113TH CONGRESS  
2D Session  
H. R. 4413  

To reauthorize the Commodity Futures Trading Commission, to better protect futures customers, to provide end users with market certainty, to make basic reforms to ensure transparency and accountability at the Commission, to help farmers, ranchers, and end users manage risks to help keep consumer costs low, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES  

APRIL 7, 2014  

Mr. LUCAS (for himself, Mr. PETERSON, Mr. CONAWAY, and Mr. DAVID SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Agriculture

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A BILL  

To reauthorize the Commodity Futures Trading Commission, to better protect futures customers, to provide end users with market certainty, to make basic reforms to ensure transparency and accountability at the Commission, to help farmers, ranchers, and end users manage risks to help keep consumer costs low, 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 “Customer Protection
5 and End User Relief Act”.


SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

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Sec. 2. Table of contents.

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TITLE I—CUSTOMER PROTECTIONS

SEC. 101. SHORT TITLE.

This title may be cited as the “Futures Customer Protection Act”.

SEC. 102. ENHANCED PROTECTIONS FOR FUTURES CUSTOMERS.

Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by adding at the end the following:

“(s) A registered futures association shall—

“(1) require each member of the association that is a futures commission merchant to maintain written policies and procedures regarding the maintenance of—

“(A) the residual interest of the member, as described in section 1.23 of title 17, Code of Federal Regulations, in any customer seg-
regated funds account of the member, as identi-

fied in section 1.20 of such title, and in any for-

eign futures and foreign options customer se-

cured amount funds account of the member, as

identified in section 30.7 of such title; and

“(B) the residual interest of the member,

as described in section 22.2(e)(4) of such title,

in any cleared swaps customer collateral ac-

count of the member, as identified in section

22.2 of such title; and

“(2) establish rules to govern the withdrawal,

transfer or disbursement by any member of the asso-

ciation, that is a futures commission merchant, of

the member’s residual interest in customer seg-

regated funds as provided in such section 1.20, in

foreign futures and foreign options customer secured

amount funds, identified as provided in such section

30.7, and from a cleared swaps customer collateral,

identified as provided in such section 22.2.”.

SEC. 103. ELECTRONIC CONFIRMATION OF CUSTOMER

FUNDS.

Section 17 of the Commodity Exchange Act (7 U.S.C.

21), as amended by section 102 of this Act, is amended

by adding at the end the following:
“(t) A registered futures association shall require any member of the association that is a futures commission merchant to—

“(1) use an electronic system or systems to report financial and operational information to the association, including information related to customer segregated funds, foreign futures and foreign options customer secured amount funds accounts, and cleared swaps customer collateral, in accordance with such terms, conditions, documentation standards, and regular time intervals as are established by the association;

“(2) instruct each depository, including any bank, trust company, derivatives clearing organization, or futures commission merchant, holding customer segregated funds under section 1.20 of title 17, Code of Federal Regulations, foreign futures and foreign options customer secured amount funds under section 30.7 of such title, or cleared swap customer funds under section 22.2 of such title, to report balances in the futures commission merchant’s section 1.20 customer segregated funds, section 30.7 foreign futures and foreign options customer secured amount funds, and section 22.2 cleared swap customer funds, to the registered futures association or
another party designated by the registered futures
association, in the form, manner, and interval pre-
scribed by the registered futures association; and

“(3) hold section 1.20 customer segregated
funds, section 30.7 foreign futures and foreign op-
tions customer secured amount funds and section
22.2 cleared swaps customer funds in a depository
that reports the balances in these accounts of the fu-
tures commission merchant held at the depository to
the registered futures association or another party
designated by the registered futures association in
the form, manner, and interval prescribed by the
registered futures association.”.

SEC. 104. NOTICE AND CERTIFICATIONS PROVIDING ADDI-
TIONAL CUSTOMER PROTECTIONS.

