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1ST SESSION

S. 2058

To amend the Commodity Exchange Act to close the Enron loophole, prevent price manipulation and excessive speculation in the trading of energy commodities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2007

Mr. LEVIN introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to close the Enron loophole, prevent price manipulation and excessive speculation in the trading of energy commodities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Close the Enron Loop-
5 hole Act”.

6 **SEC. 2. ENERGY TRADING FACILITIES.**

7 (a) DEFINITIONS.—Section 1a of the Commodity Ex-
8 change Act (7 U.S.C. 1a) is amended by redesignating

1 paragraphs (13) through (33) as paragraphs (15) through
 2 (35), respectively, and by inserting after paragraph (12)
 3 the following:

4 “(13) ENERGY COMMODITY.—The term ‘energy
 5 commodity’ means a commodity (other than an ex-
 6 cluded commodity, a metal, or an agricultural com-
 7 modity) that is—

8 “(A) used as a source of energy, including
 9 but not limited to—

10 “(i) crude oil;

11 “(ii) gasoline, diesel fuel, heating oil,
 12 and any other product derived or refined
 13 from crude oil;

14 “(iii) natural gas, including methane,
 15 propane, and any other gas or liquid de-
 16 rived from natural gas; and

17 “(iv) electricity; or

18 “(B) results from the burning of fossil
 19 fuels to produce energy, including but not lim-
 20 ited to carbon dioxide and sulfur dioxide.

21 “(14) ENERGY TRADING FACILITY.—The term
 22 ‘energy trading facility’ means a trading facility
 23 that—

24 “(A) is not a designated contract market;
 25 and

1 “(B) facilitates the execution or trading of
2 agreements, contracts, or transactions in an en-
3 ergy commodity that are not spot sales of a
4 cash commodity or sales of a cash commodity
5 for deferred shipment or delivery, and that are
6 entered into on a principal-to-principal basis
7 solely between persons that are eligible commer-
8 cial entities at the time the persons enter into
9 the agreement, contract, or transaction; and

10 “(i) facilitates the clearance and set-
11 tlement of such agreements, contracts, or
12 transactions; or

13 “(ii) the Commission determines per-
14 forms a significant price discovery function
15 in relation to an energy commodity listed
16 for trading on a trading facility or in the
17 cash market for the energy commodity. In
18 making a determination whether a trading
19 facility performs a significant price dis-
20 covery function the Commission may con-
21 sider, as appropriate—

22 “(I) the extent to which the price
23 of an agreement, contract, or trans-
24 action traded or executed on the trad-
25 ing facility is derived from or linked

1 to the price of a contract in an energy
2 commodity listed for trading on a des-
3 ignated contract market;

4 “(II) the extent to which cash
5 market bids, offers, or transactions in
6 an energy commodity are directly
7 based on, or quoted at a differential
8 to, the prices generated by agree-
9 ments, contracts, or transactions in
10 the same energy commodity being
11 traded or executed on the trading fa-
12 cility;

13 “(III) the volume of agreements,
14 contracts, or transactions in the en-
15 ergy commodity being traded on the
16 trading facility;

17 “(IV) the extent to which data
18 regarding completed transactions are
19 posted, disseminated, or made avail-
20 able immediately after completion of
21 such transactions, with or without a
22 fee, to other market participants and
23 other persons;

24 “(V) the extent to which an arbi-
25 trage market exists between the

1 agreements, contracts, or transactions
2 traded or executed on the trading fa-
3 cility and a contract in an energy
4 commodity listed for trading on a des-
5 ignated contract market; and

6 “(VI) such other factors as the
7 Commission determines appropriate.”.

8 (b) COMMISSION OVERSIGHT OF ENERGY TRADING
9 FACILITIES.—Section 2(h) of the Commodity Exchange
10 Act (7 U.S.C. 2(h)) is amended—

11 (1) in paragraph (3)(B) after “an electronic
12 trading facility” by inserting “that is not an energy
13 trading facility”; and

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

15 “(7) ENERGY TRADING FACILITIES.—Notwith-
16 standing any other provision of this Act, an energy
17 trading facility shall be subject to the provisions of
18 section 2(j) of this Act.”.

