

Business of the House of Representatives a report on the disaster assistance operations of the Administration for that fiscal year. The report shall—

“(1) specify the number of Administration personnel involved in such operations;

“(2) describe any material changes to those operations, such as changes to technologies used or to personnel responsibilities;

“(3) describe and assess the effectiveness of the Administration in responding to disasters during that fiscal year, including a description of the number and amounts of loans made for damage and for economic injury; and

“(4) describe the plans of the Administration for preparing to respond to disasters during the next fiscal year.”.

TITLE XIII—COMMODITY FUTURES

SEC. 13001. SHORT TITLE.

This title may be cited as the “CFTC Reauthorization Act of 2008”.

Subtitle A—General Provisions

SEC. 13101. COMMISSION AUTHORITY OVER AGREEMENTS, CONTRACTS OR TRANSACTIONS IN FOREIGN CURRENCY.

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

“(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—

“(i) This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

“(I) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))); and

“(II) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

“(aa) a financial institution;

“(bb)(AA) a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5); or

“(BB) an associated person of a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5) concerning the financial or securities activities of which the broker or dealer makes and keeps records under section 15C(b) or

17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

“(cc)(AA) a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a(20) of this Act, is registered under this Act, is not a person described in item (bb) of this subclause, and maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph; or

“(BB) an affiliated person of a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a(20) of this Act, is registered under this Act, and is not a person described in item (bb) of this subclause, if the affiliated person maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is not a person described in such item (bb), and the futures commission merchant makes and keeps records under section 4f(c)(2)(B) of this Act concerning the futures and other financial activities of the affiliated person;

“(dd) an insurance company described in section 1a(12)(A)(ii) of this Act, or a regulated subsidiary or affiliate of such an insurance company;

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

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

“(gg) a retail foreign exchange dealer that maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is registered in such capacity with the Commission, subject to such terms and conditions as the Commission shall prescribe, and is a member of a futures association registered under section 17.

“(ii) The dollar amount that applies for purposes of this clause is—

“(I) \$10,000,000, beginning 120 days after the date of the enactment of this clause;

“(II) \$15,000,000, beginning 240 days after such date of enactment; and

“(III) \$20,000,000, beginning 360 days after such date of enactment.

“(iii) Notwithstanding items (cc) and (gg) of clause (i)(II) of this subparagraph, agreements, contracts, or transactions described in clause (i) of this subparagraph shall be subject to subsection (a)(1)(B) of this

section and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b) if the agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant or retail foreign exchange dealer, or an affiliated person of a futures commission merchant registered under this Act that is not also a person described in any of item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II) of this subparagraph.

“(iv)(I) Notwithstanding items (cc) and (gg) of clause (i)(II), a person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 17, shall not—

“(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II);

“(bb) exercise discretionary trading authority or obtain written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II); or

“(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II).

“(II) Subclause (I) of this clause shall not apply

to—

“(aa) any person described in any of item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II);

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

“(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

“(III) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any

of the purposes of, this Act in connection with the activities of persons subject to subclause (I).

“(IV) Subclause (III) of this clause shall not apply to—

“(aa) any person described in any of item (aa) through (ff) of clause (i)(II);

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

“(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

“(v) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this Act in connection with agreements, contracts, or transactions described in clause (i) which are offered, or entered into, by a person described in item (cc) or (gg) of clause (i)(II).

“(C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is—

“(aa) offered to, or entered into with, a person that is not an eligible contract participant (except that this subparagraph shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is a person described in any of item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II)); and

“(bb) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

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

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

“(bb) a contract of sale that—

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

“(BB) creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

“(ii)(I) Agreements, contracts, or transactions described in clause (i) of this subparagraph shall be subject to subsection (a)(1)(B) of this section and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b).

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

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

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

“(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of or to accomplish any of the purposes of this Act in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph if the agreements, contracts, or transactions are offered, or entered into, by a person that is not described in item (aa) through (ff) of subparagraph (B)(i)(II).

“(iii)(I) A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 17, shall not—

“(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II);

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

“(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II).

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

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

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

“(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

“(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this Act in connection with the activities of persons subject to subclause (I).

“(IV) Subclause (III) of this clause shall not apply to—

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

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

“(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

“(iv) Sections 4(b) and 4b shall apply to any agreement, contract, or transaction described in clause (i) of this subparagraph as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

“(vi) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provision of this Act with respect to security futures products and persons effecting transactions in security futures products.”.