Section 17 of the Commodity Exchange Act (7 U.S.C.
21), as amended by sections 102 and 103 of this Act, is
amended by adding at the end the following:

“(u) A futures commission merchant that has ad-
justed net capital in an amount less than the amount re-
quired by regulations established by the Commission or
a self-regulatory organization of which the futures com-
mission merchant is a member shall immediately notify
the Commission and the self-regulatory organization of
this occurrence.
“(v) A futures commission merchant that does not hold a sufficient amount of funds in segregated accounts for futures customers under section 1.20 of title 17, Code of Federal Regulations, in foreign futures and foreign options secured amount accounts for foreign futures and foreign options secured amount customers under section 30.7 of such title, or in segregated accounts for cleared swap customers under section 22.2 of such title, as required by regulations established by the Commission or a self-regulatory organization of which the futures commission merchant is a member, shall immediately notify the Commission and the self-regulatory organization of this occurrence.

“(w) Within such time period established by the Commission after the end of each fiscal year, a futures commission merchant shall file with the Commission a report from the chief compliance officer of the futures commission merchant containing an assessment of the internal compliance programs of the futures commission merchant.”.

SEC. 105. FUTURES COMMISSION MERCHANT COMPLIANCE.

(a) IN GENERAL.—Section 4d(a) of the Commodity Exchange Act (7 U.S.C. 6d(a)) is amended—
(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) and by moving the margins of such subparagraphs two ems to the right;

(2) by inserting “(1)” before “It shall be un- lawful”; and

(3) by adding at the end the following new paragraph:

“(2) Any rules or regulations requiring a futures commission merchant to maintain a residual interest in accounts held for the benefit of customers in amounts at least sufficient to exceed the sum of all uncollected margin deficits of such customers shall provide that a futures commission merchant shall meet its residual interest requirement as of the end of each business day calculated as of the close of business on the previous business day.”.

(b) CONFORMING AMENDMENT.—Section 4d(h) of the Commodity Exchange Act (7 U.S.C. 6d(h)) is amended by striking “Notwithstanding subsection (a)(2)” and inserting “Notwithstanding subsection (a)(1)(B)”.

SEC. 106. CERTAINTY FOR FUTURES CUSTOMERS AND MARKET PARTICIPANTS.

Section 20(a) of the Commodity Exchange Act (7 U.S.C. 24(a)) is amended—
(1) by striking “and” at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting “; and”; and

(3) by adding at the end the following:

“(6) that cash, securities, or other property of the estate of a commodity broker, including the trading or operating accounts of the commodities broker and commodities held in inventory by the commodity broker, shall be included in customer property, but only to the extent that the property that is otherwise customer property is insufficient to satisfy the net equity claims of public customers (as such term may be defined by the Commission by rule or regulation) of the commodity broker.”.

SEC. 107. STUDY ON HIGH-FREQUENCY TRADING.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Commodity Futures Trading Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report examining the effect of the practice commonly referred to as high-frequency trading on markets under its jurisdiction.
(b) **Specific Areas Examined in Report.**—In preparing the report submitted under subsection (a), the Commission shall particularly examine each of the following areas:

1. The technology, personnel, or other resources the Commission may require for purposes of monitoring the effect of high-frequency trading.
2. The role such trading plays in providing market liquidity.
3. Whether the technology creates discrepancies in the marketplace between market participants.
4. Whether the existing authority of the Commission with respect to such trading is sufficient to meet the Commission’s mission to—
   (A) protect market participants and the public from fraud, manipulation, abusive practices, and systemic risk related to derivatives; and
   (B) foster transparent, open, competitive, and financially sound markets.
TITLE II—COMMODITY FUTURES TRADING COMMISSION REFORMS

SEC. 201. SHORT TITLE.

This title may be cited as the “Commodity Futures Trading Commission Reform Act”.

SEC. 202. EXTENSION OF OPERATIONS.

Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended by striking “2013” and inserting “2018”.

SEC. 203. CONSIDERATION BY THE COMMODITY FUTURES TRADING COMMISSION OF THE COSTS AND BENEFITS OF ITS REGULATIONS AND ORDERS.

