agreements, contracts, or trans-
4 actions described in clause (i) of this subpara-
5 graph shall be subject to subsection (a)(1)(B)
6 of this section and sections 4(b), 4b, 4c(b), 4o,
7 6(e) and 6(d) (except to the extent that sections
8 6(e) and 6(d) prohibit manipulation of the mar-
9 ket price of any commodity in interstate com-
10 merce, or for future delivery on or subject to
11 the rules of any market), 6c, 6d, 8(a), 13(a),
12 and 13(b).

13 “(II) Subclause (I) of this clause shall not
14 apply to—

15 “(aa) any person described in any of
16 item (aa), (bb), (dd), (ee), or (ff) of sub-
17 paragraph (B)(i)(II); or

18 “(bb) any such person’s associated
19 persons.

20 “(iii)(I) A person shall not participate in
21 the solicitation or recommendation of any
22 agreement, contract, or transaction described in
23 clause (i) of this subparagraph unless the per-
24 son is registered in such capacity as the Com-
25 mission by rule, regulation or order shall deter-

1 mine, and is a member of a futures association
2 registered under section 17.

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

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

8 “(bb) any such person’s associated
9 persons.

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

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

22 “(vi) This subparagraph shall not be con-
23 strued to limit any jurisdiction that the Com-
24 mission or the Securities and Exchange Com-
25 mission may otherwise have under any other

1 provision of this Act with respect to security fu-
2 tures products and persons effecting trans-
3 actions in security futures products.”.

4 (b) **EFFECTIVE DATE.**—Clause (iii) of section
5 2(c)(2)(B) and clause (iii) of section 2(c)(2)(C) of the
6 Commodity Exchange Act, as amended by subsection (a)
7 of this section, shall be effective 120 days after the date
8 of the enactment of this Act or such other time as the
9 Commodity Futures Trading Commission shall determine.

10 **SEC. 102. ANTIFRAUD AUTHORITY.**

11 Section 4b of the Commodity Exchange Act (7 U.S.C.
12 6b) is amended—

13 (1) by redesignating subsections (b) and (c) as
14 subsections (c) and (d), respectively; and

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

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

19 **LEAD.**

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

21 **“(1)** for any person, in or in connection with
22 any order to make, or the making of, any contract
23 of sale of any commodity in interstate commerce or
24 for future delivery that is made, or to be made, on

1 or subject to the rules of a designated contract mar-
2 ket, for or on behalf of any other person; or

3 “(2) for any person, in or in connection with
4 any order to make, or the making of, any contract
5 of sale of any commodity for future delivery, or
6 other agreement, contract, or transaction subject to
7 paragraphs (1) and (2) of section 5a(g), that is
8 made, or to be made, for or on behalf of, or with,
9 any other person, other than on or subject to the
10 rules of a designated contract market—

11 “(A) to cheat or defraud or attempt to
12 cheat or defraud the other person;

13 “(B) willfully to make or cause to be made
14 to the other person any false report or state-
15 ment or willfully to enter or cause to be entered
16 for the other person any false record;

17 “(C) willfully to deceive or attempt to de-
18 ceive the other person by any means whatsoever
19 in regard to any order or contract or the dis-
20 position or execution of any order or contract,
21 or in regard to any act of agency performed,
22 with respect to any order or contract for or, in
23 the case of paragraph (2), with the other per-
24 son; or

1 “(D)(i) to bucket an order if the order is
2 represented by the person as an order to be ex-
3 ecuted, or is required to be executed, on or sub-
4 ject to the rules of a designated contract mar-
5 ket; or

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

18 “(b) CLARIFICATION.—Subsection (a)(2) of this sec-
19 tion shall not obligate any person, in or in connection with
20 a transaction in a contract of sale of a commodity for fu-
21 ture delivery, or other agreement, contract or transaction
22 subject to paragraphs (1) and (2) of section 5a(g), with
23 another person, to disclose to the other person nonpublic
24 information that may be material to the market price,
25 rate, or level of the commodity or transaction, except as

1 necessary to make any statement made to the other person
2 in or in connection with the transaction, not misleading
3 in any material respect.”.

