

113TH CONGRESS
1ST SESSION

H. R. 2292

To provide for greater regulation of high frequency trading of commodities futures and options and greater protection for derivatives traders and trading facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2013

Mr. MARKEY introduced the following bill; which was referred to the
Committee on Agriculture

A BILL

To provide for greater regulation of high frequency trading of commodities futures and options and greater protection for derivatives traders and trading facilities, 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 “Protection from Rogue
5 Oil Traders Engaging in Computerized Trading Act” or
6 the “PROTECT Act”.

1 **SEC. 2. REQUIREMENTS APPLICABLE TO HIGH FREQUENCY**
2 **TRADERS OF COMMODITY FUTURES AND OP-**
3 **TIONS.**

4 (a) IN GENERAL.—The Commodity Exchange Act (7
5 U.S.C. 1 et seq.) is amended by inserting after section
6 4t the following:

7 **“SEC. 4u. REQUIREMENTS APPLICABLE TO HIGH FRE-**
8 **QUENCY TRADERS.**

9 “(a) REGISTRATION.—It shall be unlawful for any
10 person to engage in an activity that the Commission has
11 defined in regulations as high frequency trading, unless
12 the person has registered with the Commission (in such
13 form, in such manner, and providing such information as
14 the Commission shall prescribe) as a high frequency trad-
15 er, and the registration has not expired or been suspended
16 or revoked.

17 “(b) OTHER REQUIREMENTS.—A registered high fre-
18 quency trader shall—

19 “(1) test all computer programs and algorithms
20 used by the trader in any high frequency trading ac-
21 tivity and determine whether the programs and algo-
22 rithms are functioning properly, in such manner and
23 with such frequency as the Commission shall pre-
24 scribe in regulations;

25 “(2) establish and document high frequency
26 trading system safeguards reasonably designed to

1 ensure the proper function of all programs and algo-
2 rithms used by the high frequency trader including
3 conditions and parameters relating to the automatic
4 termination, pausing, or cancellation of the trader’s
5 messaging or trading activity, maximum message
6 and trade execution rates and order sizes, intra-day
7 risk position limits, and market and trade moni-
8 toring systems that are appropriate for ensuring
9 compliance with the system safeguards, including
10 systems designed to monitor market volatility and
11 the trader’s risk position on an intra-day basis;

12 “(3) shall not simultaneously purchase and sell
13 through the same or different accounts the same
14 commodity contract, agreement, or transaction, un-
15 less the simultaneous purchases and sales are of a
16 de minimis quantity and are reported to the Com-
17 mission periodically, in a form and manner to be de-
18 termined by the Commission;

19 “(4) submit to the Commission semiannual re-
20 ports on the high frequency trading activities of the
21 trader during the period covered by the report, in
22 such form, in such manner, and containing such in-
23 formation as the Commission may require, signed by
24 the chief executive officer (or equivalent officer) of
25 the trader; and

1 “(5) conform with such business conduct stand-
2 ards as may be prescribed by the Commission by
3 rule or regulation that relate to—

4 “(A) fraud, manipulation, and other abu-
5 sive or disruptive practices, and other practices
6 that may affect market integrity involving high
7 frequency traders (including high frequency
8 trades that are offered but not entered into);
9 and

10 “(B) such other matters as the Commis-
11 sion may determine are appropriate in the pub-
12 lic interest or otherwise in furtherance of the
13 purposes of this Act, including information nec-
14 essary to develop a classification scheme and
15 public reports relating to high frequency traders
16 and trading activity and sub-categories there-
17 to.”.

18 (b) DEADLINE FOR ISSUANCE OF RULES DEFINING
19 HIGH FREQUENCY TRADING.—Within 9 months after the
20 date of the enactment of this Act, the Commodity Futures
21 Trading Commission shall prescribe final regulations de-
22 fining the activities that shall be considered to be high
23 frequency trading for purposes of section 4u of the Com-
24 modities Exchange Act.