Section 15(a) of the Commodity Exchange Act (7 U.S.C. 19(a)) is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) IN GENERAL.—Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission, through the Office of the Chief Economist, shall assess and publish in the regulation or order the costs and benefits, both qualitative and quantitative, of the proposed regulation or order, and the proposed
regulation or order shall state its statutory justifica-

tion.

“(2) CONSIDERATIONS.—In making a reasoned
determination of the costs and the benefits, the
Commission shall evaluate—

“(A) considerations of protection of market
participants and the public;

“(B) considerations of the efficiency, com-
petitiveness, and financial integrity of futures
and swaps markets;

“(C) considerations of the impact on mar-
ket liquidity in the futures and swaps markets;

“(D) considerations of price discovery;

“(E) considerations of sound risk manage-
ment practices;

“(F) available alternatives to direct regula-
tion;

“(G) the degree and nature of the risks
posed by various activities within the scope of
its jurisdiction;

“(H) the costs of complying with the pro-
posed regulation or order by all regulated enti-
ties, including a methodology for quantifying
the costs (recognizing that some costs are dif-
ficult to quantify);
“(I) whether the proposed regulation or order is inconsistent, incompatible, or duplicative of other Federal regulations or orders;

“(J) whether, in choosing among alternative regulatory approaches, those approaches maximize net benefits (including potential economic and other benefits, distributive impacts, and equity); and

“(K) other public interest considerations.”.

SEC. 204. DIVISION DIRECTORS.

Section 2(a)(6)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(6)(C)) is amended by inserting “, and the heads of the units shall serve at the pleasure of the Commission, report directly to the Commission, and perform such functions and duties as the Commission may prescribe” before the period.

SEC. 205. OFFICE OF THE CHIEF ECONOMIST.

(a) In general.—Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) is amended by adding at the end the following:

“(17) Office of the Chief Economist.—

“(A) Establishment.—There is established in the Commission the Office of the Chief Economist.
“(B) HEAD.—The Office of the Chief Economist shall be headed by the Chief Economist, who shall be appointed by the Commission and serve at the pleasure of the Commission.

“(C) FUNCTIONS.—The Chief Economist shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

“(D) PROFESSIONAL STAFF.—The Commission shall appoint such other economists as may be necessary to assist the Chief Economist in performing such economic analysis, regulatory cost-benefit analysis, or research the Commission may direct.”.

(b) CONFORMING AMENDMENT.—Section 2(a)(6)(A) of such Act (7 U.S.C. 2(a)(6)(A)) is amended by striking “(4) and (5)” and inserting “(4), (5), and (17)”.

SEC. 206. PROCEDURES GOVERNING ACTIONS TAKEN WITHOUT A COMMISSION VOTE.

Section 2(a)(12) of the Commodity Exchange Act (7 U.S.C. 2(a)(12)) is amended—

(1) by striking “(12) The” and inserting the following:

“(12) Rules and regulations.—
“(A) IN GENERAL.—Subject to the other provisions of this paragraph, the”; and

(2) by adding after and below the end the following new subparagraph:

“(B) NOTICE TO COMMISSION.—

“(i) GENERAL RULE.—A division or office of the Commission may not issue an interpretive rule of general applicability, a statement of general policy, a response to a formal, written request or petition from any member of the public for guidance, or an exemptive, a no-action, or an interpretive letter, unless, at least 7 calendar days before the issuance, the division or office has provided the Commission with a copy of the matter to be issued.

“(ii) OPPORTUNITY FOR MEETING REQUIRED.—After receiving a copy of the matter provided in accordance with clause (i), any member of the Commission may request that the Commission hold a meeting to review the matter, and the Chairman shall immediately put any such request for a meeting before the Commission, and if the Commission decides to hold
the meeting by a majority vote, the matter may not be issued until the Commission has concluded the meeting.

“(iii) LIMITATIONS ON APPLICABILITY.—By a majority vote, the Commission may waive the 7-day prior notice requirement of clause (i) when the Commission finds that requiring such a notice would be impracticable, unnecessary, or contrary to the public interest.”

