

111TH CONGRESS
1ST SESSION

H. R. 2448

To provide for regulation of futures transactions involving energy commodities, to regulate credit default swaps, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act, Natural Gas Policy Act of 1978, and the Federal Power Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2009

Mr. STUPAK (for himself, Mr. DOYLE, Mr. INSLEE, Mr. VAN HOLLEN, Mr. BISHOP of New York, Mr. CARNEY, Mr. LARSON of Connecticut, Mr. WILSON of Ohio, Ms. SLAUGHTER, Mr. GENE GREEN of Texas, Ms. KILPATRICK of Michigan, and Mr. MCHUGH) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Energy and Commerce and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for regulation of futures transactions involving energy commodities, to regulate credit default swaps, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act, Natural Gas Policy Act of 1978, and the Federal Power Act, 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 “Prevent Unfair Manip-
3 ulation of Prices Act of 2009”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Regulation of certain transactions in derivatives involving energy commodities.
- Sec. 4. No effect on authority of the Federal Energy Regulatory Commission.
- Sec. 5. Inspector general of the Commodity Futures Trading Commission.
- Sec. 6. Settlement and clearing through registered derivatives clearing organizations.
- Sec. 7. Limitation on eligibility to purchase a credit default swap.
- Sec. 8. Transaction fees.
- Sec. 9. No effect on authority of the Federal Trade Commission.
- Sec. 10. Cease-and-desist authority.
- Sec. 11. Natural Gas Act refunds.
- Sec. 12. Regulation of carbon derivatives markets.

6 **SEC. 3. REGULATION OF CERTAIN TRANSACTIONS IN DE-**
7 **RIVATIVES INVOLVING ENERGY COMMOD-**
8 **ITIES.**

9 (a) ENERGY COMMODITY DEFINED.—Section 1a of
10 the Commodity Exchange Act (7 U.S.C. 1a) is amended—

11 (1) in paragraph (14), by inserting “, an energy
12 commodity,” after “excluded commodity”;

13 (2) by redesignating paragraphs (13) through
14 (21) and paragraphs (22) through (34) as para-
15 graphs (14) through (22) and paragraphs (24)
16 through (36), respectively;

17 (3) by inserting after paragraph (12) the fol-
18 lowing:

1 “(13) ENERGY COMMODITY.—The term ‘energy
2 commodity’ means—

3 “(A) coal;

4 “(B) crude oil, gasoline, diesel fuel, jet
5 fuel, heating oil, and propane;

6 “(C) electricity (excluding financial trans-
7 mission rights which are subject to regulation
8 and oversight by the Federal Energy Regu-
9 latory Commission);

10 “(D) natural gas; and

11 “(E) any other substance (other than an
12 excluded commodity, a metal, or an agricultural
13 commodity) that is used as a source of energy,
14 as the Commission, in its discretion, deems ap-
15 propriate.”; and

16 (4) by inserting after paragraph (22) (as so re-
17 designated by paragraph (2) of this subsection) the
18 following:

19 “(23) INCLUDED ENERGY TRANSACTION.—The
20 term ‘included energy transaction’ means a contract,
21 agreement, or transaction in an energy commodity
22 for future delivery that provides for a delivery point
23 of the energy commodity in the United States or a
24 territory or possession of the United States, or that

1 is offered or transacted on or through a computer
2 terminal located in the United States.”.

3 (b) EXTENSION OF REGULATORY AUTHORITY TO
4 SWAPS INVOLVING ENERGY TRANSACTIONS.—Section
5 2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting
6 “or an energy commodity” after “agricultural com-
7 modity”.

8 (c) ELIMINATION OF EXEMPTION FOR OVER-THE-
9 COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—
10 Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended
11 by inserting “(other than an energy commodity)” after
12 “exempt commodity”.

13 (d) EXTENSION OF REGULATORY AUTHORITY TO IN-
14 CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS
15 OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amend-
16 ed—

17 (1) in subsection (a), by inserting “, and which
18 is not an included energy transaction” after “terri-
19 tories or possessions” the 2nd place it appears; and

20 (2) in subsection (b), by adding at the end the
21 following: “The preceding sentence shall not apply
22 with respect to included energy transactions.”.

23 (e) LIMITATION OF GENERAL EXEMPTIVE AUTHOR-
24 ITY OF THE CFTC WITH RESPECT TO INCLUDED EN-
25 ERGY TRANSACTIONS.—

1 (1) IN GENERAL.—Section 4(c) of such Act (7
2 U.S.C. 6(c)) is amended by adding at the end the
3 following:

4 “(6) The Commission may not exempt any in-
5 cluded energy transaction from the requirements of
6 subsection (a), unless the Commission provides 60
7 days advance notice to the Congress and the Posi-
8 tion Limit Energy Advisory Group and solicits pub-
9 lic comment about the exemption request and any
10 proposed Commission action.”.

11 (2) NULLIFICATION OF NO-ACTION LETTER EX-
12 EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE
13 TO INCLUDED ENERGY TRANSACTIONS.—Beginning
14 180 days after the date of the enactment of this Act,
15 any exemption provided by the Commodity Futures
16 Trading Commission that has allowed included en-
17 ergy transactions (as defined in section 1a(13) of
18 the Commodity Exchange Act) to be conducted with-
19 out regard to the requirements of section 4(a) of
20 such Act shall be null and void.

21 (f) REQUIREMENT TO ESTABLISH UNIFORM SPECU-
22 LATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—

23 (1) IN GENERAL.—Section 4a(a) of such Act (7
24 U.S.C. 6a(a)) is amended—

25 (A) by inserting “(1)” after “(a)”;

1 (B) by inserting after the 2nd sentence the
2 following: “With respect to energy transactions,
3 the Commission shall fix limits on the aggregate
4 number of positions which may be held by
5 any person for each month across all markets
6 subject to the jurisdiction of the Commission.”;

7 (C) in the 4th sentence by inserting “, consistent
8 with the 3rd sentence,” after “Commission”;
9 and

10 (D) by adding after and below the end the
11 following:

12 “(2)(A) Not later than 60 days after the date of the
13 enactment of this paragraph, the Commission shall convene
14 a Position Limit Energy Advisory Group consisting
15 of representatives from—

16 “(i) 7 predominantly commercial short hedgers
17 of the actual energy commodity for future delivery;

18 “(ii) 7 predominantly commercial long hedgers
19 of the actual energy commodity for future delivery;

20 “(iii) 4 non-commercial participants in markets
21 for energy commodities for future delivery; and

22 “(iv) each designated contract market or derivatives
23 transaction execution facility upon which a
24 contract in the energy commodity for future delivery
25 is traded, and each electronic trading facility that

1 has a significant price discovery contract in the en-
2 ergy commodity.

