

Section by Section Analysis of H.R. 977, THE DERIVATIVES MARKETS
TRANSPARENCY AND ACCOUNTABILITY ACT OF 2009

SECTION 1 – SHORT TITLE.

Section 1 provides that the short title of the bill is the “Derivatives Markets Transparency and Accountability Act of 2009.”

SECTION 2 – TABLE OF CONTENTS.

SECTION 3 – SPECULATIVE LIMITS AND TRANSPARENCY OF OFFSHORE TRADING.

Section 3(a) prohibits the CFTC from permitting a foreign board of trade (FBOT) to provide its members or participants located in the U.S. direct access to its electronic trading system with respect to all transactions that settle against any price of a contract listed on a registered entity unless the FBOT:

- o Publicly provides comparable daily trading information.
- o Adopts comparable position limits that take into account the relative market size.
- o Has comparable authority to prevent price manipulation or distortion, excessive speculation, or the disruption of physical delivery or cash settlement.
- o Agrees to notifies the CFTC of any changes to the information, position limits and accountability provisions, position reductions, or any other area of interest to the CFTC.
- o Provides comparable information to the CFTC regarding large trader positions.
- o Provides comparable information on aggregate trader positions.

Section 3(b) provides that a person registered with the CFTC 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 CFTC has not been determined by the CEA to be operating in violation of that requirement.

Section 3(c) provides that if an FBOT fails to comply with any requirements under the CEA, a futures contract executed through that facility will still be enforceable.

SECTION 4 – DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA.

Section 4 requires the CFTC to issue a proposed rule 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.

Section 4 also requires the CFTC to disaggregate and publicly provide the number and total value of positions of index funds, and other passive, long-only and short-only

investors, in all regulated markets, and data on speculative positions relative to their bona fide physical hedgers.

SECTION 5 – TRANSPARENCY AND RECORDKEEPING AUTHORITIES.

Section 5(a) subjects over-the-counter transactions for all commodities to reporting and recordkeeping requirements as determined by CFTC.

Section 5(b)(1): includes over-the-counter (OTC) contracts, as determined by CFTC, as part of large trader reporting requirements of section 4i of the CEA; gives the CFTC special call authority so that it can obtain any OTC market positions held by any person pursuant to exemptive provisions of the CEA; and requires that records must be kept for 5 years.

Section 5(c) makes conforming changes.

SECTION 6 – TRADING LIMITS TO PREVENT EXCESSIVE SPECULATION.

Section 6 requires the CFTC to set appropriate position limits for all physically-deliverable commodities. It provides that 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 markets. It sets criteria for the CFTC to consider when establishing position limits.

Section 6 also requires CFTC to annually hold public hearings, one for agriculture commodities and one for energy commodities, to provide an opportunity for interested parties to make recommendations on position limits. It also establishes conditions for the granting of hedge exemptions from position limits to limit exemptions to bona fide hedgers of the commodity.

SECTION 7 – CFTC ADMINISTRATION.

Section 7 requires the CFTC to appoint new full time employees necessary to implement this Act.

SECTION 8 – REVIEW OF PRIOR ACTIONS.

Section 8 requires the CFTC to review all prior actions to ensure compliance with this Act.

SECTION 9 – REVIEW OF OVER-THE-COUNTER MARKETS.

Section 9 requires the CFTC to study and report on the effects of potential position limits on OTC trading and aggregate limits across the OTC market, designated contract markets, and derivative transaction execution facilities for agriculture and energy commodities.

SECTION 10 - STUDIES; REPORTS.

Section 10 requires a GAO study and report of the international regulatory regime for energy commodity futures and derivatives trading.

SECTION 11 – OVER-THE-COUNTER AUTHORITY.

Section 11(a) requires the CFTC to determine whether fungible OTC 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 CFTC finds any of the above, it is authorized to impose and enforce position limits for speculators trading the involved agreements. Section 11(b) makes conforming amendments.

SECTION 12 – EXPEDITED PROCESS.

Section 12 provides that the CFTC may use emergency and expedited procedures to carry out this Act.

SECTION 13 – CLEARING OF OVER-THE-COUNTER TRANSACTIONS.

Section 13(a) generally requires that prospective over-the-counter transactions must be settled and cleared through a CFTC-regulated derivative clearing organization (DCO).

Section 13(b) provides that as an alternative, over-the-counter transactions relating to an excluded commodity (i.e. financials) may be settled and cleared through a SEC-regulated clearing agency. Section 13(b) also provides that as an alternative to clearing, over-the-counter transactions may be reported to the CFTC. Under section 13(b): parties reporting OTC transactions must demonstrate their financial integrity and the integrity of the OTC transaction; the CFTC shall establish net capital requirements associated with reported OTC transactions; and clearing and reporting requirements do not apply to spot and forward transactions, as defined by CFTC.

Section 13(c) adds additional Core Principles for DCOs, including (1) daily publication of pricing information, (2) fitness standards, and (3) disclosure of operational information.

Section 13(d) amends bank laws to: clarify that only DCOs and SEC-regulated multilateral clearing agencies can clear OTC transactions; provide that the Federal Reserve does not have authority to establish regulations or rules with regard to clearing OTC transactions; and make other conforming changes.

Section 13(e) provides that the effective date for the section is 150 days after enactment of the Act.

Section 13(f) requires that all OTC transactions in effect prior to date of enactment must be either cleared as stated above or reported to CFTC.

SECTION 14 – TREATMENT OF CARBON OFFSET CREDITS AND EMISSION ALLOWANCES.

Section 14(a) amends the definition of “exempt commodity” to exclude allowances authorized under law to emit a greenhouse gas, and any credit authorized under law for a reduction in greenhouse gas emissions or increase in carbon sequestration. Any such contract could only be traded on a designated contract market.

Section 14(b) directs the CFTC to establish an MOU with USDA on development of procedures and protocols for market-based greenhouse gas program.

SECTION 15 – INSPECTOR GENERAL OF CFTC.

Section 15 makes the Inspector General position at the CFTC a Presidential appointment, confirmed by the Senate.

SECTION 16 – CFTC AUTHORITY TO SUSPEND TRADING IN CREDIT DEFAULT SWAPS.

Section 16(a) grants the CFTC the authority to suspend credit default swap trading, with the concurrence of the President.

Section 16(b) amends the CEA to add a definition of the term “credit default swap”. Credit default swaps traded or cleared by registered entities shall not be considered securities except as necessary for enforcing insider trading prohibitions.

SECTION 17 – CFTC AUTHORITY TO PROSECUTE CRIMINAL VIOLATIONS OF COMMODITY EXCHANGE ACT.

Section 17 grants the CFTC the authority to initiate and conduct criminal litigation relating to violations of the Act if the Attorney General has declined such litigation.