

# **COMMODITY MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT OF 2008**

## **SECTION BY SECTION**

### **SECTION 1 – SHORT TITLE.**

“Commodity Markets Transparency and Accountability Act of 2008.”

### **SECTION 2- TABLE OF CONTENTS.**

### **SECTION 3 – DEFINITION OF ENERGY COMMODITY.**

- Creates new definition for “energy commodity” which includes coal, crude oil, gasoline, diesel fuel, jet fuel, heating oil, propane, electricity, natural gas and any other substance used as a source of energy as determined by the Commodity Futures Trading Commission (Commission) (except excluded commodities).

### **SECTION 4 – SPECULATIVE LIMITS AND TRANSPARENCY OF OFFSHORE TRADING.**

- Prohibits the Commission from permitting a foreign board of trade (FBOT) from providing its members or participants located in the U.S. direct access to its electronic trading system with respect to energy or agricultural transactions that settle against any price of at least 1 contract listed on a registered entity unless the FBOT:
  - Publicly provides daily trading information that is comparable to that published by the registered entity for the contract(s) against which the FBOT settles.
  - Adopts position limits that are comparable to those adopted by the registered entity for the contracts settled by the FBOT and that take into account the relative size of their respective markets.
  - Has the authority to require participants to limit, reduce or liquidate a position in order to prevent price manipulation or distortion, excessive speculation, or disrupt delivery of cash settlement; and
  - Notifies the Commission of any changes to the information, position limits and accountability provisions, position reductions, or any other area of interest to the Commission.
  - Provides information to the Commission regarding large trader positions in the FBOT transactions comparable to large trader position information collected for contract listed on registered entity.
  - Provides information on aggregate trader positions on the FBOT comparable to that provided in reports for the U.S.-listed contract on which the FBOT contract settles
- This section does not apply to FBOTs who had previously been granted direct access until 180 days after enactment.

- A person registered with the Commission or exempt from registration shall not be found in violation of the exchange-trading requirement of the Commodity Exchange Act (CEA) if the person has reason to believe that the futures contract in question is traded on an FBOT that is authorized and regulated by a foreign futures authority and that the Commission has not been determined by the CEA to be operating in violation of that requirement.
- If an FBOT fails to comply with any requirements under the CEA, a futures contract executed through that facility will still be enforceable.

#### **SECTION 5 – DISAGGREGATION OF INDEX FUNDS AND OTHER DATA IN ENERGY AND AGRICULTURE MARKETS.**

- Requires the Commission to disaggregate and publicly provide the number of positions and total value of index funds -- and other passive, long-only and short-only investors -- in energy and agriculture markets, and data on speculative positions relative to their bona fide physical hedgers within 30 days of a final rule.

#### **SECTION 6– DETAILED REPORTING FROM INDEX TRADERS AND SWAP DEALERS.**

- Requires the Commission to issue a proposed rule within 60 days of enactment defining and classifying index traders and swap dealers for data reporting requirements and setting reporting requirements for transactions in designated contracts markets, derivative transaction execution facilities, FBOTs, and electronic trading facilities with respect to significant price discovery contracts in exempt and agricultural futures markets. The rule is to be final within 120 days of enactment.

#### **SECTION 7 – TRANSPARENCY AND RECORDKEEPING AUTHORITIES.**

- Subjects excluded swap transactions and transactions for agricultural and energy commodities to reporting and recordkeeping requirements
- Requires large traders to report over-the-counter (OTC) contracts pursuant to reporting requirements of section 4i of the CEA. Gives the Commission special call authority so that it can obtain market positions held by any person pursuant to exemptive provisions of the CEA.
- Records must be kept for 5 years.

#### **SECTION 8 – TRADING LIMITS TO PREVENT EXCESSIVE SPECULATION.**

- Mandates the Commission to set position limits for Designated Contract Markets, Derivative Transaction Execution Facilities, and electronic trading facilities with regard to significant price discovery contracts on enumerated agricultural and energy commodities within 60 days of enactment.
- Position limit requirements shall apply to spot month, each month and aggregate positions held by a person for all months, taking into account the availability of

other agricultural and energy future markets. Sets criteria for the Commission to consider when establishing position limits

- Creates a Position Limit Agricultural Advisory Group and a Position Limit Energy Group to recommend whether position limits should be administered by the Commission or the registered entity.
- Establishes conditions for the granting of hedge exemptions from position limits. Exemptions shall only be granted to persons that are expected to transact in the physical commodity at a later time, that are acting in an economically appropriate manner to reduce risk to a commercial enterprise, for whom the transaction arises from the potential change in the value of assets and liabilities or services that the person provides or purchases. If the contract would reduce risk attendant to an over the counter transaction, an exemption may only be granted if the OTC trade was executed opposite a counterparty that would otherwise meet the requirements for a hedge exemption.

#### **SECTION 9 – MODIFICATIONS TO CORE PRINCIPLES APPLICABLE TO POSITION LIMITS FOR CONTRACTS IN AGRICULTURAL AND ENERGY COMMODITIES.**

- Changes the core principle on position limits and accountability on contract markets, derivative transaction execution facilities and electronic trading facilities with respect to significant price discovery contracts to specifically require position limitations for agricultural and energy commodities for speculators.

#### **SECTION 10 – CFTC ADMINISTRATION.**

- Requires the Commission to appoint at least 100 new full time employees to increase transparency and improve enforcement in agriculture and energy markets, and carry out other duties, subject to appropriations.
- Modifies Inspector General position for the Commission in order to elevate the office's status.

#### **SECTION 11 – REVIEW OF PRIOR ACTIONS.**

- Requires the Commission to review all prior actions to ensure compliance with this Act.

#### **SECTION 12 – REVIEW OF OVER-THE-COUNTER MARKETS.**

- Requires the Commission to study and report on the effects of limits on the OTC market, designated contract markets, and derivative transaction execution facilities.
- The report shall include recommendations on actions necessary to deter and prevent disruption of the markets or prevent excessive speculation.

#### **SECTION 13 - STUDIES; REPORTS.**

- Requires a GAO study and report of the international regulatory regime for energy commodity futures and derivatives trading.

- Requires a GAO study and report on the effects of noncommercial speculators on agriculture energy futures markets and prices.

**SECTION 14 – OVER-THE-COUNTER AUTHORITY.**

- The Commission is required to mandate routine reporting of fungible OTC agricultural and energy transactions.
- The Commission is to determine whether such agreements have the potential to disrupt market liquidity and price discovery functions, cause severe, market disturbance or prevent prices from reflecting supply and demand.
- If the Commission finds any of the above, it is authorized to impose and enforce position limits on the involved agreements.

**SECTION 15 – EXPEDITED PROCESS.**

- The Commission may use emergency and expedited procedures to carry out this Act.