3 “(B) Not later than 60 days after the date on which
4 the advisory group is convened under subparagraph (A),
5 and annually thereafter, the advisory group shall submit
6 to the Commission advisory recommendations regarding
7 the position limits to be established in paragraph (1).

8 “(C) The Commission shall have exclusive authority
9 to grant exemptions for bona fide hedging transactions
10 and positions from position limits imposed under this Act
11 on energy transactions.”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) SIGNIFICANT PRICE DISCOVERY CON-
14 TRACTS.—Section 2(h)(7) of such Act (7 U.S.C.
15 2(h)(7)) is amended—

16 (i) in subparagraph (A)—

17 (I) by inserting “of this para-
18 graph and section 4a(a)” after “(B)
19 through (D)”;

20 (II) by inserting “of this para-
21 graph” before the period; and

22 (ii) in subparagraph (C)(ii)(IV)—

23 (I) in the heading, by striking
24 “LIMITATIONS OR”; and

1 (II) by striking “position limita-
2 tions or”.

3 (B) CONTRACTS TRADED ON OR THROUGH
4 DESIGNATED CONTRACT MARKETS.—Section
5 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is
6 amended—

7 (i) in the heading by striking “LIMI-
8 TATIONS OR”; and

9 (ii) by striking “position limitations
10 or”.

11 (C) CONTRACTS TRADED ON OR THROUGH
12 DERIVATIVES TRANSACTION EXECUTION FACILI-
13 TIES.—Section 5a(d)(4) of such Act (7 U.S.C.
14 7a(d)(4)) is amended—

15 (i) in the heading by striking “LIMI-
16 TATIONS OR”; and

17 (ii) by striking “position limits or”.

18 (g) ELIMINATION OF THE SWAPS LOOPHOLE.—Sec-
19 tion 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—

20 (1) by inserting “(1)” after “(c)”; and

21 (2) by adding after and below the end the fol-
22 lowing:

23 “(2) For the purposes of contracts of sale for future
24 delivery and options on such contracts or commodities, the
25 Commission shall define what constitutes a bona fide

1 hedging transaction or position as a transaction or posi-
2 tion that—

3 “(A)(i) represents a substitute for transactions
4 made or to be made or positions taken or to be
5 taken at a later time in a physical marketing chan-
6 nel;

7 “(ii) is economically appropriate to the reduc-
8 tion of risks in the conduct and management of a
9 commercial enterprise; and

10 “(iii) arises from the potential change in the
11 value of—

12 “(I) assets that a person owns, produces,
13 manufactures, processes, or merchandises or
14 anticipates owning, producing, manufacturing,
15 processing, or merchandising;

16 “(II) liabilities that a person owns or an-
17 ticipates incurring; or

18 “(III) services that a person provides, pur-
19 chases, or anticipates providing or purchasing;
20 or

21 “(B) reduces risks attendant to a position re-
22 sulting from a transaction that—

23 “(i) was executed pursuant to subsection
24 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-

1 emption issued by the Commission by rule, reg-
2 ulation or order; and

3 “(ii) was executed opposite a counterparty
4 for which the transaction would qualify as a
5 bona fide hedging transaction pursuant to para-
6 graph (2)(A) of this subsection.”.

7 (h) DETAILED REPORTING AND DISAGGREGATION OF
8 MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is
9 amended by adding at the end the following:

10 “(e) DETAILED REPORTING AND DISAGGREGATION
11 OF MARKET DATA.—

12 “(1) INDEX TRADERS AND SWAP DEALERS RE-
13 PORTING.—The Commission shall issue a proposed
14 rule defining and classifying index traders and swap
15 dealers (as those terms are defined by the Commis-
16 sion) for purposes of data reporting requirements
17 and setting routine detailed reporting requirements
18 for any positions of such entities in contracts traded
19 on designated contract markets, over-the-counter
20 markets, derivatives transaction execution facilities,
21 foreign boards of trade subject to section 4(f), and
22 electronic trading facilities with respect to signifi-
23 cant price discovery contracts not later than 120
24 days after the date of the enactment of this sub-

1 section, and issue a final rule within 180 days after
2 such date of enactment.

3 “(2) DISAGGREGATION OF INDEX FUNDS AND
4 OTHER DATA IN MARKETS.—Subject to section 8
5 and beginning within 60 days of the issuance of the
6 final rule required by paragraph (1), the Commis-
7 sion shall disaggregate and make public weekly—

8 “(A) the number of positions and total no-
9 tional value of index funds and other passive,
10 long-only and short-only positions (as defined
11 by the Commission) in all markets to the extent
12 such information is available; and

13 “(B) data on speculative positions relative
14 to bona fide physical hedgers in those markets
15 to the extent such information is available.

16 “(3) DISCLOSURE OF IDENTITY OF HOLDERS
17 OF POSITIONS IN INDEXES IN EXCESS OF POSITION
18 LIMITS.—The Commission shall include in its weekly
19 Commitment of Trader reports the identity of each
20 person who holds a position in an index in excess of
21 a limit imposed under section 4i.”.

22 (i) AUTHORITY TO SET LIMITS TO PREVENT EXCES-
23 SIVE SPECULATION IN INDEXES.—

1 seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or
2 other law to obtain information, carry out enforcement ac-
3 tions, or otherwise carry out the responsibilities of the
4 Federal Energy Regulatory Commission.”.

5 **SEC. 5. INSPECTOR GENERAL OF THE COMMODITY FU-**
6 **TURES TRADING COMMISSION.**

7 (a) ELEVATION OF OFFICE.—

8 (1) INCLUSION OF CFTC IN DEFINITION OF ES-
9 TABLISHMENT.—

10 (A) Section 11(1) of the Inspector General
11 Act of 1978 (5 U.S.C. App.) is amended by
12 striking “or the Federal Cochairpersons of the
13 Commissions established under section 15301
14 of title 40, United States Code;” and inserting
15 “the Federal Cochairpersons of the Commis-
16 sions established under section 15301 of title
17 40, United States Code; or the Chairman of the
18 Commodity Futures Trading Commission;”.

19 (B) Section 11(2) of the Inspector General
20 Act of 1978 (5 U.S.C. App.) is amended by
21 striking “or the Commissions established under
22 section 15301 of title 40, United States Code,”
23 and inserting “the Commissions established
24 under section 15301 of title 40, United States

1 Code, or the Commodity Futures Trading Com-
2 mission,”.

3 (2) EXCLUSION OF CFTC FROM DEFINITION OF
4 DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2)
5 of the Inspector General Act of 1978 (5 U.S.C.
6 App.) is amended by striking “the Commodity Fu-
7 tures Trading Commission,”.

