
CONFERENCE COMMITTEE ON H.R. 2419

**Senate Amendment Title XIII & Applicable House
Provisions – CEA Reauthorization**

**Section-by-Section Comparison of House Bill,
Senate Amendment, and Current Law**

Item	Item Heading	CURRENT LAW	HOUSE BILL (H.R. 2419)	SENATE AMENDMENT	CONF. AGREEMENT
T13 -1	Short Title Section 13001 of the Senate Amendment to HR 2419		No comparable provision	This title may be cited as the “CFTC Reauthorization Act of 2008”.	
T13 -2	CFTC Authority Over Off-Exchange Retail Foreign Currency Transactions Sec. 13101 of the Senate Amendment to H.R.2419,	Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)2) provides the CFTC jurisdiction over futures contracts and foreign currency options executed or traded on an organized exchange.. Section 2(c)(2)(B) provides the Commission has jurisdiction over an agreement, contract, or transaction (off exchange) in retail foreign currency that involves a commodity future or option unless the person or the counterparty to the person is already regulated by another financial regulator. Section 2(c)(2)(C) subjects these agreements, contracts and transaction in retail foreign currency described above to CFTC anti-fraud authorities.	No comparable provision	Sec. 13101. CFTC Authority over Off-Exchange Retail Foreign Currency Transactions Amends Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2) by clarifying that CFTC’s anti-fraud authority applies to retail foreign currency transactions by futures commission merchants (including retail foreign exchange dealers) who are leveraged, margined or financed (except that such authority does not apply to securities, spots, or forward contracts) as if they were a contract of sale of a commodity for future delivery. This provision prohibits certain persons from participating in solicitations or recommendations relative to retail foreign currency futures and similar transactions unless they are registered (according to Commission rule) and are members of a futures association, if such persons are not already regulated by another financial regulator It also provides authority to the CFTC to issue rules proscribing fraud in connection with any agreement, contract or transaction in an exempt or agricultural commodity.	
T13 -3	Liaison with Department of Justice Sec. 13102 of the Senate Amendment to H.R.2419	No comparable provision	No comparable provision	Sec. 13102. Liaison with Department of Justice Requires the Attorney General to designate a liaison between the Department of Justice and the CFTC to coordinate civil and criminal investigations and prosecutions of violations of the CEA.	
T13 -4	Anti-Fraud Authority over Principal-to- Principal Transactions Sec. 13103 of the Senate Amendment to H.R.2419	Section 4b of the Commodity Exchange Act (7 U.S.C. Section 6b) prohibits fraudulent transactions for any member of a registered entity (or associated person) or any person in or in connection with any contract of sale of any commodity for future delivery.	No comparable provision	Sec. 13103. Anti-fraud Authority over Principal-to-principal transactions Amends Section 4b of the Commodity Exchange Act (7 U.S.C. Section 6b) by clarifying that fraudulent actions in off-exchange principal-to-principal futures transactions are subject to the anti-fraud provisions of this section.	

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				This provision also clarifies that persons trading excluded and exempt commodities on a derivatives transaction execution facility (DTEF) are not obligated to disclose nonpublic information that may be material to the market price, rate or level of commodity or transaction except as necessary to avoid misleading the other person in any material respect.	
T13-5	<p>Criminal and Civil Penalties</p> <p>Sec. 13104 of the Senate Amendment to H.R.2419</p>	<p>Section 6c of the Commodity Exchange Act (7 U.S.C. 9, 15) provides for civil penalties for manipulation or attempted manipulation of the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules, regulations, or orders of the CFTC, in an amount not more than the higher of \$100,000 or triple the monetary gain to the person for each violation.</p> <p>Section 6b of the Commodity Exchange Act (7 U.S.C. 13a) provides the CFTC with the authority to make and enter an order directing a registered entity, director, officer, agent, or employee to cease and desist from any violations, including civil penalties of not more than \$500,000 for each violation. If the party shall fail or refuse to obey or comply with such order, it shall be guilty of a misdemeanor, including a fine of not more than \$500,000 or imprisonment for not less than 6 months, nor more than one year.</p> <p>Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a-1(d)) provides the CFTC with authority to impose civil penalties in not more than the higher of \$100,000 or triple the monetary gain, on any person in any action brought under this section.</p> <p>Section 9 of the Commodity Exchange Act (7 U.S.C. 13) declares that it shall be a felony, punishable by a fine of not more than \$1,000,000 or imprisonment for not more than 5 years, or both, for 1) any person registered or required to be registered under this act to embezzle, steal, purloin, or with criminal intent to convert to the use of another, any money, securities, property</p>	No comparable provision	<p>Sec. 13104. Criminal and Civil Penalties</p> <p>Amends Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9, 15) to increase civil penalties for manipulation under the Act to “not more than the greater of \$1,000,000 or triple the monetary gain to each person for each such violation.”</p> <p>Amends Section 6(b) of the Commodity Exchange Act (7 U.S.C. 13a) to increase the civil penalty for registered entities that fail to enforce rules to \$1,000,000. It also increased the criminal penalty for officers of a registered entity who fail to comply with cease and desist orders in connection with manipulation from a misdemeanor to a felony.</p> <p>Amends Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a-1(d)) by increasing civil penalties for violations of injunctions or restraining orders involving manipulation to “\$1,000,000 or triple the monetary gain.”</p> <p>Amends Section 9 of the Commodity Exchange Act (7 U.S.C. 13) to increase the criminal penalty for violations of the Act in general from 5 to 10 years and increases the civil penalty for individual persons to \$1,000,000.</p>	