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

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

(2) The provisions of section 2(c)(2)(B)(i)(II)(cc) that set forth adjusted net capital requirements, and the provisions of such section that require a futures commission merchant to be primarily or substantially engaged in certain business activities.

SEC. 13102. ANTI-FRAUD AUTHORITY OVER PRINCIPAL-TO-PRINCIPAL TRANSACTIONS.

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

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

(2) by striking all through the end of subsection (a) and inserting the following:

“SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MISLEAD.

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

“(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or

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

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

“(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

“(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person; or

“(D)(i) to bucket an order if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market; or

“(ii) to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of the other person to become the buyer in respect to any selling order of the other person, or become the seller in respect to any buying order of the other person, if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market unless the order is executed in accordance with the rules of the designated contract market.

“(b) CLARIFICATION.—Subsection (a)(2) of this section shall not obligate any person, in or in connection with a transaction in a contract of sale of a commodity for future delivery, or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g), with another person, to disclose to the other person nonpublic information that may be material to the market price, rate, or level of the commodity or transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.”.

SEC. 13103. CRIMINAL AND CIVIL PENALTIES.

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

(1) by inserting “(A)” after “assess such person”; and

(2) by inserting after “each such violation” the following: “, or (B) in any case of manipulation or attempted manipulation in violation of this subsection, subsection (d) of this section, or section 9(a)(2), a civil penalty of not more than the greater of \$1,000,000 or triple the monetary gain to the person for each such violation.”.

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

(1) in the first sentence, by inserting before the period at the end the following: “, or, in any case of manipulation or attempted manipulation in violation of section 6(c), 6(d), or 9(a)(2), a civil penalty of not more than \$1,000,000 for each such violation”; and

(2) in the second sentence, by inserting before the period at the end the following: “, except that if the failure or refusal to obey or comply with the order involved any offense under section 9(a)(2), the registered entity, director, officer, agent,

or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 9(a)(2)”.

(c) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—Section 6c(d) of such Act (7 U.S.C. 13a–1(d)) is amended by striking all that precedes paragraph (2) and inserting the following:

“(d) CIVIL PENALTIES.—

“(1) IN GENERAL.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

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

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

(d) VIOLATIONS GENERALLY.—Section 9(a) of such Act (7 U.S.C. 13(a)) is amended in the matter preceding paragraph (1)—

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

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

SEC. 13104. AUTHORIZATION OF APPROPRIATIONS.

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

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

SEC. 13105. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 4a(e) of the Commodity Exchange Act (7 U.S.C. 6a(e)) is amended—

(1) by inserting “or certified by a registered entity pursuant to section 5c(c)(1)” after “approved by the Commission” ; and

(2) by striking “section 9(c)” and inserting “section 9(a)(5)”.

(b) Section 4f(c)(4)(B)(i) of such Act (7 U.S.C. 6f(c)(4)(B)(i)) is amended by striking “compiled” and inserting “complied”.

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

(d) The Commodity Exchange Act is amended—

(1) by redesignating the first section 4p (7 U.S.C. 6o–1), as added by section 121 of the Commodity Futures Modernization Act of 2000, as section 4q; and

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

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

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

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

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

(2) by inserting “commenced” after “in a judicial proceeding”.

H. R. 2419—513

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

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

(2) by redesignating subsection (f) as subsection (e).

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

(j) Section 1a(33)(A) of such Act (7 U.S.C. 1a(33)(A)) is amended by striking “transactions” and all that follows and inserting “trans-

actions—

“(i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or

“(ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.”.

(k) Section 14(d) of such Act (7 U.S.C. 18(d)) is amended—

(1) by inserting “(1)” before “If”; and

(2) by adding after and below the end the following:

“(2) A reparation award shall be directly enforceable in district court as if it were a judgment pursuant to section 1963 of title 28, United States Code. This paragraph shall operate retroactively from the effective date of its enactment, and shall apply to all reparation awards for which a proceeding described in paragraph (1) is commenced within 3 years of the date of the Commission’s order.”.

SEC. 13106. PORTFOLIO MARGINING AND SECURITY INDEX ISSUES.

(a) The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission shall work to ensure that the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or both, as appropriate, have taken the actions required under subsection (b).

(b) The SEC, the CFTC, or both, as appropriate, shall take action under their existing authorities to permit—

(1) by September 30, 2009, risk-based portfolio margining for security options and security futures products (as defined in section 1a(32) of the Commodity Exchange Act); and

(2) by June 30, 2009, the trading of futures on certain security indexes by resolving issues related to foreign security indexes.