8 (b) EFFECTIVE DATE; TRANSITION RULE.—

9 (1) EFFECTIVE DATE.—The amendments made
10 by this section shall take effect 30 days after the
11 date of the enactment of this Act.

12 (2) TRANSITION RULE.—An individual serving
13 as Inspector General of the Commodity Futures
14 Trading Commission on the effective date of this
15 section pursuant to an appointment made under sec-
16 tion 8G of the Inspector General Act of 1978 (5
17 U.S.C. App.)—

18 (A) may continue so serving until the
19 President makes an appointment under section
20 3(a) of such Act consistent with the amend-
21 ments made by this section; and

22 (B) shall, while serving under subpara-
23 graph (A), remain subject to the provisions of
24 section 8G of such Act which apply with respect

1 to the Commodity Futures Trading Commis-
2 sion.

3 **SEC. 6. SETTLEMENT AND CLEARING THROUGH REG-**
4 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
5 **TIONS.**

6 (a) IN GENERAL.—

7 (1) APPLICATION TO EXCLUDED DERIVATIVE
8 TRANSACTIONS.—

9 (A) Section 2(d)(1) of the Commodity Ex-
10 change Act (7 U.S.C. 2(d)(1)) is amended—

11 (i) by striking “and” at the end of
12 subparagraph (A);

13 (ii) by striking the period at the end
14 of subparagraph (B) and inserting “and”;
15 and

16 (iii) by adding at the end the fol-
17 lowing:

18 “(C) except as provided in section 4(f), the
19 agreement, contract, or transaction is settled
20 and cleared through a derivatives clearing orga-
21 nization registered with the Commission.”.

22 (B) Section 2(d)(2) of such Act (7 U.S.C.
23 2(d)(2)) is amended—

24 (i) by striking “and” at the end of
25 subparagraph (B);

1 (ii) by striking the period at the end
2 of subparagraph (C) and inserting “; and”;
3 and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(D) except as provided in section 4(f), the
7 agreement, contract, or transaction is settled
8 and cleared through a derivatives clearing orga-
9 nization registered with the Commission.”.

10 (2) APPLICATION TO CERTAIN SWAP TRANS-
11 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))
12 is amended—

13 (A) by striking “and” at the end of para-
14 graph (2);

15 (B) by striking the period at the end of
16 paragraph (3) and inserting “; and”; and

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

18 “(4) except as provided in section 4(f), settled
19 and cleared through a derivatives clearing organiza-
20 tion registered with the Commission.”.

21 (3) APPLICATION TO CERTAIN TRANSACTIONS
22 IN EXEMPT COMMODITIES.—

23 (A) Section 2(h)(1) of such Act (7 U.S.C.
24 2(h)(1)) is amended—

1 (i) by striking “and” at the end of
2 subparagraph (A);

3 (ii) by striking the period at the end
4 of subparagraph (B) and inserting “;
5 and”; and

6 (iii) by adding at the end the fol-
7 lowing:

8 “(C) except as provided in section 4(f), is
9 settled and cleared through a derivatives clear-
10 ing organization registered with the Commis-
11 sion.”.

12 (B) Section 2(h)(3) of such Act (7 U.S.C.
13 2(h)(3)) is amended—

14 (i) by striking “and” at the end of
15 subparagraph (A);

16 (ii) by striking the period at the end
17 of subparagraph (B) and inserting “;
18 and”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(C) except as provided in section 4(f), set-
22 tled and cleared through a derivatives clearing
23 organization registered with the Commission.”.

24 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-
25 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is

1 amended by inserting “the agreement, contract, or
2 transaction, except as provided in section 4(h), will
3 be settled and cleared through a derivatives clearing
4 organization registered with the Commission and”
5 before “the Commission determines”.

6 (5) CONFORMING AMENDMENT RELATING TO
7 SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Sec-
8 tion 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is
9 amended by striking the heading for the subpara-
10 graph and all that follows through “As part of” and
11 inserting the following:

12 “(D) REVIEW OF IMPLEMENTATION.—As
13 part of”.

14 (b) ALTERNATIVES TO CLEARING THROUGH DES-
15 IGNATED CLEARING ORGANIZATIONS.—Section 4 of such
16 Act (7 U.S.C. 6), as amended by section 3(h) of this Act,
17 is amended by adding at the end the following:

18 “(f) ALTERNATIVES TO CLEARING THROUGH DES-
19 IGNATED CLEARING ORGANIZATIONS.—

20 “(1) SETTLEMENT AND CLEARING THROUGH
21 CERTAIN OTHER REGULATED ENTITIES.—An agree-
22 ment, contract, or transaction, or class thereof, re-
23 lating to an excluded commodity, that would other-
24 wise be required to be settled and cleared by section
25 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or

1 2(h)(3)(C) of this Act, or subsection (c)(1) of this
2 section may be settled and cleared through an entity
3 listed in subsections (a) or (b) of section 409 of the
4 Federal Deposit Insurance Corporation Improvement
5 Act of 1991.

6 “(2) WAIVER OF CLEARING REQUIREMENT.—

7 “(A) The Commission, in its discretion,
8 may exempt an agreement, contract, or trans-
9 action, or class thereof, that would otherwise be
10 required by section 2(d)(1)(C), 2(d)(2)(D),
11 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,
12 or subsection (c)(1) of this section to be settled
13 and cleared through a derivatives clearing orga-
14 nization registered with the Commission from
15 such requirement.

16 “(B) In granting exemptions pursuant to
17 subparagraph (A), the Commission shall consult
18 with the Securities and Exchange Commission
19 and the Board of Governors of the Federal Re-
20 serve System regarding exemptions that relate
21 to excluded commodities or entities for which
22 the Securities Exchange Commission or the
23 Board of Governors of the Federal Reserve Sys-
24 tem serve as the primary regulator.

1 “(C) Before granting an exemption pursu-
2 ant to subparagraph (A), the Commission shall
3 find that the agreement, contract, or trans-
4 action, or class thereof—

5 “(i) is highly customized as to its ma-
6 terial terms and conditions;

7 “(ii) is transacted infrequently;

8 “(iii) does not serve a significant
9 price-discovery function in the market-
10 place; and

11 “(iv) is being entered into by parties
12 who can demonstrate the financial integ-
13 rity of the agreement, contract, or trans-
14 action and their own financial integrity, as
15 such terms and standards are determined
16 by the Commission. The standards may in-
17 clude, with respect to any federally regu-
18 lated financial entity for which net capital
19 requirements are imposed, a net capital re-
20 quirement associated with any agreement,
21 contract, or transaction subject to an ex-
22 emption from the clearing requirement
23 that is higher than the net capital require-
24 ment that would be associated with such a
25 transaction were it cleared.