19 (c) STANDARDS APPLICABLE TO ENERGY TRADING
20 FACILITIES.—Section 2 of the Commodity Exchange Act
21 (7 U.S.C. 2) is amended by adding the following new sub-
22 section:

23 “(j) REGISTRATION OF ENERGY TRADING FACILI-
24 TIES.—

1 “(1) IN GENERAL.—It shall be unlawful for any
2 person to enter into an agreement, contract, or
3 transaction for future delivery of an energy com-
4 modity that is not a spot sale of a cash commodity
5 or a sale of a cash commodity for deferred shipment
6 or delivery, on or through an energy trading facility
7 unless such facility is registered with the Commis-
8 sion as an energy trading facility.

9 “(2) APPLICATIONS.—Any trading facility ap-
10 plying to the Commission for registration as an en-
11 ergy trading facility shall submit an application to
12 the Commission that includes any relevant materials
13 and records, consistent with the Act, that the Com-
14 mission may require.

15 “(3) COMMISSION ACTION.—The Commission
16 shall make a determination whether to approve an
17 application for registration as an energy trading fa-
18 cility within 120 days after such application is sub-
19 mitted.

20 “(4) CRITERIA FOR REGISTRATION.—To be reg-
21 istered as an energy trading facility, the applicant
22 shall demonstrate to the Commission that the trad-
23 ing facility meets the criteria specified in this para-
24 graph.

1 “(A) PREVENTION OF PRICE MANIPULA-
2 TION AND EXCESSIVE SPECULATION.—The
3 trading facility shall have the capacity to pre-
4 vent price manipulation, excessive speculation,
5 price distortion, and disruption of the delivery
6 or cash-settlement process through market sur-
7 veillance, compliance, and enforcement practices
8 and procedures, including methods for con-
9 ducting real-time monitoring of trading and
10 comprehensive and accurate trade reconstruc-
11 tions.

12 “(B) MONITORING OF TRADING.—The
13 trading facility shall monitor trading to prevent
14 price manipulation, excessive speculation, price
15 distortion, and disruption of the delivery or
16 cash-settlement process.

17 “(C) CONTRACTS NOT READILY SUSCEP-
18 TIBLE TO MANIPULATION.—The trading facility
19 shall list for trading only contracts that are not
20 readily susceptible to manipulation.

21 “(D) FINANCIAL INTEGRITY OF TRANS-
22 ACTIONS.—A trading facility that facilitates the
23 clearance and settlement of agreements, con-
24 tracts, or transactions by a derivatives clearing
25 organization shall establish and enforce rules

1 and procedures for ensuring the financial integ-
2 rity of such agreements, contracts, and trans-
3 actions.

4 “(E) ABILITY TO OBTAIN INFORMATION.—
5 The trading facility shall establish and enforce
6 rules that will allow the trading facility to ob-
7 tain any necessary information to perform any
8 of the functions described in this subsection, in-
9 cluding the capacity to carry out such inter-
10 national information-sharing agreements as the
11 Commission may require.

12 “(F) POSITION LIMITS OR ACCOUNT-
13 ABILITY LEVELS.—To reduce the threat of
14 price manipulation, excessive speculation, price
15 distortion, or disruption of the delivery or cash-
16 settlement process, the trading facility shall
17 adopt position limits or position accountability
18 levels for speculators, where necessary and ap-
19 propriate.

20 “(G) EMERGENCY AUTHORITY.—The trad-
21 ing facility shall adopt rules to provide for the
22 exercise of emergency authority, in consultation
23 and cooperation with the Commission, where
24 necessary and appropriate, including the au-
25 thority to—

1 “(i) liquidate open positions in any
2 contract;

3 “(ii) suspend or curtail trading in any
4 contract; and

5 “(iii) require market participants in
6 any contract to meet special margin re-
7 quirements.

8 “(H) DAILY PUBLICATION OF TRADING IN-
9 FORMATION.—The trading facility shall make
10 public daily information on settlement prices,
11 volume, open interest, and opening and closing
12 ranges for actively traded contracts on the facil-
13 ity.