SEC. 207. STRATEGIC TECHNOLOGY PLAN.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)), as amended by section 204(a) of this Act, is amended by adding at the end the following:

“(18) STRATEGIC TECHNOLOGY PLAN.—

“(A) IN GENERAL.—Every 5 years, the Commission shall develop and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a detailed plan focused on the acquisition and use of technology by the Commission.

“(B) CONTENTS.—The plan shall—

“(i) include for each related division or office a detailed technology strategy fo-
cused exclusively on market surveillance and risk detection, market data collection, aggregation, interpretation, standardization, harmonization, streamlining, and internal management and protection of data collected by the Commission, including a detailed accounting of how the funds provided for technology will be used and the priorities that will apply in the use of the funds; and

“(ii) set forth annual goals to be accomplished and annual budgets needed to accomplish the goals.”.

SEC. 208. INTERNAL RISK CONTROLS.

(a) In General.—Section 2(a)(12) of the Commodity Exchange Act (7 U.S.C. 2(a)(12)), as amended by section 206 of this Act, is amended by adding at the end the following:

“(C) Internal Risk Controls.—The Commission staff and the Chief Economist shall develop comprehensive internal risk control mechanisms to safeguard and govern the storage of all market data by the Commission, all market data sharing agreements of the Com-
mission, and all academic research performed at
the Commission using market data.”.

(b) REPORTS TO THE CONGRESS.—

(1) CONTENT.—The Commission shall submit
to the Committee on Agriculture of the House of
Representatives and the Committee on Agriculture,
Nutrition, and Forestry of the Senate 2 reports on
the progress made in implementing the internal risk
controls provided for in section 2(a)(12)(C) of the
Commodity Exchange Act.

(2) TIMING.—The Commission shall submit the
1st report required by paragraph (1) within 60 days
after the date of the enactment of this Act, and the
2nd such report within 120 days after such date of
enactment.

SEC. 209. SUBPOENA DURATION AND RENEWAL.

Section 6(c)(5) of the Commodity Exchange Act (7
U.S.C. 9(5)) is amended—

(1) by striking “(5) SUBPOENA.—For” and in-
serting the following:

“(5) SUBPOENA.—

“(A) IN GENERAL.—

“(B) IN GENERAL.—For”;

(2) by adding after and below the end the fol-
lowing:
“(B) CONTENT OF SUBPOENA ORDER.—An order of the Commission authorizing the issuance of a subpoena—

“(i) shall state in good faith the purpose of the investigation;

“(ii) shall require only the provision of information reasonably relevant to that purpose; and

“(iii) shall not be for an indefinite duration.

“(C) RENEWAL.—An order issued under this paragraph may be renewed only by Commission action.”.

SEC. 210. IMPLEMENTATION PLAN FOR COMMISSION RULEMAKINGS.

Section 2(a)(12) of the Commodity Exchange Act (7 U.S.C. 2(a)(12)), as amended by sections 206 and 208(a) of this Act, is amended by adding at the end the following:

“(E) REQUIREMENT TO PUBLISH IMPLEMENTATION PLAN FOR COMMISSION RULES.—The Commission shall direct its staff to develop and publish in any proposed rule a plan for—

“(i) when and for how long the proposed rule will be subject to public comment; and
“(ii) by when compliance with the final rule will be required.”.

SEC. 211. APPLICABILITY OF NOTICE AND COMMENT REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT TO GUIDANCE VOTED ON BY THE COMMISSION.

Section 2(a)(12) of the Commodity Exchange Act (7 U.S.C. 2(a)(12)), as amended by sections 206, 208(a), and 210 of this Act, is amended by adding at the end the following:

“(F) APPLICABILITY OF NOTICE AND COMMENT RULES TO GUIDANCE VOTED ON BY THE COMMISSION.—The notice and comment requirements of chapter 5 of title 5, United States Code, shall also apply with respect to any guidance issued by the Commission after being voted on by the Commission.”.

SEC. 212. JUDICIAL REVIEW OF COMMISSION RULES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding at the end the following:

“SEC. 24. JUDICIAL REVIEW OF COMMISSION RULES.