1 “(D) Any agreement, contract, or trans-
2 action, or class thereof, which is exempted pur-
3 suant to subparagraph (A) shall be reported to
4 the Commission in a manner designated by the
5 Commission, or to such other entity the Com-
6 mission deems appropriate.

7 “(E) The Commission, the Securities and
8 Exchange Commission, and the Board of Gov-
9 ernors of the Federal Reserve System shall
10 enter into a memorandum of understanding by
11 which the information reported to the Commis-
12 sion pursuant to subparagraph (D) with regard
13 to excluded commodities or entities for which
14 the Securities Exchange Commission or the
15 Board of Governors of the Federal Reserve Sys-
16 tem serve as the primary regulator may be pro-
17 vided to the other agencies.

18 “(g) SPOT AND FORWARD EXCLUSION.—The settle-
19 ment and clearing requirements of section 2(d)(1)(C),
20 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(e)(1)
21 shall not apply to an agreement, contract, or transaction
22 of any cash commodity for immediate or deferred ship-
23 ment or delivery, as defined by the Commission.”.

24 (c) ADDITIONAL REQUIREMENTS APPLICABLE TO
25 APPLICANTS FOR REGISTRATION AS A DERIVATIVE

1 CLEARING ORGANIZATION.—Section 5b(e)(2) of such Act
2 (7 U.S.C. 7a–1(c)(2)) is amended by adding at the end
3 the following:

4 “(O) DISCLOSURE OF GENERAL INFORMA-
5 TION.—The applicant shall disclose publicly and
6 to the Commission information concerning—

7 “(i) the terms and conditions of con-
8 tracts, agreements, and transactions
9 cleared and settled by the applicant;

10 “(ii) the conventions, mechanisms,
11 and practices applicable to the contracts,
12 agreements, and transactions;

13 “(iii) the margin-setting methodology
14 and the size and composition of the finan-
15 cial resource package of the applicant; and

16 “(iv) other information relevant to
17 participation in the settlement and clearing
18 activities of the applicant.

19 “(P) DAILY PUBLICATION OF TRADING IN-
20 FORMATION.—The applicant shall make public
21 daily information on settlement prices, volume,
22 and open interest for contracts settled or
23 cleared pursuant to the requirements of
24 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),
25 2(h)(3)(C) or 4(c)(1) of this Act by the appli-

1 cant if the Commission determines that the
2 contracts perform a significant price discovery
3 function for transactions in the cash market for
4 the commodity underlying the contracts.

5 “(Q) FITNESS STANDARDS.—The applicant
6 shall establish and enforce appropriate fitness
7 standards for directors, members of any dis-
8 ciplinary committee, and members of the appli-
9 cant, and any other persons with direct access
10 to the settlement or clearing activities of the
11 applicant, including any parties affiliated with
12 any of the persons described in this subpara-
13 graph.”.

14 (d) AMENDMENTS.—

15 (1) Section 409 of the Federal Deposit Insur-
16 ance Corporation Improvement Act of 1991 (12
17 U.S.C. 4422) is amended by adding at the end the
18 following:

19 “(c) CLEARING REQUIREMENT.—A multilateral
20 clearing organization described in subsections (a) or (b)
21 of this section shall comply with requirements similar to
22 the requirements of sections 5b and 5c or the Commodity
23 Exchange Act.”.

24 (2) Section 407 of the Legal Certainty for
25 Bank Products Act of 2000 (7 U.S.C. 27e) is

1 amended by inserting “and the settlement and clear-
2 ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),
3 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such
4 Act” after “the clearing of covered swap agree-
5 ments”.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect 150 days after the date of
8 the enactment of this Act.

9 (f) TRANSITION RULE.—Any agreement, contract, or
10 transaction entered into before the date of the enactment
11 of this Act or within 150 days after such date of enact-
12 ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)
13 of section 2 of the Commodity Exchange Act or any other
14 exemption issued by the Commission Futures Trading
15 Commission by rule, regulation, or order shall, within 90
16 days after such date of enactment, unless settled and
17 cleared through an entity registered with the Commission
18 as a derivatives clearing organization or another clearing
19 entity pursuant to section 4(f) of such Act, be reported
20 to the Commission in a manner designated by the Com-
21 mission, or to such other entity as the Commission deems
22 appropriate.

1 **SEC. 7. LIMITATION ON ELIGIBILITY TO PURCHASE A**
2 **CREDIT DEFAULT SWAP.**

3 (a) IN GENERAL.—Section 4c of the Commodity Ex-
4 change Act (7 U.S.C. 6c) is amended by adding at the
5 end the following:

6 “(h) LIMITATION ON ELIGIBILITY TO PURCHASE A
7 CREDIT DEFAULT SWAP.—It shall be unlawful for any
8 person to enter into a credit default swap unless the per-
9 son—

10 “(1) owns a credit instrument which is insured
11 by the credit default swap;

12 “(2) would experience financial loss if an event
13 that is the subject of the credit default swap occurs
14 with respect to the credit instrument; and

15 “(3) meets such minimum capital adequacy
16 standards as may be established by the Commission,
17 in consultation with the Board of Governors of the
18 Federal Reserve System, or such more stringent
19 minimum capital adequacy standards as may be es-
20 tablished by or under the law of any State in which
21 the swap is originated or entered into, or in which
22 possession of the contract involved takes place.”.

23 (b) ELIMINATION OF PREEMPTION OF STATE
24 BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT
25 SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C.
26 16(e)(2)(B)) is amended by inserting “(other than a credit

1 default swap in which the purchaser of the swap would
2 not experience financial loss if an event that is the subject
3 of the swap occurred)” before “that is excluded”.