14 “(I) DETERRENCE OF ABUSES.—The trad-
15 ing facility shall establish and enforce trading
16 and participation rules that will deter abuses
17 and shall have the capacity to detect, inves-
18 tigate violations of, and enforce those rules, in-
19 cluding means to—

20 “(i) obtain information necessary to
21 perform the functions required under this
22 section; or

23 “(ii) use technological means to cap-
24 ture information that may be used in es-

1 tablishing whether rule violations have oc-
2 curred.

3 “(J) TRADE INFORMATION.—The trading
4 facility shall maintain rules and procedures to
5 provide for the recording and safe storage of all
6 identifying trade information in a manner that
7 enables the facility to use the information for
8 the purposes of assisting in the prevention of
9 price manipulation, excessive speculation, price
10 distortion, or disruption of the delivery or cash-
11 settlement process, and providing evidence of
12 any violations of the rules of the facility.

13 “(K) TRADING PROCEDURES.—The trad-
14 ing facility shall establish and enforce rules or
15 terms and conditions defining, or specifications
16 detailing, trading procedures to be used in en-
17 tering and executing orders traded on the facil-
18 ity, including procedures to provide participants
19 with impartial access to the trading facility.

20 “(L) COMPLIANCE WITH RULES.—The
21 trading facility shall monitor and enforce the
22 rules of the facility, including any terms and
23 conditions of any contracts traded on or
24 through the facility and any limitations on ac-
25 cess to the facility.

1 “(M) DISCLOSURE OF GENERAL INFORMA-
2 TION.—The trading facility shall disclose pub-
3 licly and to the Commission information con-
4 cerning—

5 “(i) contract terms and conditions;

6 “(ii) trading conventions, mechanisms,
7 and practices;

8 “(iii) financial integrity protections;
9 and

10 “(iv) other information relevant to
11 participation in trading on the facility.

12 “(N) FITNESS STANDARDS.—The trading
13 facility shall establish and enforce appropriate
14 fitness standards for directors, members of any
15 disciplinary committee, and any other persons
16 with direct access to the facility, including any
17 parties affiliated with any of the persons de-
18 scribed in this paragraph.

19 “(O) CONFLICTS OF INTEREST.—The
20 trading facility shall establish and enforce rules
21 to minimize conflicts of interest in the decision
22 making process of the facility and establish a
23 process for resolving such conflicts of interest.

24 “(P) RECORDKEEPING.—The trading facil-
25 ity shall maintain records of all activities re-

1 lated to the business of the facility in a form
2 and manner acceptable to the Commission for a
3 period of 5 years.

4 “(Q) ANTITRUST CONSIDERATIONS.—Un-
5 less necessary or appropriate to achieve the
6 purposes of this Act, the trading facility shall
7 endeavor to avoid—

8 “(i) adopting any rules or taking any
9 actions that result in any unreasonable re-
10 straint of trade; or

11 “(ii) imposing any material anti-
12 competitive burden on trading on the facil-
13 ity.

14 “(5) CRITERIA FOR ENERGY TRADING FACILI-
15 TIES.—To maintain the registration as an energy
16 trading facility, the trading facility shall comply with
17 all of the criteria in paragraph (4). Failure to com-
18 ply with any of these criteria shall constitute a viola-
19 tion of this Act. The trading facility shall have rea-
20 sonable discretion in establishing the manner in
21 which it complies with the criteria in paragraph (4).

22 “(6) POSITION LIMITS AND ACCOUNTABILITY
23 LEVELS.—

24 “(A) DUTY OF COMMISSION.—The Com-
25 mission shall ensure that the position limits and

1 accountability levels applicable to contracts in
2 an energy commodity listed for trading on a
3 designated contract market and the position
4 limits and accountability levels applicable to
5 similar contracts in the same energy commodity
6 listed for trading on an energy trading facil-
7 ity—

8 “(i) appropriately prevent price ma-
9 nipulation, excessive speculation, price dis-
10 tortion, and disruption of the delivery or
11 cash-settlement process; and

12 “(ii) are on a parity with each other
13 and applied in a functionally equivalent
14 manner.