4 **SEC. 103. PORTFOLIO MARGINING AND SECURITY INDEX**
5 **ISSUES.**

6 (a) The agencies represented on the President’s
7 Working Group on Financial Markets shall work to ensure
8 that the Securities and Exchange Commission (SEC), the
9 Commodity Futures Trading Commission (CFTC), or
10 both, as appropriate, have taken the actions required
11 under subsection (b).

12 (b) The SEC, the CFTC, or both, as appropriate,
13 shall take action under their existing authorities to per-
14 mit—

15 (1) by September 30, 2006, risk-based portfolio
16 margining for security options and security futures
17 products; and

18 (2) by June 30, 2006, the trading of futures on
19 certain security indexes by resolving issues related to
20 debt security indexes and foreign security indexes.

21 **SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

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

1 “(d) There are authorized to be appropriated such
2 sums as are necessary to carry out this Act for each of
3 the fiscal years 2006 through 2010.”

4 **SEC. 105. TECHNICAL AND CONFORMING AMENDMENTS.**

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

8 (b) Section 4f(c)(4)(B)(i) of such Act (7 U.S.C.
9 6f(c)(4)(B)(i)) is amended by striking “compiled” and in-
10 serting “complied”.

11 (c) Section 4k of such Act (7 U.S.C. 6k) is amended
12 by redesignating the second paragraph (5) as paragraph
13 (6).

14 (d) The Commodity Exchange Act is amended—

15 (1) by redesignating the first section 4p (7
16 U.S.C. 6o–1), as added by section 121 of the Com-
17modity Futures Modernization Act of 2000, as sec-
18tion 4q; and

19 (2) by moving such section to after the second
20 section 4p, as added by section 206 of Public Law
21 93–446.

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

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

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

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

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

10 (h) Section 22(a)(2) of such Act (7 U.S.C. 25(a)(2))
11 is amended by striking “5b(b)(1)(E)” and inserting
12 “5b(e)(2)(H)”.

13 **TITLE II—NATURAL GAS PRICE** 14 **TRANSPARENCY**

15 **SEC. 201. MARKET SURVEILLANCE.**

16 (a) **IN GENERAL.**—The Commodity Futures Trading
17 Commission (in this section referred to as the “Commis-
18 sion”) shall detect and deter manipulation and attempted
19 manipulation and increase the transparency of the pricing
20 of natural gas by conducting surveillance of trading in
21 contracts for natural gas.

22 (b) **CERTAIN EVENTS REQUIRED TO BE RE-**
23 **VIEWED.**—

24 (1) **REQUIREMENT.**—In the event of a signifi-
25 cant and highly unusual change in the settlement

1 price of any physically delivered natural gas futures
2 contract traded on a contract market (within the
3 meaning of section 5 of the Commodity Exchange
4 Act) or derivatives transaction execution facility
5 (within the meaning of section 5a of such Act), the
6 Commission shall conduct a review of the factors
7 that caused the price movement in order to deter-
8 mine if manipulation or attempted manipulation in
9 violation of such Act has occurred.

10 (2) CERTAIN FACTORS REQUIRED TO BE CON-
11 sidered.—The Commission shall consider in its re-
12 view, among other things and as appropriate to the
13 circumstances, the following:

14 (A) Prices and price relationships in the
15 futures and cash markets.

16 (B) Market information, and cash market
17 supply and demand factors which may be rel-
18 evant to the price event.

19 (C) Large futures and options market po-
20 sitions and large futures and options market
21 transactions on the contract market or deriva-
22 tives transaction execution facility.

23 (D) Any related contract, agreement or
24 transaction in natural gas.

1 **SEC. 202. REPORTING OF LARGE POSITIONS INVOLVING**
2 **NATURAL GAS.**

3 (a) IN GENERAL.—Section 4a of the Commodity Ex-
4 change Act (7 U.S.C. 6a) is amended—

5 (1) in subsection (e), by striking the last sen-
6 tence; and

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

8 “(f) REPORTING OF LARGE POSITIONS INVOLVING
9 NATURAL GAS.—

10 “(1) IN GENERAL.—The Commission, by rule,
11 shall require any person holding, maintaining, or
12 controlling any position in a contract of sale of nat-
13 ural gas for future delivery, or option thereon, on or
14 subject to the rules of any contract market or de-
15 rivatives transaction execution facility, at or in ex-
16 cess of such limits as the Commission may specify
17 as reportable, to maintain for a period of 5 years
18 and provide on request to the Commission, records
19 of the person regarding the position and any related
20 contract, agreement, or transaction in natural gas to
21 which the person is a party.