4 (c) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-
5 tion 1a of such Act (7 U.S.C. 1a), as amended by section
6 3(a) of this Act, is amended by adding at the end the fol-
7 lowing:

8 “(37) CREDIT DEFAULT SWAP.—the term ‘cred-
9 it default swap’ means a contract which insures a
10 party to the contract against the risk that an entity
11 may experience a loss of value as a result of an
12 event specified in the contract, such as a default or
13 credit downgrade. A credit default swap that is trad-
14 ed on or cleared by a registered entity shall be ex-
15 cluded from the definition of a security as defined in
16 this Act and in section 2(a)(1) of the Securities Act
17 of 1933 or section 3(a)(10) of the Securities Ex-
18 change Act of 1934, except it shall be deemed a se-
19 curity solely for purpose of enforcing prohibitions
20 against insider trading in sections 10 and 16 of the
21 Securities Exchange Act of 1934.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall be effective for credit default swaps (as
24 defined in section 1a(37) of the Commodity Exchange Act)

1 entered into after 60 days after the date of the enactment
2 of this section.

3 **SEC. 8. TRANSACTION FEES.**

4 (a) IN GENERAL.—Section 12 of the Commodity Ex-
5 change Act (7 U.S.C. 16) is amended by redesignating
6 subsections (e), (f), and (g) as subsections (f), (g), and
7 (h), respectively, and inserting after subsection (d) the fol-
8 lowing:

9 “(e) CLEARING FEES.—

10 “(1) IN GENERAL.—The Commission shall, in
11 accordance with this subsection, charge and collect
12 from each registered clearing organization, and each
13 such organization shall pay to the Commission,
14 transaction fees at a rate calculated to recover the
15 costs to the Federal Government of the supervision
16 and regulation of futures markets, except those di-
17 rectly related to enforcement.

18 “(2) FEES ASSESSED PER SIDE OF CLEARED
19 CONTRACTS.—

20 “(A) IN GENERAL.—The Commission shall
21 determine the fee rate referred to in paragraph
22 (1), and shall apply the fee rate per side of any
23 transaction cleared.

24 “(B) AUTHORITY TO DELEGATE.—The
25 Commission may determine the procedures by

1 which the fee rate is to be applied on the trans-
2 actions subject to the fee, or delegate the au-
3 thority to make the determination to any appro-
4 priate derivatives clearing organization.

5 “(3) EXEMPTIONS.—The Commision may not
6 impose a fee under paragraph (1) on—

7 “(A) a class of contracts or transactions if
8 the Commission finds that it is in the public in-
9 terest to exempt the class from the fee; or

10 “(B) a contract or transaction cleared by
11 a registered derivatives clearing organization
12 that is—

13 “(i) subject to fees under section 31
14 of the Securities Exchange Act of 1934; or

15 “(ii) a security as defined in the Secu-
16 rities Act of 1933 or the Securities Ex-
17 change Act of 1934.

18 “(4) DATES FOR PAYMENT OF FEES.—The fees
19 imposed under paragraph (1) shall be paid on or be-
20 fore—

21 “(A) March 15 of each year, with respect
22 to transactions occurring on or after the pre-
23 ceding September 1 and on or before the pre-
24 ceding December 31; and

1 “(B) September 15 of each year, with re-
2 spect to transactions occurring on or after the
3 preceding January 1 and on or before the pre-
4 ceding August 31.

5 “(5) ANNUAL ADJUSTMENT OF FEE RATES.—

6 “(A) IN GENERAL.—Not later than April
7 30 of each fiscal year, the Commission shall, by
8 order, adjust each fee rate determined under
9 paragraph (2) for the fiscal year to a uniform
10 adjusted rate that, when applied to the esti-
11 mated aggregate number of cleared sides of
12 transactions for the fiscal year, is reasonably
13 likely to produce aggregate fee receipts under
14 this subsection for the fiscal year equal to the
15 target offsetting receipt amount for the fiscal
16 year.

17 “(B) DEFINITIONS.—In subparagraph (A):

18 “(i) ESTIMATED AGGREGATE NUMBER
19 OF CLEARED SIDES OF TRANSACTIONS.—

20 The term ‘estimated aggregate number of
21 cleared sides of transactions’ means, with
22 respect to a fiscal year, the aggregate
23 number of cleared sides of transactions to
24 be cleared by registered derivatives clear-
25 ing organizations during the fiscal year, as

1 estimated by the Commission, after con-
2 sultation with the Office of Management
3 and Budget, using the methodology re-
4 quired for making projections pursuant to
5 section 257 of the Balanced Budget and
6 Emergency Deficit Control Act of 1985.

7 “(ii) TARGET OFFSETTING RECEIPT
8 AMOUNT.—The term ‘target offsetting re-
9 ceipt amount’ means, with respect to a fis-
10 cal year, the total level of Commission
11 budget authority for all non-enforcement
12 activities of the Commission, as contained
13 in the regular appropriations Acts for the
14 fiscal year.

15 “(C) NO JUDICIAL REVIEW.—An adjusted
16 fee rate prescribed under subparagraph (A)
17 shall not be subject to judicial review.

18 “(6) PUBLICATION.—Not later than April 30 of
19 each fiscal year, the Commission shall cause to be
20 published in the Federal Register notices of the fee
21 rates applicable under this subsection for the suc-
22 ceeding fiscal year, and any estimate or projection
23 on which the fee rates are based.

24 “(7) INAPPLICABILITY OF CERTAIN PROCE-
25 DURAL RULES.—Section 553 of title 5, United

1 States Code, shall not apply with respect to any ex-
2 ercise of authority under this subsection.

3 “(8) ESTABLISHMENT OF FUTURES AND OP-
4 TIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF
5 FEES.—There is established in the Treasury of the
6 United States an account which shall be known as
7 the ‘Futures and Options Transaction Fee Account’.
8 All fees collected under this subsection for a fiscal
9 year shall be deposited in the account. Amounts in
10 the account are authorized to be appropriated to
11 fund the expenditures of the Commission.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) shall apply to fiscal years beginning 30 or
14 more days after the date of the enactment of this Act.

15 (c) TRANSITION RULE.—If this section becomes law
16 after March 31 and before September 1 of a fiscal year,
17 then paragraphs (5)(A) and (6) of section 12(e) of the
18 Commodity Exchange Act shall be applied, in the case of
19 the 1st fiscal year beginning after the date of the enact-
20 ment of this Act, by substituting “August 31” for “April
21 30”.

22 **SEC. 9. NO EFFECT ON AUTHORITY OF THE FEDERAL**
23 **TRADE COMMISSION.**

24 Nothing in this Act shall be interpreted to affect or
25 diminish the jurisdiction or authority of the Federal Trade

1 Commission with respect to its authorities under the Fed-
2 eral Trade Commission Act (15 U.S.C. 41 et seq.) or the
3 Energy Independence and Security Act of 2007 (Public
4 Law 110–140) to obtain information, to carry out enforce-
5 ment activities or otherwise carry out the responsibilities
6 of the Federal Trade Commission.