15 “(B) COMMISSION REVIEW.—Upon learn-
16 ing that a person has exceeded an applicable
17 position limit or accountability level in an en-
18 ergy commodity, the Commission shall obtain
19 such information as it determines to be nec-
20 essary and appropriate regarding all of the po-
21 sitions held by such person in such energy com-
22 modity and take such action as may be nec-
23 essary and appropriate, in addition to any ac-
24 tion taken by an energy trading facility or a
25 designated contract market, to require, or direct

1 an energy trading facility or a designated con-
2 tract market to require, such person to limit,
3 reduce, or liquidate any position to prevent or
4 reduce the threat of price manipulation, exces-
5 sive speculation, price distortion, or disruption
6 of the delivery or cash-settlement process.

7 “(C) INFORMATION TO COMMISSION.—In
8 order to make any determination required
9 under this section, the Commission may request
10 all relevant information regarding all of the po-
11 sitions held by any person in the energy com-
12 modity for which the person has exceeded a po-
13 sition limit or accountability level, including po-
14 sitions held or controlled or transactions exe-
15 cuted on or through a designated contract mar-
16 ket, an energy trading facility, an exempt com-
17 mercial markets operating pursuant to sections
18 2(h)(3) through paragraph (5) of this Act, an
19 exempt board of trade operating pursuant to
20 section 5d of this Act, a derivative transaction
21 execution facility, a foreign board of trade,
22 over-the-counter pursuant to sections 2(g), or
23 2(h)(1) and (2) of this Act, and in the cash
24 market for the commodity. Any person entering
25 into or executing an agreement, contract, or

1 transaction with respect to an energy com-
2 modity on a designated contract market or on
3 an energy trading facility shall retain such
4 books and records as the Commission may re-
5 quire in order to provide such information upon
6 request, and upon request shall promptly pro-
7 vide such information to the Commission or the
8 Department of Justice. Notwithstanding this
9 requirement to retain and provide position in-
10 formation, the Commission may alternatively
11 choose to obtain any of the position information
12 specified in this paragraph from the trading fa-
13 cility at which such positions are maintained.

14 “(D) CRITERIA FOR COMMISSION DETER-
15 MINATION.—In making any determination to
16 require a limitation, reduction, or liquidation of
17 any position with respect to an energy com-
18 modity, the Commission may consider, as ap-
19 propriate—

20 “(i) the person’s open interest in a
21 contract, agreement, or transaction involv-
22 ing an energy commodity relative to the
23 total open interest in such contracts,
24 agreements, or transactions;

1 “(ii) the daily volume of trading in
2 such contracts, agreements or transactions;

3 “(iii) the person’s overall position in
4 related contracts, including options, and
5 the overall open interest or liquidity in
6 such related contracts and options;

7 “(iv) the potential for such positions
8 to cause or allow price manipulation, exces-
9 sive speculation, price distortion, or disrup-
10 tion of the delivery or cash-settlement
11 process;

12 “(v) the person’s record of compliance
13 with rules, regulations, and orders of the
14 Commission, a designated contract market,
15 or an energy trading facility, as appro-
16 priate;

17 “(vi) the person’s financial ability to
18 support such positions on an ongoing
19 basis;

20 “(vii) any justification provided by the
21 person for such positions; and

22 “(viii) other such factors determined
23 to be appropriate by the Commission.”.

24 (d) INFORMATION FOR PRICE DISCOVERY DETER-
25 MINATION.—

1 (1) Section 2(h)(5)(B) of the Commodity Ex-
2 change Act (7 U.S.C. 2(h)(5)(B)) is amended by
3 adding the following new clause:

4 “(iv) to the extent that the electronic
5 trading facility provides for the trading of
6 agreements, contracts, or transactions in
7 an energy commodity, provide the Commis-
8 sion with such information as the Commis-
9 sion determines necessary to evaluate
10 whether the energy trading facility per-
11 forms a significant price discovery function
12 in relation to a contract in an energy com-
13 modity listed for trading on a trading facil-
14 ity or in the cash market for the energy
15 commodity, including the provision of such
16 requested information on a continuous
17 basis.”.