Subtitle B—Significant Price Discovery Contracts on Exempt Commercial Markets

SEC. 13201. SIGNIFICANT PRICE DISCOVERY CONTRACTS.

(a) DEFINITIONS.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraph (33) as paragraph (34); and

(2) by inserting after paragraph (32) the following:

“(33) SIGNIFICANT PRICE DISCOVERY CONTRACT.—The term ‘significant price discovery contract’ means an agreement, contract, or transaction subject to section 2(h)(7).”.

(b) STANDARDS APPLICABLE TO SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Section 2(h) of such Act (7 U.S.C. 2(h)) is amended by adding at the end the following:

“(7) SIGNIFICANT PRICE DISCOVERY CONTRACTS.—

“(A) IN GENERAL.—An agreement, contract, or transaction conducted in reliance on the exemption in paragraph (3) shall be subject to the provisions of subparagraphs (B) through (D), under such rules and regulations as the Commission shall promulgate, provided that the Commission determines, in its discretion, that the agreement, contract, or transaction performs a significant price discovery function as described in subparagraph (B).

“(B) SIGNIFICANT PRICE DISCOVERY DETERMINATION.—In making a determination whether an agreement, contract, or transaction performs a significant price discovery function, the Commission shall consider, as appropriate:

“(i) PRICE LINKAGE.—The extent to which the agreement, contract, or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market or a derivatives transaction execution facility, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

“(ii) ARBITRAGE.—The extent to which the price for the agreement, contract, or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated contract market or derivatives transaction execution facility, or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

“(iii) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts, or transactions being traded or executed on the electronic trading facility.

“(iv) MATERIAL LIQUIDITY.—The extent to which the volume of agreements, contracts, or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts, or transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in paragraph (3).

“(v) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule as relevant to determine whether an agreement, contract,

or transaction serves a significant price discovery function.

“(C) CORE PRINCIPLES APPLICABLE TO SIGNIFICANT PRICE DISCOVERY CONTRACTS.—

“(i) IN GENERAL.—An electronic trading facility on which significant price discovery contracts are traded or executed shall, with respect to those contracts, comply with the core principles specified in this subparagraph.

“(ii) CORE PRINCIPLES.—The electronic trading facility shall have reasonable discretion (including discretion to account for differences between cleared and uncleared significant price discovery contracts) in establishing the manner in which it complies with the following core principles:

“(I) CONTRACTS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The electronic trading facility shall list only significant price discovery contracts that are not readily susceptible to manipulation.

“(II) MONITORING OF TRADING.—The electronic trading facility shall monitor trading in significant price discovery contracts to prevent market manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(III) ABILITY TO OBTAIN INFORMATION.—The electronic trading facility shall—

“(aa) establish and enforce rules that will allow the electronic trading facility to obtain any necessary information to perform any of the functions described in this subparagraph;

“(bb) provide the information to the Commission upon request; and

“(cc) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(IV) POSITION LIMITATIONS OR ACCOUNTABILITY.—The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts, and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.

“(V) EMERGENCY AUTHORITY.—The electronic trading facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where

necessary and appropriate, including the authority—

“(aa) to liquidate open positions in a significant price discovery contract; and

“(bb) to suspend or curtail trading in a significant price discovery contract.

“(VI) DAILY PUBLICATION OF TRADING INFORMATION.—The electronic trading facility shall make public daily information on price, trading volume, and other trading data to the extent appropriate for significant price discovery contracts

“(VII) COMPLIANCE WITH RULES.—The electronic trading facility shall monitor and enforce compliance with any rules of the electronic trading facility applicable to significant price discovery contracts, including the terms and conditions of the contracts and any limitations on access to the electronic trading facility with respect to the contracts.

“(VIII) CONFLICT OF INTEREST.—The electronic trading facility, with respect to significant price discovery contracts, shall—

“(aa) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(bb) establish a process for resolving the conflicts of interest.

“(IX) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the electronic trading facility, with respect to significant price discovery contracts, shall endeavor to avoid—

“(aa) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(bb) imposing any material anticompetitive burden on trading on the electronic trading facility.

“(D) IMPLEMENTATION.—

“(i) CLEARING.—The Commission shall take into consideration differences between cleared and uncleared significant price discovery contracts when reviewing the implementation of the core principles by an electronic trading facility.

