I

112TH CONGRESS
2D SESSION

H. R. 5186

To prevent excessive speculation in energy commodities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2012

Mr. MARKEY (for himself, Mr. FRANK of Massachusetts, Ms. DELAURO, Ms. EDWARDS, Mr. LARSON of Connecticut, Mr. MORAN, Mr. PASCRELL, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on Agriculture

---

A BILL

To prevent excessive speculation in energy commodities, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Halt Index Trading of Energy Commodities (HITEC) Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Investment in our commodities markets has grown dramatically in recent years. While the vol-

ume of futures contracts traded in the United States was only 630,000,000 in 1998, that volume ballooned to over 3,200,000,000 in 2007.

(2) According to testimony provided to the Committee on Natural Resources of the House of Representatives, this growth in volume has been accompanied by a huge increase in the percentage of commodity futures contracts owned by speculators. While physical hedgers used to account for 70 percent of futures contracts and speculators accounted for just 30 percent, those numbers have reversed, and speculators now possess 70 percent of all open commodity futures contracts.

(3) Almost all of this increase in speculation has been caused by a surge in trading of commodity index funds.

(4) Commodity index trading is investing in funds or other financial products which are indexed to changes in value of various commodities traded on commodity markets in the United States. These funds can be tied to a basket of different commodities or just to a single commodity.

(5) Investment in funds tied to these indexes has grown enormously in the last 2 decades. According to the Commodity Futures Trading Commission,

a partial tally of net long positions in United States markets in these indexes reached to over $160,000,000,000 in February 2012, and net long positions in West Texas Intermediate Crude Oil reached to over $39,000,000,000. Many of the investors in these funds are institutional clients, such as pension funds and universities.

(6) The vast majority of investors in commodity index funds do not use the commodities involved. These investors are only interested in profiting from a rise in value of the commodities and must sell their interests in the commodities before the futures contracts they own close. This practice, known as rolling, causes hundreds of billions of dollars of additional trading to flow through our commodities markets each month, artificially increasing the volatility of our markets and driving up prices for many of our commodities, including crude oil.

(7) Because our commodities markets are tied to the actual retail prices of our commodities, the artificial and excessive levels of speculation have significantly increased the retail prices our citizens pay for their commodities. In the case of oil, excessive speculation may have added nearly $1.00 to the per gallon price of gasoline.

(8) As sharp increases in energy costs reduce economic growth, these commodity index funds are creating a weight on the overall economy, threatening to delay our Nation's full recovery from the 2008 financial crisis and recession.

(9) Thus, commodity index funds hurt economic growth and consumer's wallets.

(10) In the Dodd-Frank Wall Street Reform Act, Congress ordered the Commodity Futures Trading Commission to limit the number of positions that a person or a class of persons may hold in the commodities markets. Congress has taken initial steps to set boundaries on commodity trading, but more must be done to address the role of commodity index funds in the energy commodity markets.

(11) Because oil prices have been at elevated levels for much of the last year, Congress believes the situation is an emergency and warrants immediate action to ban commodity index trading in energy commodities.

SEC. 3. PREVENTION OF EXCESSIVE SPECULATION IN ENERGY COMMODITIES.

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

"(h)(1)(A) It shall be unlawful for a commodity index fund to engage in a transaction involving an energy commodity if any person investing in the fund is an excluded investor.

"(B) It shall be unlawful for an energy commodity index fund to accept an investment from a person who is an excluded investor.

"(C) Beginning 2 years after the date of the enactment of this subsection, it shall be unlawful for a commodity index fund to hold an investment in an energy commodity if any person investing in the fund is an excluded investor.

"(2) In this subsection:

"(A) The term 'commodity index fund' means a fund that consists principally of swaps involving, or contracts of sale for future delivery of, more than 1 commodity, the value or level of which is based, in whole or in part, on the value or level of more than 1 commodity, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level.

"(B) The term 'energy commodity index fund' means a commodity index fund that consists principally of swaps involving, or contracts of sale for future delivery of, more than 1 energy commodity.

"(C) The term 'energy commodity' means crude oil, natural gas, or any other product (other than an agricultural commodity) that is produced or refined, in whole or in part, from crude oil or natural gas and that may be used as fuel for a power source of any kind, but does not include electricity.

"(D) The term 'excluded investor' means a person with respect to whom there is no position in at least 1 energy commodity which, if held by the person, would be considered a bona fide hedging position (within the meaning of section 4a(c)(1)).

"(E) The term 'swap' shall have the meaning the term would have if the provisions of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act defining, and authorizing further definition of, the term were in effect.".

○