18 (2) Section 5a(b) of the Commodity Exchange
19 Act (7 U.S.C. 7a(b)) is amended by adding the fol-
20 lowing new paragraph:

21 “(5) PRICE DISCOVERY FOR ENERGY COM-
22 MODITY.—A registered derivatives transaction execu-
23 tion facility shall, to the extent that it provides for
24 the trading of any contract of sale of a commodity
25 for future delivery (or option on such contract)

1 based on an energy commodity, provide the Commis-
2 sion with such information as the Commission deter-
3 mines necessary to evaluate whether the registered
4 derivatives transaction execution facility performs a
5 significant price discovery function in relation to a
6 contract in an energy commodity listed for trading
7 on a trading facility or in the cash market for the
8 energy commodity, including the provision of such
9 requested information on a continuous basis.”.

10 (e) CONFORMING AMENDMENTS.—The Commodity
11 Exchange Act is amended—

12 (1) in paragraph 29 of section 1a (7 U.S.C.
13 1a)—

14 (A) in subparagraph (C) by deleting
15 “and”;

16 (B) in subparagraph (D) by deleting the
17 period and inserting “; and”; and

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

19 “(E) an energy trading facility registered
20 under section 2(j).”;

21 (2) in subsection (a) of section 4 (7 U.S.C.
22 6(a))—

23 (A) in paragraph (1) by inserting “reg-
24 istered energy trading facility or a” after “sub-
25 ject to the rules of a”; and

1 (B) in paragraph (2) by inserting “or en-
2 energy trading facility” after “derivatives trans-
3 action execution facility”;

4 (3) in subsection (c) of section 4 (7 U.S.C.
5 6(c)), by inserting “registered energy trading facility
6 or” in the parenthetical after “including any”;

7 (4) in subsection (a) of section 4a (7 U.S.C.
8 6a)—

9 (A) in the first sentence by inserting “or
10 energy trading facilities” after “derivatives
11 transaction execution facilities”; and

12 (B) in the second sentence by inserting “or
13 energy trading facility” after “derivatives trans-
14 action execution facility”;

15 (5) in subsection (b) of section 4a (7 U.S.C.
16 6a), by inserting “or energy trading facility” after
17 “derivatives transaction execution facility” wherever
18 it appears;

19 (6) in subsection (e) of section 4a (7 U.S.C.
20 6a)—

21 (A) in the first sentence—

22 (i) by inserting “or by any energy
23 trading facility” after “registered by the
24 Commission”;

1 (ii) by inserting “or energy trading fa-
2 cility” after “derivatives transaction execu-
3 tion facility” the second time it appears;
4 and

5 (iii) by inserting “energy trading facil-
6 ity” before “or such board of trade” each
7 time it appears; and

8 (B) in the second sentence, by inserting
9 “or energy trading facility” after “registered by
10 the Commission”;

11 (7) in section 4e (7 U.S.C. 6e), by inserting “or
12 energy trading facility” after “or derivatives trans-
13 action execution facility”;

14 (8) in section 4i (7 U.S.C. 6i), by inserting “or
15 energy trading facility” after “derivatives trans-
16 action execution facility”;

17 (9) in section 4l (7 U.S.C. 6l), by inserting “or
18 energy trading facilities” after “derivatives trans-
19 action execution facilities” wherever it appears in
20 paragraphs (2) and (3);

21 (10) in section 5c(b) (7 U.S.C. 7a–2(b)), by in-
22 serting “or energy trading facility” after “deriva-
23 tives transaction execution facility” wherever it ap-
24 pears in paragraphs (1), (2), and (3);

25 (11) in section 6(b) (7 U.S.C. 8(b))—

1 (A) by inserting “or energy trading facil-
 2 ity” after “derivatives transaction execution fa-
 3 cility” wherever it appears; and

4 (B) by inserting “section 2(j) or” before
 5 “sections 5 through 5b”; and

6 (12) in section 6d(1) (7 U.S.C. 13a–2(1)), by
 7 inserting “energy trading facility” after “derivatives
 8 transaction execution facility”.