1 **SEC. 3. FINE FOR HIGH FREQUENCY TRADING VIOLATION**
2 **REQUIRED TO BE BASED ON THE DURATION**
3 **OF THE VIOLATION.**

4 Section 9 of the Commodity Exchange Act (7 U.S.C.
5 13) is amended by adding at the end the following:

6 “(f) FINE FOR HIGH FREQUENCY TRADING VIOLA-
7 TION REQUIRED TO BE BASED ON THE DURATION OF
8 THE VIOLATION.—The amount of a fine imposed under
9 this Act with respect to a violation of a high frequency
10 trading regulation shall be determined on the basis of the
11 number of seconds, including fractions of seconds, during
12 which the violation continued.”.

13 **SEC. 4. CIVIL PENALTIES UNDER THE COMMODITY EX-**
14 **CHANGE ACT.**

15 (a) AUTHORITY OF THE COMMODITY FUTURES
16 TRADING COMMISSION TO DEFINE MEANING OF “EACH
17 VIOLATION”.—Section 9 of the Commodity Exchange Act
18 (7 U.S.C. 13), as amended by section 3 of this Act, is
19 amended by adding at the end the following:

20 “(g) AUTHORITY TO DEFINE SCOPE OF VIOLA-
21 TION.—The Commission may define the scope of any vio-
22 lation for purposes of determining the number of viola-
23 tions involved in any case arising under this Act.”.

24 (b) ENFORCEMENT POWERS OF THE COMMISSION.—
25 Section 6 of such Act is amended—

1 (1) in paragraph (10) of subsection (c) (7
2 U.S.C. 9), by striking subparagraph (C) and insert-
3 ing the following:

4 “(C) assess such person—

5 “(i) a civil penalty of not more than
6 an amount equal to the greater of—

7 “(I) \$1,000,000, in the case of a
8 person who is an individual, for each
9 violation;

10 “(II) \$10,000,000, in the case of
11 any person other than an individual,
12 for each violation;

13 “(III) triple the monetary gain to
14 the person and all other persons act-
15 ing in concert with the person, for
16 each such violation; or

17 “(IV) triple the total amount of
18 losses to persons proximately caused
19 by each such violation; or

20 “(ii) a civil penalty of triple the max-
21 imum amount otherwise available under
22 clause (i) if the person, within 5 years pre-
23 ceding the violation, has been—

24 “(I) found in a proceeding
25 brought by the Commission, or by

1 agreement of settlement to which the
2 Commission is a party, to have reck-
3 lessly or willfully violated any provi-
4 sion of this Act or of the rules, regu-
5 lations, or orders of the Commission
6 thereunder; or

7 “(II) convicted of any criminal
8 offense that involves a violation of this
9 Act or of the rules, regulations, or or-
10 ders of the Commission thereunder;
11 and”;

12 (2) in subsection (d) (7 U.S.C. 13b)—

13 (A) by inserting “(1)” after “(d)”;

14 (B) by striking “\$140,000 or triple the
15 monetary gain to such person,” and inserting
16 “(A) \$1,000,000, in the case of a person who
17 is an individual, for each violation, (B)
18 \$10,000,000, in the case of any person other
19 than an individual, for each violation, (C) triple
20 the monetary gain to the person and all other
21 persons acting in concert with the person, for
22 each such violation, or (D) triple the total
23 amount of losses to persons proximately caused
24 by each such violation,”; and

1 (C) by striking the period and inserting “;
2 and”; and

3 (D) by adding after and below the end the
4 following:

5 “(2)(A) A person shall be held liable for a civil
6 penalty in triple the amount otherwise available for
7 a violation under this subsection if the person, with-
8 in 5 years preceding such violation, has been—

9 “(i) found in a proceeding brought by the
10 Commission, or by agreement of settlement to
11 which the Commission is a party, to have reck-
12 lessly or willfully violated any provision of this
13 Act or the rules, regulations, or orders of the
14 Commission thereunder; or

15 “(ii) convicted of any criminal offense that
16 involves violation of this Act or the rules, regu-
17 lations, or orders of the Commission there-
18 under.”.