7 **SEC. 10. CEASE-AND-DESIST AUTHORITY.**

8 (a) NATURAL GAS ACT.—Section 20 of the Natural
9 Gas Act (15 U.S.C. 717s) is amended by adding the fol-
10 lowing at the end:

11 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
12 ORDERS; AUTHORITY OF THE COMMISSION.—

13 “(1) IN GENERAL.—If the Commission finds,
14 after notice and opportunity for hearing, that any
15 entity may be violating, may have violated, or may
16 be about to violate any provision of this Act, or any
17 rule, regulation, restriction, condition, or order made
18 or imposed by the Commission under the authority
19 of this Act, the Commission may publish its findings
20 and issue an order requiring such entity, and any
21 other entity that is, was, or would be a cause of the
22 violation, due to an act or omission the entity knew
23 or should have known would contribute to such vio-
24 lation, to cease and desist from committing or caus-
25 ing such violation and any future violation of the

1 same provision, rule, or regulation. Such order may,
2 in addition to requiring an entity to cease and desist
3 from committing or causing a violation, require such
4 entity to comply, to provide an accounting and
5 disgorgement, or to take steps to effect compliance,
6 with such provision, rule, or regulation, upon such
7 terms and conditions and within such time as the
8 Commission may specify in such order. Any such
9 order may, as the Commission deems appropriate,
10 require future compliance or steps to effect future
11 compliance, either permanently or for such period of
12 time as the Commission may specify.

13 “(2) TIMING OF ENTRY.—An order issued
14 under this subsection shall be entered only after no-
15 tice and opportunity for a hearing, unless the Com-
16 mission determines that notice and hearing prior to
17 entry would be impracticable or contrary to the pub-
18 lic interest.

19 “(f) HEARING.—The notice instituting proceedings
20 pursuant to subsection (e) shall fix a hearing date not ear-
21 lier than 30 days nor later than 60 days after service of
22 the notice unless an earlier or a later date is set by the
23 Commission with the consent of any respondent so served.

24 “(g) TEMPORARY ORDER.—Whenever the Commis-
25 sion determines that—

1 “(1) a respondent may take actions to dissipate
2 or convert assets prior to the completion of the pro-
3 ceedings referred to in subsection (e), and such as-
4 sets would be necessary to comply with or otherwise
5 satisfy a final enforcement order of the Commission
6 pursuant to alleged violations or threatened viola-
7 tions specified in the notice instituting proceedings,
8 or

9 “(2) a respondent is engaged in actual or
10 threatened violations of this Act or a Commission
11 rule, regulation, restriction or order referred to in
12 subsection (e),

13 the Commission may issue a temporary order requiring
14 the respondent to take such action to prevent dissipation
15 or conversion of assets, significant harm to energy con-
16 sumers, or substantial harm to the public interest, frustra-
17 tion of the Commission’s ability to conduct the pro-
18 ceedings, or frustration of the Commission’s ability to re-
19 dress said violation at the conclusion of the proceedings,
20 as the Commission deems appropriate pending completion
21 of such proceedings.

22 “(h) REVIEW OF TEMPORARY ORDERS.—

23 “(1) COMMISSION REVIEW.—At any time after
24 the respondent has been served with a temporary
25 cease-and-desist order pursuant to subsection (g),

1 the respondent may apply to the Commission to have
2 the order set aside, limited, or suspended. If the re-
3 spondent has been served with a temporary cease-
4 and-desist order entered without a prior Commission
5 hearing, the respondent may, within 10 days after
6 the date on which the order was served, request a
7 hearing on such application and the Commission
8 shall hold a hearing and render a decision on such
9 application at the earliest possible time.

10 “(2) JUDICIAL REVIEW.—Within—

11 “(A) 10 days after the date the respondent
12 was served with a temporary cease-and-desist
13 order entered with a prior Commission hearing;
14 or

15 “(B) 10 days after the Commission ren-
16 ders a decision on an application and hearing
17 under paragraph (1), with respect to any tem-
18 porary cease-and-desist order entered without a
19 prior Commission hearing, the respondent may
20 apply to the United States district court for the
21 district in which the respondent resides or has
22 its principal place of business, or for the Dis-
23 trict of Columbia, for an order setting aside,
24 limiting, or suspending the effectiveness or en-
25 forcement of the order, and the court shall have

1 jurisdiction to enter such an order. A respond-
2 ent served with a temporary cease-and-desist
3 order entered without a prior Commission hear-
4 ing may not apply to the court except after
5 hearing and decision by the Commission on the
6 respondent's application under paragraph (1) of
7 this subsection.

8 “(3) NO AUTOMATIC STAY OF TEMPORARY
9 ORDER.—The commencement of proceedings under
10 paragraph (2) of this subsection shall not, unless
11 specifically ordered by the court, operate as a stay
12 of the Commission's order.

13 “(4) EXCLUSIVE REVIEW.—Sections 19(d) and
14 24 shall not apply to a temporary order entered pur-
15 suant to this section.

16 “(i) IMPLEMENTATION.—The Commission is author-
17 ized to adopt rules, regulations, and orders as it deems
18 appropriate to implement this section.”.

19 (b) FEDERAL POWER ACT.—Section 314 of the Fed-
20 eral Power Act (16 U.S.C. 825m) is amended by adding
21 the following at the end:

22 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
23 ORDERS; AUTHORITY OF THE COMMISSION.—

24 “(1) IN GENERAL.—If the Commission finds,
25 after notice and opportunity for hearing, that any

1 entity may be violating, may have violated, or may
2 be about to violate any provision of this Act, or any
3 rule, regulation, restriction, condition, or order made
4 or imposed by the Commission under the authority
5 of this Act, the Commission may publish its findings
6 and issue an order requiring such entity, and any
7 other entity that is, was, or would be a cause of the
8 violation, due to an act or omission the entity knew
9 or should have known would contribute to such vio-
10 lation, to cease and desist from committing or caus-
11 ing such violation and any future violation of the
12 same provision, rule, or regulation. Such order may,
13 in addition to requiring an entity to cease and desist
14 from committing or causing a violation, require such
15 entity to comply, to provide an accounting and
16 disgorgement, or to take steps to effect compliance,
17 with such provision, rule, or regulation, upon such
18 terms and conditions and within such time as the
19 Commission may specify in such order. Any such
20 order may, as the Commission deems appropriate,
21 require future compliance or steps to effect future
22 compliance, either permanently or for such period of
23 time as the Commission may specify.