9 **SEC. 3. REPORTING OF U.S. ENERGY TRADES.**

10 Section 2 of the Commodity Exchange Act (7 U.S.C.
 11 1a) is amended by adding at the end the following:

12 “(k) DOMESTIC ENERGY TRADES ON A FOREIGN
 13 BOARD OF TRADE.—

14 “(1) DEFINITIONS.—In this subsection:

15 “(A) DOMESTIC TERMINAL.—The term
 16 ‘domestic terminal’ means a technology, soft-
 17 ware, or other means of providing electronic ac-
 18 cess within the United States to a contract,
 19 agreement, or transaction traded on a foreign
 20 board of trade.

21 “(B) REPORTABLE CONTRACT.—The term
 22 ‘reportable contract’ means a contract, agree-
 23 ment, or transaction for future delivery of an
 24 energy commodity (or option thereon), or an
 25 option on an energy commodity, for which the

1 underlying commodity has a physical delivery
2 point within the United States and that is exe-
3 cuted through a domestic terminal.

4 “(2) RECORD KEEPING.—The Commission, by
5 rule, shall require any person holding, maintaining,
6 or controlling any position in any reportable contract
7 under this section—

8 “(A) to maintain such records as directed
9 by the Commission for a period of 5 years, or
10 longer, if directed by the Commission; and

11 “(B) to provide such records upon request
12 to the Commission or the Department of Jus-
13 tice.

14 “(3) REPORTING.—The Commission shall pre-
15 scribe rules requiring such regular or continuous re-
16 porting of positions in a reportable contract in ac-
17 cordance with such requirements regarding size lim-
18 its for reportable contracts and the form, timing,
19 and manner of filing such reports under this para-
20 graph, as the Commission shall determine.

21 “(4) EQUIVALENT MEANS OF OBTAINING IN-
22 FORMATION.—The Commission may waive the re-
23 quirement under paragraph (3) if the Commission
24 determines that the foreign board of trade is pro-
25 viding the Commission with equivalent information

1 in a usable format pursuant to an agreement be-
2 tween the Commission and the foreign board of
3 trade or a foreign futures authority, department or
4 agency of a foreign government, or political subdivi-
5 sion thereof.

6 “(5) OTHER RULES NOT AFFECTED.—

7 “(A) IN GENERAL.—Except as provided in
8 clause (ii), this paragraph does not prohibit or
9 impair the adoption by any board of trade or
10 energy trading facility licensed, designated, or
11 registered by the Commission of any bylaw,
12 rule, regulation, or resolution requiring reports
13 of positions in any agreement, contract, or
14 transaction for future delivery of an energy
15 commodity (or option thereon), or option on an
16 energy commodity, including any bylaw, rule,
17 regulation, or resolution pertaining to filing or
18 recordkeeping, which may be held by any per-
19 son subject to the rules of the board of trade
20 or energy trading facility.

21 “(B) EXCEPTION.—Any bylaw, rule, regu-
22 lation, or resolution established by a board of
23 trade or energy trading facility described in
24 clause (i) shall not be inconsistent with any re-

1 requirement prescribed by the Commission under
2 this paragraph.”.

3 **SEC. 4. ANTIFRAUD AUTHORITY.**

4 Section 4b of the Commodity Exchange Act (7 U.S.C.
5 6b) is amended—

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

8 (2) by striking “**SEC. 4B.**” and all that follows
9 through the end of subsection (a) and inserting the
10 following:

11 **“SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MIS-**
12 **LEAD.**

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

14 “(1) for any person, in or in connection with
15 any order to make, or the making of, any contract
16 of sale of any commodity in interstate commerce or
17 for future delivery that is made, or to be made, on
18 or subject to the rules of a designated contract mar-
19 ket, for or on behalf of any other person; or