“(a) A person aggrieved by a final rule of the Commission under this Act may obtain review of the rule in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for
the circuit where the party resides, by filing in the court,
within 60 days after publication in the Federal Register
of the entry of the rule, a written petition requesting that
the rule be modified or set aside in whole or in part.

“(b) A copy of the petition shall be transmitted forth-
with by the clerk of the court to an officer designated by
the Commission for that purpose. Thereupon the Commis-

sion shall file in the court the record on which the rule
complained of is entered, as provided in section 2112 of
title 28, United States Code, and the Federal Rules of
Appellate Procedure.

“(c) On the filing of the petition, the court has juris-
diction, which becomes exclusive on the filing of the
record, to affirm or modify and enforce or to set aside
the rule in whole or in part.

“(d) The findings of the Commission as to the facts
identified by the Commission as the basis, in whole or in
part, of the rule, if supported by substantial evidence, are
conclusive. The court shall affirm and enforce the rule un-
less the Commission’s action in promulgating the rule is
found to be arbitrary, capricious, an abuse of discretion,
or otherwise not in accordance with law; contrary to con-
stitutional right, power, privilege, or immunity; in excess
of statutory jurisdiction, authority, or limitations, or short
of statutory right; or without observance of procedure re-
quired by law.

“(e) If either party applies to the court for leave to
adduce additional evidence and shows to the satisfaction
of the court that the additional evidence is material and
that there was reasonable ground for failure to adduce it
before the Commission, the court may remand the case
to the Commission for further proceedings, in whatever
manner and on whatever conditions the court considers
appropriate. If the case is remanded to the Commission,
it shall file in the court a supplemental record containing
any new evidence, any further or modified findings, and
any new order.”.

SEC. 213. GAO STUDY ON ADEQUACY OF CFTC RESOURCES.

(a) STUDY.—The Comptroller General of the United
States shall conduct a study of the resources of the Com-
modity Futures Trading Commission that—

(1) assesses whether the resources of the Com-
mmission are sufficient to enable the Commission to
effectively carry out the duties of the Commission;
and

(2) examines the prior expenditures of the Com-
mmission on hardware, software, and analytical proc-
esses designed to protect customers in the areas
of—
(A) market surveillance and risk detection;
and
(B) market data collection, aggregation, interpretation, standardization, harmonization, and streamlining.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that contains the results of the study.

TITLE III—END-USER RELIEF

SEC. 301. SHORT TITLE.
This title may be cited as the “End-User Relief and Market Certainty Act”.

Subtitle A—End-User Exemption From Margin Requirements

SEC. 311. END-USER MARGIN REQUIREMENTS.
Section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)) is amended by adding at the end the following new paragraph:

“(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii), including the initial and variation margin requirements imposed by rules
adopted pursuant to paragraphs (2)(A)(ii) and (2)(B)(ii), shall not apply to a swap in which a counterparty qualifies for an exception under section 2(h)(7)(A), or an exemption issued under section 4(c)(1) from the requirements of section 2(h)(1)(A) for cooperative entities as defined in such exemption, or satisfies the criteria in section 2(h)(7)(D).”.

SEC. 312. IMPLEMENTATION.

The amendment made by this subtitle shall be implemented—

(1) without regard to—

(A) chapter 35 of title 44, United States Code; and

(B) the notice and comment provisions of section 553 of title 5, United States Code;

(2) through the promulgation of an interim final rule, pursuant to which public comment will be sought before a final rule is issued; and

(3) such that paragraph (1) shall apply solely to changes to rules and regulations, or proposed rules and regulations, that are limited to and directly a consequence of the amendment.
Subtitle B—Inter-Affiliate Swaps

SEC. 321. TREATMENT OF AFFILIATE TRANSACTIONS.

(a) In General.—Section 2(h)(7)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(D)(i)) is amended to read as follows:

“(i) In General.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, provided that if the transfer of commercial risk is addressed by entering into a swap with a swap dealer or major swap participant, a credit support measure or other mechanism is utilized.”.