19 (c) NONENFORCEMENT OF RULES OF GOVERNMENT
20 OR OTHER VIOLATIONS.—Section 6b of such Act (7
21 U.S.C. 13a) is amended in the 1st sentence—

22 (1) by striking “\$500,000 for each such viola-
23 tion, or, in any case of manipulation or attempted
24 manipulation in violation of section 6(c), 6(d), or
25 9(a)(2), a civil penalty of not more than \$1,000,000

1 for each such violation” and inserting “(A)
2 \$1,000,000, in the case of a person who is an indi-
3 vidual, for each violation, (B) \$10,000,000, in the
4 case of any person other than an individual, for each
5 violation, (C) triple the monetary gain to the person
6 and all other persons acting in concert with the per-
7 son, for each such violation, or (D) triple the total
8 amount of losses to persons proximately caused by
9 each such violation, and such civil penalty shall be
10 assessed for each violation on which a failure to en-
11 force or other violation occurs or has occurred; pro-
12 vided that a registered entity, director, officer,
13 agent, or employee shall be assessed a civil penalty
14 of triple the amount otherwise available if the per-
15 son, within 5 years of such violation, has been found
16 in a proceeding brought by the Commission, or by
17 agreement of settlement to which the Commission is
18 a party, to have recklessly or willfully violated any
19 provision of this Act or the rules, regulations, or or-
20 ders of the Commission thereunder, or convicted of
21 any criminal offense that involves a violation of this
22 Act or the rules, regulations, or orders of the Com-
23 mission thereunder”.

1 (d) ACTION TO ENJOIN OR RESTRAIN VIOLA-
2 TIONS.—Section 6c(d) of such Act (7 U.S.C. 13a–1(d))
3 is amended—

4 (1) in paragraph (1), by inserting “a civil pen-
5 alty in the amount of” after “violation”; and

6 (2) by striking subparagraphs (A) and (B) of
7 paragraph (1) and inserting the following:

8 “(A) not more than the greater of—

9 “(i) “\$1,000,000, in the case of a per-
10 son who is an individual, for each violation;

11 “(ii) \$10,000,000, in the case of any
12 person other than an individual, for each
13 violation;

14 “(iii) triple the monetary gain to the
15 person and all other persons acting in con-
16 cert with the person, for each such viola-
17 tion; or

18 “(iv) triple the total amount of losses
19 by persons proximately caused by each
20 such violation; or

21 “(B) triple the maximum amount other-
22 wise available under subparagraph (A) if the
23 person, within 5 years preceding the violation,
24 has been—

1 “(i) found in a proceeding brought by
2 the Commission, or by agreement of settle-
3 ment to which the Commission is a party,
4 to have recklessly or willfully violated any
5 provision of this Act or of the rules, regu-
6 lations, or orders of the Commission there-
7 under; or

8 “(ii) convicted of any criminal offense
9 that involves a violation of this Act or of
10 the rules, regulations, or orders of the
11 Commission thereunder.”.

12 (e) CRIMINAL PENALTIES.—Section 9(a) of such Act
13 (7 U.S.C. 13(a)) is amended by inserting “in the case of
14 an individual or \$10,000,000 in the case of any person
15 other than an individual, for each violation,” after
16 “\$1,000,000”.

17 (f) STATUTE OF LIMITATIONS.—Section 9 of such
18 Act (7 U.S.C. 13) is amended by adding at the end the
19 following:

20 “(f) STATUTE OF LIMITATIONS.—An action, suit or
21 proceeding for the enforcement of any civil fine, penalty,
22 or forfeiture, pecuniary or otherwise, shall not be enter-
23 tained unless commenced within 10 years after the date
24 when the claim first accrued if, within the same period,

1 the offender or the property is found within the United
2 States in order that proper service may be made thereon.”.

3 **SEC. 5. EFFECTIVE DATES.**

4 (a) REQUIREMENTS APPLICABLE TO HIGH FRE-
5 QUENCY TRADERS.—The amendment made by section
6 2(a) shall take effect on the date that is 9 months after
7 the date of the enactment of this Act.

8 (b) PENALTIES PROVISIONS.—The amendments
9 made by sections 3 and 4 shall take effect on the date
10 that is 15 days after the date of the enactment of this
11 Act.

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