20 “(2) for any person, in or in connection with
21 any order to make, or the making of, any contract
22 of sale of any commodity for future delivery, or
23 other agreement, contract, or transaction subject to
24 paragraphs (1) and (2) of section 5a(g), that is
25 made, or to be made, for or on behalf of, or with,

1 any other person, other than on or subject to the
2 rules of a designated contract market—

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

5 “(B) willfully to make or cause to be made
6 to the other person any false report or state-
7 ment or willfully to enter or cause to be entered
8 for the other person any false record;

9 “(C) willfully to deceive or attempt to de-
10 ceive the other person by any means whatsoever
11 in regard to any order or contract or the dis-
12 position or execution of any order or contract,
13 or in regard to any act of agency performed,
14 with respect to any order or contract for or, in
15 the case of paragraph (2), with the other per-
16 son; or

17 “(D)(i) to bucket an order if the order is
18 represented by the person as an order to be ex-
19 ecuted, or is required to be executed, on or sub-
20 ject to the rules of a designated contract mar-
21 ket; or

22 “(ii) to fill an order by offset against the
23 order or orders of any other person, or willfully
24 and knowingly and without the prior consent of
25 the other person to become the buyer in respect

1 to any selling order of the other person, or be-
2 come the seller in respect to any buying order
3 of the other person, if the order is represented
4 by the person as an order to be executed, or is
5 required to be executed, on or subject to the
6 rules of a designated contract market unless the
7 order is executed in accordance with the rules
8 of the designated contract market.

9 “(b) CLARIFICATION.—Subsection (a)(2) of this sec-
10 tion shall not obligate any person, in or in connection with
11 a transaction in a contract of sale of a commodity for fu-
12 ture delivery, or other agreement, contract or transaction
13 subject to paragraphs (1) and (2) of section 5a(g), with
14 another person, to disclose to the other person nonpublic
15 information that may be material to the market price,
16 rate, or level of the commodity or transaction, except as
17 necessary to make any statement made to the other person
18 in or in connection with the transaction, not misleading
19 in any material respect.”.

20 **SEC. 5. COMMISSION RULEMAKING.**

21 Not later than 180 days after the date of enactment
22 of this Act, the Commission shall issue a proposed rule
23 regarding the requirements for an application for registra-
24 tion for an energy trading facility, and not later than 270

1 days after the date of enactment of this Act, shall issue
2 a final rule.

3 **SEC. 6. EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as provided in this section,
5 this Act shall become effective immediately upon enact-
6 ment.

7 (b) TRADING FACILITIES.—With respect to any trad-
8 ing facility operating on the date of enactment of this Act
9 in reliance upon the exemption set forth in section 2(h)(3)
10 of the Commodity Exchange Act with respect to an energy
11 commodity, the prohibition in section 2(j)(1) of the Com-
12 modity Exchange Act, as added by this Act, shall not
13 apply, if the trading facility submits an application to the
14 Commission for registration as an energy trading facility
15 within 180 days after the Commission promulgates a final
16 rule regarding the requirements for an application for reg-
17 istration for an energy trading facility, prior to a deter-
18 mination by the Commission on whether to approve such
19 application.

20 (c) EXTENSIONS.—(1) At the time the Commission
21 approves an application by a trading facility operating on
22 the date of enactment of this Act in reliance on the exemp-
23 tion set forth in section 2(h)(3) of the Commodity Ex-
24 change Act for registration as an energy trading facility,
25 the Commission shall, upon the written request of the fa-

1 cility, grant an extension of up to 180 days to fully imple-
2 ment a requirement applicable under this Act to an energy
3 trading facility.

4 (2) The Commission may in its discretion, upon the
5 written request of the facility and for good cause, grant
6 an additional extension of up to 6 months to fully imple-
7 ment a requirement for which an initial extension has been
8 granted under paragraph (1).

9 (3) The Commission may not grant any extension
10 under paragraphs (1) or (2) for any information reporting
11 or recordkeeping requirement.

12 (d) DOMESTIC TRADING ON FOREIGN BOARDS OF
13 TRADE.—Section 3 of this Act shall take effect 180 days
14 after the date of the enactment of this Act.

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