“(ii) REVIEW.—As part of the Commission’s continual monitoring and surveillance activities, the Commission shall, not less frequently than annually, evaluate, as appropriate, all the agreements, contracts, or transactions conducted on an electronic trading facility in reliance on the exemption provided in paragraph (3) to determine whether they serve a significant price discovery function as described in subparagraph (B) of this paragraph.”

SEC. 13202. LARGE TRADER REPORTING.

(a) REPORTING AND RECORDKEEPING.—Section 4g(a) of the Commodity Exchange Act (7 U.S.C. 6g(a)) is amended by inserting

“, and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract” after “elsewhere”.

(b) REPORTS OF POSITIONS EQUAL TO OR IN EXCESS OF TRADING LIMITS.—Section 4i of such Act (7 U.S.C. 6i) is amended—

(1) by inserting “, or any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract” after “subject to the rules of any contract market or derivatives transaction execution facility”; and

(2) in the matter following paragraph (2), by inserting “or electronic trading facility” after “subject to the rules of any other board of trade”.

SEC. 13203. CONFORMING AMENDMENTS.

(a) Section 1a(12)(A)(x) of the Commodity Exchange Act (7 U.S.C. 1a(12)(A)(x)) is amended by inserting “(other than an electronic trading facility with respect to a significant price discovery contract)” after “registered entity”.

(b) Section 1a(29) of such Act (7 U.S.C. 1a(29)) is amended—

(1) in subparagraph (C), by striking “and” at the end;

(2) in subparagraph (D), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(E) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.”

(c) Section 2(a)(1)(A) of such Act (7 U.S.C. 2(a)(1)(A)) is amended by inserting after “future delivery” the following: “(including significant price discovery contracts)”.

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

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

(1) in subparagraph (B), by inserting “and, for a significant price discovery contract, requiring large trader reporting,” after “proscribing fraud”;

(2) by striking “and” at the end of subparagraph (C); and

(3) by striking subparagraph (D) and inserting the following:

“(D) such rules, regulations, and orders as the Commission may issue to ensure timely compliance with any of the provisions of this Act applicable to a significant price discovery contract traded on or executed on any electronic trading facility; and

“(E) such other provisions of this Act as are applicable by their terms to significant price discovery contracts or to registered entities or electronic trading facilities with respect to significant price discovery contracts.”

(f) Section 2(h)(5)(B)(iii)(I) of such Act (7 U.S.C. 2(h)(5)(B)(iii)(I)) is amended by inserting “or to make the determination described in subparagraph (B) of paragraph (7)” after “paragraph (4)”.

(g) Section 4a of such Act (7 U.S.C. 6a) is amended—

H. R. 2419—518

(1) in subsection (a)—

(A) in the first sentence, by inserting “, or on electronic trading facilities with respect to a significant price discovery contract” after “derivatives transaction execution facilities”; and

(B) in the second sentence, by inserting “, or on an electronic trading facility with respect to a significant price discovery contract,” after “derivatives transaction execution facility”; and

(2) in subsection (b)—

(A) in paragraph (1), by inserting “or electronic trading facility with respect to a significant price discovery contract” after “facility or facilities”; and

(B) in paragraph (2), by inserting “or electronic trading facility with respect to a significant price discovery contract” after “derivatives transaction execution facility”; and

(3) in subsection (e)—

(A) in the first sentence—

(i) by inserting “or by any electronic trading facility” after “registered by the Commission”;

(ii) by inserting “or on an electronic trading facility” after “derivatives transaction execution facility” the second place it appears; and

(iii) by inserting “or electronic trading facility” before “or such board of trade” each place it appears; and

(B) in the second sentence, by inserting “or electronic trading facility with respect to a significant price discovery contract” after “registered by the Commission”.

(h) Section 5a(d) of such Act (7 U.S.C. 7a(d)(1)) is amended—
(1) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10); and

(2) by inserting after paragraph (3) the following:

“(4) POSITION LIMITATIONS OR ACCOUNTABILITY.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the derivatives transaction execution facility shall adopt position limits or position accountability for speculators, where necessary and appropriate for a contract, agreement or transaction with an underlying commodity that has a physically deliverable supply.”.

(i) Section 5c(a) of such Act (7 U.S.C. 7a–2(a)) is amended in paragraph (1) by inserting “, and section 2(h)(7) with respect to significant price discovery contracts,” after “, and 5b(d)(2)”.

