SUMMARY OF THE CLOSE THE ENRON LOOPHOLE ACT

Closes the "Enron Loophole." The bill would close the Enron loophole and require government oversight of the trading of energy commodities by large traders to prevent price manipulation and excessive speculation.

Since 2000, the "Enron loophole" in §2(h)(3) of the Commodity Exchange Act has exempted from oversight the electronic trading of energy commodities by large traders. As a hedge fund known as Amaranth Advisors demonstrated in the natural gas market in 2006, the Enron loophole makes it impossible to prevent traders from distorting energy prices through large trades on these unregulated exchanges. Under this bill, a trading facility that functions as an energy exchange would be subject to Commodity Futures Trading Commission (CFTC) oversight to prevent price manipulation and excessive speculation. The bill would:

Require oversight of Energy Trading Facilities (ETFs). ETFs would have to comply with the same standards that apply to futures exchanges, like NYMEX, to prevent price manipulation and excessive speculation. The only difference would be that regulatory provisions governing retail trading and brokers on a futures exchange would not apply because trading on an ETF is restricted to large traders trading amongst themselves. ETFs would function as self-regulatory organizations under CFTC oversight in the same manner as futures exchanges.

Require ETFs to establish trading limits on traders, such as position limits or accountability levels, to prevent price manipulation and excessive speculation, subject to CFTC approval, in the same manner as futures exchanges. Position limits set a ceiling on the number of contracts that a trader can hold at one time on a trading facility; accountability levels, when exceeded, trigger a review by regulators of a trader's holdings in order to prevent price manipulation and excessive speculation. The CFTC would ensure that position limits and accountability levels for similar contracts on different exchanges are on parity with each other and applied in a functionally equivalent manner. The CFTC would also ensure that a trader's positions on multiple exchanges and other markets, when combined, are not excessive.

Define "energy commodity" as a commodity used as a source of energy, including crude oil, gasoline, heating oil, diesel fuel, natural gas, and electricity, or results from the burning of fossil fuels, including carbon dioxide and sulfur dioxide.

Define "energy trading facility" as a trading facility that trades contracts in an energy commodity (other than in the cash or spot market) between large traders ("eligible commercial entities"), and provides either for the clearing of those contracts or a price discovery function in the futures or cash market for that energy commodity. Clearing services, which are already subject to CFTC oversight, generally guarantee the performance of a contract, and facilitate the trading of those contracts. A trading facility performs a price discovery function when the price of transactions are publicly disseminated and can affect the prices of subsequent transactions.

Require large-trader reporting for domestic trades on foreign exchanges. Large trades of U.S. energy commodities taking place from the United States on foreign exchanges would have to be reported to the CFTC. Traders would be relieved of this reporting requirement if the CFTC reached agreement with a foreign board of trade to obtain the same information.