110TH CONGRESS
2D SESSION

# S. ______

To amend the Commodity Exchange Act to prohibit the purchase of certain commodity futures contracts and financial instruments and physical commodities by certain investors.

IN THE SENATE OF THE UNITED STATES

______ introduced the following bill; which was read twice and referred to the Committee on ______

# A BILL

To amend the Commodity Exchange Act to prohibit the purchase of certain commodity futures contracts and financial instruments and physical commodities by certain investors.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PROHIBITED TRANSACTIONS BY INSTITUTIONAL INVESTORS AND FINANCIAL INSTITUTIONS.**

Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by adding at the end the following:

"(h) PROHIBITION ON CERTAIN INVESTMENTS IN COMMODITIES BY INSTITUTIONAL INVESTORS.—

"(1) DEFINITIONS.—

"(A) BONA FIDE HEDGING TRANSACTION.—The term 'bona fide hedging transaction' means a transaction that—

"(i) represents a substitute for a transaction to be made or a position to be taken at a later time in a physical marketing channel;

"(ii) is economically appropriate for the reduction of risks in the conduct and management of a commercial enterprise; and

"(iii) arises from the potential change in the value of—

"(I) assets that a person owns, produces, manufactures, possesses, or merchandises (or anticipates owning, producing, manufacturing, possessing, or merchandising);

"(II) liabilities that a person incurs or anticipates incurring; or

"(III) services that a person provides or purchases (or anticipates providing or purchasing).

"(B) OVER-THE-COUNTER COMMODITY DERIVATIVE.—The term 'over-the-counter commodity derivative' means any agreement, contract, or transaction that—

"(i)(I) is traded or executed in the United States; or

"(II) is held by a person located in the United States;

"(ii) is not traded on a designated contract market or derivatives transaction execution facility; and

"(iii)(I) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or substantially based on the value of, 1 or more qualifying commodities or an economic or financial index or measure of economic or financial risk primarily associated with 1 or more qualifying commodities;

"(II) provides on an executory basis for the applicable transaction, on a fixed or contingent basis, of 1 or more payments substantially based on the value of 1 or more qualifying commodities or an economic or financial index or measure of economic or financial risk primarily associated with 1 or more qualifying commodities, and that transfers between the parties to the transaction, in whole or in part, the economic or financial risk associated with a future change in any such value without also conveying a current or future direct or indirect ownership interest in an asset or liability that incorporates the financial risk that is transferred; or

"(III) is any combination or permutation of, or option on, any agreement, contract, or transaction described in subclause (I) or (II).

"(C) QUALIFYING COMMODITY.—The term 'qualifying commodity' means—

"(i) an agricultural commodity; and

"(ii) an energy commodity.

"(D) QUALIFYING EMPLOYEE BENEFIT INVESTOR.—The term 'qualifying employee benefit investor' means a plan that—

"(i) is—

"(I) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

"(II) a governmental employee benefit plan; or

"(III) a foreign person performing a similar role or function subject to foreign regulation; and

"(ii) the total assets of which are greater than $500,000,000.

"(E) QUALIFYING GOVERNMENTAL INVESTOR.—The term 'qualifying governmental investor' means an entity that—

"(i) is—

"(I) a governmental entity (including a foreign government, or a political subdivision of a governmental entity);

"(II) a multinational or supranational governmental entity; or

"(III) an instrumentality, agency, or department of a governmental entity described in subclause (I) or (II); and "(ii) the total assets of which are greater than $500,000,000.

"(F) QUALIFYING INSTITUTIONAL INVESTOR.—The term 'qualifying institutional investor' means a corporation, partnership, proprietorship, organization, trust, or other entity the total assets of which are greater than $500,000,000.

"(2) PROHIBITION RELATING TO QUALIFYING EMPLOYEE BENEFIT INVESTORS.—A qualifying employee benefit investor shall not enter into an agreement or transaction involving—

"(A) a contract of sale of a qualifying commodity for future delivery or, on a futures equivalent basis, any option based on the value of a qualifying commodity; or

"(B) an over-the-counter qualifying commodity derivative.

"(3) PROHIBITION RELATING TO QUALIFYING GOVERNMENTAL INVESTORS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a qualifying governmental investor shall not enter into an agreement or transaction involving—

"(i) a contract of sale of a qualifying commodity for future delivery or, on a futures equivalent basis, any option based on the value of a qualifying commodity; or

"(ii) an over-the-counter qualifying commodity derivative.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), a qualifying governmental investor may enter into any agreement or transaction described in that subparagraph if the agreement or transaction is a bona fide hedging transaction.

"(4) PROHIBITION RELATING TO QUALIFYING INSTITUTIONAL INVESTORS.—A qualifying institutional investor shall not enter into a contract, agreement, or transaction that provides a financial return primarily based on the value of a passively managed and broadly diversified index of physical commodities.".