24 “(2) TIMING OF ENTRY.—An order issued
25 under this subsection shall be entered only after no-

1 tice and opportunity for a hearing, unless the Com-
2 mission determines that notice and hearing prior to
3 entry would be impracticable or contrary to the pub-
4 lic interest.

5 “(3) HEARING.—The notice instituting pro-
6 ceedings pursuant to paragraph (1) shall fix a hear-
7 ing date not earlier than 30 days nor later than 60
8 days after service of the notice unless an earlier or
9 a later date is set by the Commission with the con-
10 sent of any respondent so served.

11 “(4) TEMPORARY ORDER.—Whenever the Com-
12 mission determines that—

13 “(A) a respondent may take actions to dis-
14 sipate or convert assets prior to the completion
15 of the proceedings referred to in paragraph (1),
16 and such assets would be necessary to comply
17 with or otherwise satisfy a final enforcement
18 order of the Commission pursuant to alleged
19 violations or threatened violations specified in
20 the notice instituting proceedings, or

21 “(B) a respondent is engaged in actual or
22 threatened violations of this Act or a Commis-
23 sion rule, regulation, restriction or order re-
24 ferred to in paragraph (1),

1 the Commission may issue a temporary order requir-
2 ing the respondent to take such action to prevent
3 dissipation or conversion of assets, significant harm
4 to energy consumers, or substantial harm to the
5 public interest, frustration of the Commission's abil-
6 ity to conduct the proceedings, or frustration of the
7 Commission's ability to redress said violation at the
8 conclusion of the proceedings, as the Commission
9 deems appropriate pending completion of such pro-
10 ceedings.

11 “(5) REVIEW OF TEMPORARY ORDERS.—

12 “(A) COMMISSION REVIEW.—At any time
13 after the respondent has been served with a
14 temporary cease-and-desist order pursuant to
15 paragraph (4), the respondent may apply to the
16 Commission to have the order set aside, limited,
17 or suspended. If the respondent has been served
18 with a temporary cease-and-desist order entered
19 without a prior Commission hearing, the re-
20 spondent may, within 10 days after the date on
21 which the order was served, request a hearing
22 on such application and the Commission shall
23 hold a hearing and render a decision on such
24 application at the earliest possible time.

25 “(B) JUDICIAL REVIEW.—Within—

1 “(i) 10 days after the date the re-
2 spondent was served with a temporary
3 cease-and-desist order entered with a prior
4 Commission hearing; or

5 “(ii) 10 days after the Commission
6 renders a decision on an application and
7 hearing under subparagraph (A), with re-
8 spect to any temporary cease-and-desist
9 order entered without a prior Commission
10 hearing, the respondent may apply to the
11 United States district court for the district
12 in which the respondent resides or has its
13 principal place of business, or for the Dis-
14 trict of Columbia, for an order setting
15 aside, limiting, or suspending the effective-
16 ness or enforcement of the order, and the
17 court shall have jurisdiction to enter such
18 an order. A respondent served with a tem-
19 porary cease-and-desist order entered with-
20 out a prior Commission hearing may not
21 apply to the court except after hearing and
22 decision by the Commission on the re-
23 spondent’s application under subparagraph
24 (A) of this paragraph.

1 “(C) NO AUTOMATIC STAY OF TEMPORARY
2 ORDER.—The commencement of proceedings
3 under subparagraph (B) of this subsection shall
4 not, unless specifically ordered by the court, op-
5 erate as a stay of the Commission’s order.

6 “(D) EXCLUSIVE REVIEW.—Section 317
7 shall not apply to a temporary order entered
8 pursuant to this section.

9 “(6) IMPLEMENTATION.—The Commission is
10 authorized to adopt rules, regulations, and orders as
11 it deems appropriate to implement this subsection.”.

12 (c) NATURAL GAS POLICY ACT OF 1978.—Section
13 504 of the Natural Gas Policy Act of 1978 (15 U.S.C.
14 3414) is amended by adding the following at the end:

15 “(c) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
16 ORDERS; AUTHORITY OF THE COMMISSION.—

17 “(1) IN GENERAL.—If the Commission finds,
18 after notice and opportunity for hearing, that any
19 entity may be violating, may have violated, or may
20 be about to violate any provision of this Act, or any
21 rule, regulation, restriction, condition, or order made
22 or imposed by the Commission under the authority
23 of this Act, the Commission may publish its findings
24 and issue an order requiring such entity, and any
25 other entity that is, was, or would be a cause of the

1 violation, due to an act or omission the entity knew
2 or should have known would contribute to such vio-
3 lation, to cease and desist from committing or caus-
4 ing such violation and any future violation of the
5 same provision, rule, or regulation. Such order may,
6 in addition to requiring an entity to cease and desist
7 from committing or causing a violation, require such
8 entity to comply, to provide an accounting and
9 disgorgement, or to take steps to effect compliance,
10 with such provision, rule, or regulation, upon such
11 terms and conditions and within such time as the
12 Commission may specify in such order. Any such
13 order may, as the Commission deems appropriate,
14 require future compliance or steps to effect future
15 compliance, either permanently or for such period of
16 time as the Commission may specify.

17 “(2) TIMING OF ENTRY.—An order issued
18 under this subsection shall be entered only after no-
19 tice and opportunity for a hearing, unless the Com-
20 mission determines that notice and hearing prior to
21 entry would be impracticable or contrary to the pub-
22 lic interest.

23 “(3) HEARING.—The notice instituting pro-
24 ceedings pursuant to paragraph (1) shall fix a hear-
25 ing date not earlier than 30 days nor later than 60

1 days after service of the notice unless an earlier or
2 a later date is set by the Commission with the con-
3 sent of any respondent so served.

4 “(4) TEMPORARY ORDER.—Whenever the Com-
5 mission determines that—

6 “(A) a respondent may take actions to dis-
7 sipate or convert assets prior to the completion
8 of the proceedings referred to in paragraph (1)
9 and such assets would be necessary to comply
10 with or otherwise satisfy a final enforcement
11 order of the Commission pursuant to alleged
12 violations or threatened violations specified in
13 the notice instituting proceedings, or

14 “(B) a respondent is engaged in actual or
15 threatened violations of this Act or a Commis-
16 sion rule, regulation, restriction or order re-
17 ferred to in paragraph (1),

18 the Commission may issue a temporary order requir-
19 ing the respondent to take such action to prevent
20 dissipation or conversion of assets, significant harm
21 to energy consumers, or substantial harm to the
22 public interest, frustration of the Commission’s abil-
23 ity to conduct the proceedings, or frustration of the
24 Commission’s ability to redress said violation at the
25 conclusion of the proceedings, as the Commission

1 deems appropriate pending completion of such pro-
2 ceedings.