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		having a value in excess of \$100; 2) to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on the subject of the rules of any registered entity or communicate false or misleading or knowingly inaccurate.; 3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this Act or any rule, or regulation thereunder; 4) Any person willfully to falsify, conceal, or cover by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations; and 5) Any person willfully to violate any other provision of this act, or any rule or regulation thereunder, the violation of which is made unlawful.			
T13-6	Authorization of Appropriations Sec. 13105 of the Senate Amendment to H.R.2419	Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) authorized appropriations for the Act through 2005. (expired)	No comparable provision	Sec. 13105. Authorization of Appropriations Authorizes such sums as may be necessary to carry out the Act for fiscal years 2008 through 2013.	
T13-7	Technical and Conforming Amendments Sec. 13106 of the Senate Amendment to H.R.2419	N/A	No comparable provision	Sec. 13106. Technical and Conforming Amendments Various amendments to correct statutory errors and other conforming changes.	
T13-8	Portfolio Margining and Security Index Issues Sec. 13107 of the Senate Amendment to H.R.2419	Section 7 of the Security Exchange Act of 1934 (15 U.S.C 78g), as amended by the CFMA, requires the Board of Governors of the Federal Reserve System (or they may delegate such authority to the SEC and the CFTC) to prescribe rules and regulations for margin requirements for security futures.	No comparable provision	Sec. 13107. Portfolio Margining and Security Index Issues Requires the PWG to work with the CFTC and the SEC to permit risk-based portfolio margining for securities by September 30, 2008 and the trading of futures on security indexes by June 30, 2008.	
T13-9	Significant Price Discovery Contracts Sec. 13201 of the Senate Amendment to H.R.2419	No comparable provision	No comparable provision	Sec. 13201. Significant Price Discovery Contracts 13201(a)- Defines “significant price discovery contract” as an agreement, contract or transaction subject to section 2(h)(7)(A). 13201(b)- Amends section 2(h) of the Commodity	

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				<p>Exchange Act by adding a new paragraph (7) that provides for standards applicable to significant price discovery contracts.</p> <p>The new paragraph (7):</p> <p>Provides that any agreement, contract or transaction conducted in reliance on the 2(h)(3) exemption will be subject to standards if the Commission determines that it performs a significant price discovery function. (7)(A)</p> <p>Specifies the factors the Commission will consider in making a determination whether an agreement, contract or transaction performs a significant price discovery function including price linkage, arbitrage, material price reference, material liquidity and other material factors. (7)(B)</p> <p>Specifies the core principles applicable to an electronic facility on which significant price discovery contracts are traded or executed including those relating to contracts not readily susceptible to manipulation, monitoring of trading, the ability to obtain information, position limitations or accountability, emergency authority, daily publication of trading information, compliance with rules, and conflict of interest. (7)(C)</p> <p>Gives the electronic trading facility the discretion to take into account differences between cleared and uncleared significant price discovery contracts in applying the core principles in subparagraph (7)(C) and directs the Commission to take such differences into consideration when reviewing implementation of such principles by the electronic trading facility. (7)(D)</p>	

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				<p>Requires an electronic trading facility to notify the Commission whenever it has reason to believe that an agreement, contract or transaction conducted in reliance on the exemption provided in 2(h)(3) displays any of the factors relating to a significant price discovery function described in subparagraph (7)(B). Also directs the Commission to conduct an evaluation at least once a year to determine whether any agreement, contract or transaction conducted on an electronic trading facility in reliance on the exemption in 2(h)(3) performs a significant price discovery function. (7)(E)</p>	
T13-10	<p>Large Trader Reporting</p> <p>Sec. 13202 of the Senate Amendment to H.R.2419</p>	<p>Section 4g and 4i of the Commodity Exchange Act (7 U.S.C. 6g, 6i) requires persons registered as futures commission merchants, introducing brokers, floor brokers, or floor traders to keep books and records pertaining to transactions and positions in such form and manner and for such period as may be required by the Commission.</p>	<p>No comparable provision</p>	<p>Sec. 13202. Large Trader Reporting</p> <p>Section 13202(a) amends Section 4g of the Commodity Exchange Act to require reporting and recordkeeping of every person registered with the Commission regarding the transactions and positions of such person in any significant price discovery contract traded or executed on an electronic trading facility.</p> <p>Section 13202(b) amends Section 4i of the Commodity Exchange Act to make any person buying or selling commodities in a significant price discovery contract on an electronic trading facility subject to trading limits set by the Commission and to require such person to report and keep records on transactions or positions equal to or in excess of any trading limits the Commission has set.</p>	
T13-11	<p>Conforming Amendments</p> <p>Sec. 13203 of the Senate Amendment to H.R.2419</p>	<p>N/A</p>	<p>No comparable provision</p>	<p>Sec. 13203. Conforming Amendments</p> <p>Provides various amendments to conform other areas of current law based on changes made in Sections 13201 and 13202.</p>	
T13-12	<p>Effective Date</p> <p>Sec. 13204 of the Senate</p>	<p>No comparable provision</p>	<p>No comparable provision</p>	<p>Sec. 13204. Effective Date</p> <p>Section 13204(a) provides that this subtitle shall</p>	

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	Amendment to H.R.2419			<p>become effective on the date of enactment of this Act.</p> <p>Section 13204(b) requires the Commission to issue a proposed rule regarding the significant price discovery standards in Section 13201(b) within 180 days of the date of enactment of this Act and a final rule within 270 days.</p> <p>Section 13204(c) requires the Commission to complete a review of the agreements, contracts and transactions of any electronic trading facility operating on the effective date of the final rule described in 13204(b) within 180 days after that effective date to determine whether such agreement, contract or transaction performs a significant price discovery function.</p>	