

110TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

Mr. LEVIN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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           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”;

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

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

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

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

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

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

24 (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 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.