3 “(5) REVIEW OF TEMPORARY ORDERS.—

4 “(A) COMMISSION REVIEW.—At any time
5 after the respondent has been served with a
6 temporary cease-and-desist order pursuant to
7 paragraph (4), the respondent may apply to the
8 Commission to have the order set aside, limited,
9 or suspended. If the respondent has been served
10 with a temporary cease-and-desist order entered
11 without a prior Commission hearing, the re-
12 spondent may, within 10 days after the date on
13 which the order was served, request a hearing
14 on such application and the Commission shall
15 hold a hearing and render a decision on such
16 application at the earliest possible time.

17 “(B) JUDICIAL REVIEW.—Within—

18 “(i) 10 days after the date the re-
19 spondent was served with a temporary
20 cease-and-desist order entered with a prior
21 Commission hearing; or

22 “(ii) 10 days after the Commission
23 renders a decision on an application and
24 hearing under subparagraph (A), with re-
25 spect to any temporary cease-and-desist

1 order entered without a prior Commission
2 hearing, the respondent may apply to the
3 United States district court for the district
4 in which the respondent resides or has its
5 principal place of business, or for the Dis-
6 trict of Columbia, for an order setting
7 aside, limiting, or suspending the effective-
8 ness or enforcement of the order, and the
9 court shall have jurisdiction to enter such
10 an order. A respondent served with a tem-
11 porary cease-and-desist order entered with-
12 out a prior Commission hearing may not
13 apply to the court except after hearing and
14 decision by the Commission on the re-
15 spondent's application under paragraph (1)
16 of this subsection.

17 “(C) NO AUTOMATIC STAY OF TEMPORARY
18 ORDER.—The commencement of proceedings
19 under subparagraph (B) of this paragraph shall
20 not, unless specifically ordered by the court, op-
21 erate as a stay of the Commission's order.

22 “(6) IMPLEMENTATION.—The Commission is
23 authorized to adopt rules, regulations, and orders as
24 it deems appropriate to implement this subsection.”.

1 **SEC. 11. NATURAL GAS ACT REFUNDS.**

2 Section 5(a) of the Natural Gas Act (15 U.S.C.
3 717d(a)) is amended by adding the following new para-
4 graphs at the end thereof:

5 “(3) REFUND EFFECTIVE DATE.—

6 “(A) IN GENERAL.—In accordance with
7 subparagraphs (B) and (C), the Commission
8 shall establish a refund effective date for any
9 proceeding initiated under this subsection.

10 “(B) COMPLAINTS.—In the case of a pro-
11 ceeding initiated by a complaint, the refund ef-
12 fective date shall be—

13 “(i) not earlier than the date on which
14 the complaint is submitted to the Commis-
15 sion; and

16 “(ii) not later than 150 days after the
17 date on which the complaint was submitted
18 to the Commission.

19 “(C) COMMISSION MOTION.—In the case of
20 a proceeding initiated on motion of the Com-
21 mission, the refund effective date shall be—

22 “(i) not earlier than the date on which
23 the Commission publishes notice of the in-
24 tention of the Commission to initiate the
25 proceeding; and

1 “(ii) not later than 150 days after the
2 date on which the notice under clause (i)
3 is published.

4 “(4) ISSUANCE OF REFUNDS.—

5 “(A) IN GENERAL.—At the conclusion of
6 any hearing under this section, the Commission
7 may order, for the period beginning on the re-
8 fund effective date and ending on a date 15
9 months after the refund effective date, refunds
10 of any amounts paid in excess of the amounts
11 that would have been paid under the just and
12 reasonable rate, charge, classification, rule, reg-
13 ulation, practice, or contract that the Commis-
14 sion orders that would be in effect after the
15 hearing.

16 “(B) EXCEPTION.—Notwithstanding sub-
17 paragraph (A), the Commission may order re-
18 funds of any or all amounts paid for the period
19 beginning on the refund effective date and end-
20 ing on the date on which the hearing con-
21 cludes—

22 “(i) if the proceeding is not concluded
23 by the date that is 15 months after the re-
24 fund effective date; and

1 “(ii) if the Commission determines at
2 the conclusion of the proceeding that the
3 proceeding was not resolved within the 15-
4 month period primarily because of dilatory
5 behavior by the natural gas company.

6 “(C) INTEREST.—Refunds under this sub-
7 section shall be issued in an amount determined
8 by the proceeding, plus interest, to the persons
9 that paid the rates or charges.”.

10 **SEC. 12. REGULATION OF CARBON DERIVATIVES MARKETS.**

11 (a) IN GENERAL.—Section 2 of the Commodity Ex-
12 change Act (7 U.S.C. 2), as amended by section 4 of this
13 Act, is amended by adding at the end the following:

14 “(k) The Commission shall have jurisdiction over the
15 establishment, operation, and oversight of markets for reg-
16 ulated allowance derivatives, and shall provide for the es-
17 tablishment, operation, and oversight of the markets in
18 accordance with the same regulations that apply under
19 this Act to included energy transactions.”.

20 (b) DEFINITIONS.—Section 1a of such Act (7 U.S.C.
21 1a), as amended by section 3(a) of this Act, is amended
22 by redesignating paragraphs (32) through (36) as para-
23 graphs (34) through (38), respectively, and by inserting
24 after paragraph (31) the following:

1 “(32) REGULATED ALLOWANCE.—The term
2 ‘regulated allowance’ means any allowance author-
3 ized under law to emit a greenhouse gas, and any
4 credit authorized under law based on a reduction in
5 greenhouse gas emissions, the production of renew-
6 able energy, a carbon emission offset, or an increase
7 in carbon sequestration.

8 “(33) REGULATED ALLOWANCE DERIVATIVE.—
9 The term ‘regulated allowance derivative’ means an
10 instrument that is, or includes, an instrument—

11 “(A) which—

12 “(i) is of the character of, or is com-
13 monly known to the trade as, a ‘put op-
14 tion’, ‘call option’, ‘privilege’, ‘indemnity’,
15 ‘advance guaranty’, ‘decline guaranty’, or
16 ‘swap agreement’; or

17 “(ii) is a contract of sale for future
18 delivery, other than a written agreement
19 for the origination and development of an
20 offset project, and the related issuance of
21 offset credits, pursuant to title VII of the
22 Clean Air Act; and

23 “(B) the value of which, in whole or in
24 part, is expressly linked to the price of a regu-

1 lated allowance or another regulated allowance
2 derivative.”.

○