(j) Section 5c(b) of such Act (7 U.S.C. 7a–2(b)) is amended—
(1) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—A contract market, derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.”;

(2) in paragraph (2), by striking “contract market or derivatives transaction execution facility” and inserting “contract market, derivatives transaction execution facility, or electronic trading facility”; and

(3) in paragraph (3), by striking “contract market or derivatives transaction execution facility” each place it appears and

inserting “contract market, derivatives transaction execution facility, or electronic trading facility”.

(k) Section 5c(d)(1) of such Act (7 U.S.C. 7a–2(d)(1)) is amended by inserting “or 2(h)(7)(C) with respect to a significant price discovery contract traded or executed on an electronic trading facility,” after “5b(d)(2)”.

(l) Section 5e of such Act (7 U.S.C. 7b) is amended by inserting “, or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,” after “revocation of designation as a registered entity”.

(m) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended by striking the first sentence and all that follows through “hearing on the record: Provided,” and inserting the following:

“The Commission is authorized to suspend for a period not to exceed 6 months or to revoke the designation or registration of any contract market or derivatives transaction execution facility, or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract, on a showing that the contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government, made a condition of its designation or registration as set forth in sections 5 through 5b or section 5f, or that the contract market or derivatives transaction execution facility or electronic trading facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record: Provided,”

(n) Section 22(b)(1) of such Act (7 U.S.C. 25(b)(1)) is amended by inserting “section 2(h)(7) or” before “sections 5”.

SEC. 13204. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in this section, this subtitle shall become effective on the date of enactment of this Act.

(b) SIGNIFICANT PRICE DISCOVERY STANDARDS RULEMAKING.—

(1) The Commodity Futures Trading Commission shall—

(A) not later than 180 days after the date of the enactment of this Act, issue a proposed rule regarding the implementation of section 2(h)(7) of the Commodity Exchange Act; and

(B) not later than 270 days after the date of enactment of this Act, issue a final rule regarding the implementation.

(2) In its rulemaking pursuant to paragraph (1) of this subsection, the Commission shall include the standards, terms, and conditions under which an electronic trading facility will have the responsibility to notify the Commission that an agreement, contract, or transaction conducted in reliance on the exemption provided in section 2(h)(3) of the Commodity Exchange Act may perform a price discovery function.

(c) SIGNIFICANT PRICE DISCOVERY DETERMINATIONS.—With respect to any electronic trading facility operating on the effective date of the final rule issued pursuant to subsection (b)(1), the

Commission shall complete a review of the agreements, contracts, and transactions of the facility not later than 180 days after that effective date to determine whether any such agreement, contract, or transaction performs a significant price discovery function.

TITLE XIV—MISCELLANEOUS

Subtitle A—Socially Disadvantaged Producers and Limited Resource Producers

SEC. 14001. IMPROVED PROGRAM DELIVERY BY DEPARTMENT OF AGRICULTURE ON INDIAN RESERVATIONS.

Section 2501(g)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(g)(1)) is amended—

(1) in the first sentence—

(A) by striking “Agricultural Stabilization and Conservation Service, Soil Conservation Service, and Farmers Home Administration offices” and inserting “Farm Service Agency and Natural Resources Conservation Service”; and

(B) by inserting “where there has been a need demonstrated” after “include”; and

(2) by striking the second sentence.

SEC. 14002. FORECLOSURE.

(a) IN GENERAL.—Section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) is amended:

(1) by inserting “(a)” after “SEC. 331A.”; and

(2) by adding at the end the following:

“(b) MORATORIUM.—

“(1) IN GENERAL.—Subject to the other provisions of this subsection, effective beginning on the date of the enactment of this subsection, there shall be in effect a moratorium, with respect to farmer program loans made under subtitle A, B, or C, on all acceleration and foreclosure proceedings instituted by the Department of Agriculture against any farmer or rancher who—

“(A) has pending against the Department a claim of program discrimination that is accepted by the Department as valid; or

“(B) files a claim of program discrimination that is accepted by the Department as valid.

“(2) WAIVER OF INTEREST AND OFFSETS.—During the period of the moratorium, the Secretary shall waive the accrual of interest and offsets on all farmer program loans made under subtitle A, B, or C for which loan acceleration or foreclosure proceedings have been suspended under paragraph (1).

“(3) TERMINATION OF MORATORIUM.—The moratorium shall terminate with respect to a claim of discrimination by a farmer or rancher on the earlier of—

“(A) the date the Secretary resolves the claim; or

“(B) if the farmer or rancher appeals the decision of the Secretary on the claim to a court of competent jurisdiction, the date that the court renders a final decision on the claim.