22 “(2) NO DUPLICATE REPORTS.—Except as oth-
23 erwise provided in this paragraph, the rules pre-
24 scribed under paragraph (1) shall not apply to any
25 position that otherwise is required to be reported to
26 any agency of the United States if the report would

1 otherwise satisfy the requirements under this sub-
2 section and the report of the position is available to
3 the Commission at the request of the Commission.
4 Notwithstanding the preceding sentence, any report
5 of any such position to any agency of the United
6 States shall constitute a statement, report, or docu-
7 ment required for the purposes of section 9.

8 “(3) CRITERIA FOR RULES.—

9 “(A) IN GENERAL.—In prescribing rules
10 required by paragraph (1), the Commission
11 shall consider—

12 “(i) the purposes for monitoring large
13 positions in any contract for future deliv-
14 ery of natural gas;

15 “(ii) the effect of the reporting re-
16 quirements on the efficiency and liquidity
17 of the market for any agreement, contract,
18 or transaction made in connection with any
19 contract for the future delivery of natural
20 gas; and

21 “(iii) the costs and burden on the per-
22 sons that would be required to file the re-
23 ports.

24 “(B) FREQUENCY.—The Commission shall
25 require the provision of records under para-

1 graph (1) only in circumstances where manipu-
2 lation is suspected, except that the Commission
3 may prescribe rules requiring regular or contin-
4 uous reporting if the Commission finds that
5 such reporting would help to deter or to detect
6 manipulation in any market for any agreement,
7 contract, or transaction made in connection
8 with any contract for the future delivery of nat-
9 ural gas.

10 “(C) FILING REQUIREMENTS.—Records re-
11 quired to be provided under paragraph (1) shall
12 be required to be filed with the Commission in
13 accordance with such requirements regarding
14 the form, timing, and manner of filing such re-
15 ports, as the Commission may prescribe by rule.

16 “(5) OTHER RULES NOT AFFECTED.—This sub-
17 section shall not be interpreted to prohibit or impair
18 the adoption by any board of trade licensed, des-
19 igned, or registered by the Commission of any
20 bylaw, rule, regulation, or resolution requiring re-
21 ports of positions in any agreement, contract, or
22 transaction made in connection with a contract of
23 sale for future delivery of natural gas (including
24 such a contract of sale), including any bylaw, rule,
25 regulation, or resolution pertaining to filing or rec-

1 ordkeeping, which may be held by any person sub-
2 ject to the rules of the board of trade, except that
3 any bylaw, rule, regulation, or resolution established
4 by the board of trade shall not be inconsistent with
5 any requirement prescribed by the Commission
6 under this subsection.”.

7 **SEC. 203. CRIMINAL AND CIVIL PENALTIES.**

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

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

13 (2) by inserting after “each such violation” the
14 following: “or (B) in any case of manipulation of, or
15 attempt to manipulate under section 9(a)(2), a civil
16 penalty of not more than the greater of \$1,000,000
17 or triple the monetary gain to such person for each
18 such violation,”.

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

22 (1) in the 1st sentence, by inserting “, or, in
23 any case of manipulation of, or an attempt to ma-
24 nipulate, the price of any commodity, a civil penalty

1 of not more than \$1,000,000 for each such viola-
2 tion” before the period; and

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

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

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

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

23 “(B) in any case of manipulation of, or an
24 attempt to manipulate, the price of any com-
25 modity, a civil penalty in the amount of not

1 more than the greater of \$1,000,000 or triple
2 the monetary gain to the person for each viola-
3 tion.”.

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

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

8 (2) by striking “five years” and inserting “10
9 years”.

Passed the House of Representatives December 14,
2005.

Attest:

Clerk.