(b) Applicability of Credit Support Measure Requirement.—Notwithstanding section 371 of this Act, the requirement in section 2(h)(7)(D)(i) of the Commodity Exchange Act, as amended by subsection (a), requiring
that a credit support measure or other mechanism be utilized if the transfer of commercial risk referred to in such section is addressed by entering into a swap with a swap dealer or major swap participant, shall not apply with respect to swaps entered into before the date of the enactment of this Act.

Subtitle C—Indemnification Requirements Related to Swap Data Repositories

SEC. 331. INDEMNIFICATION REQUIREMENTS.

(a) Derivatives Clearing Organizations.—Section 5b(k)(5) of the Commodity Exchange Act (7 U.S.C. 7a–1(k)(5)) is amended to read as follows:

“(5) CONFIDENTIALITY AGREEMENT.—Before the Commission may share information with any entity described in paragraph (4), the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided.”

(b) Swap Data Repositories.—Section 21(d) of such Act (7 U.S.C. 24a(d)) is amended to read as follows:

“(d) CONFIDENTIALITY AGREEMENT.—Before the swap data repository may share information with any enti-
ty described in subsection (c)(7), the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided.”

Subtitle D—Relief for Municipal Utilities

SEC. 341. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.

Section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)) is amended by adding at the end the following:

“(E) CERTAIN TRANSACTIONS WITH A UTILITY SPECIAL ENTITY.—

“(i) Transactions in utility operations-related swaps shall be reported pursuant to section 4r.

“(ii) In making a determination to exempt pursuant to subparagraph (D), the Commission shall treat a utility operations-related swap entered into with a utility special entity, as defined in section 4s(h)(2)(D), as if it were entered into with an entity that is not a special entity, as defined in section 4s(h)(2)(C).”.
SEC. 342. UTILITY SPECIAL ENTITY DEFINED.

Section 4s(h)(2) of the Commodity Exchange Act (7 U.S.C. 6s(h)(2)) is amended by adding at the end the following:

“(D) Utility special entity.—For purposes of this Act, the term ‘utility special entity’ means a special entity, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State, that—

“(i) owns or operates an electric or natural gas facility or an electric or natural gas operation;

“(ii) supplies natural gas and or electric energy to another utility special entity;

“(iii) has public service obligations under Federal, State, or local law or regulation to deliver electric energy or natural gas service to customers; or

“(iv) is a Federal power marketing agency, as defined in section 3 of the Federal Power Act.”.

SEC. 343. UTILITY OPERATIONS-RELATED SWAP.

(a) Swap further defined.—Section 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(iii)) is amended—
(1) by striking “and” at the end of subclause (XXI);

(2) by adding “and” at the end of subclause (XXII); and

(3) by adding at the end the following:

“(XXIII) a utility operations-related swap;”.

(b) Utility Operations-related Swap Defined.—Section 1a of such Act (7 U.S.C. 1a) is amended by adding at the end the following:

“(52) Utility operations-related swap.—The term ‘utility operations-related swap’ means a swap that—

“(A) is entered into to hedge or mitigate a commercial risk;

“(B) is not a contract, agreement, or transaction based on, derived on, or referencing—

“(i) an interest rate, credit, equity, or currency asset class; or

“(ii) a metal, agricultural commodity, or crude oil or gasoline commodity of any grade, except as used as fuel for electric energy generation; and

“(C) is associated with—
“(i) the generation, production, purchase, or sale of natural gas or electric energy, the supply of natural gas or electric energy to a utility, or the delivery of natural gas or electric energy service to utility customers;

“(ii) all fuel supply for the facilities or operations of a utility;

“(iii) compliance with an electric system reliability obligation;

“(iv) compliance with an energy, energy efficiency, conservation, or renewable energy or environmental statute, regulation, or government order applicable to a utility; or

“(v) any other electric energy or natural gas swap to which a utility is a party.”.

Subtitle E—End-User Regulatory Relief

SEC. 351. END USERS NOT TREATED AS FINANCIAL ENTITIES.

(a) In General.—Section 2(h)(7)(C)(iii) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(iii)) is amended to read as follows:
“(iii) LIMITATION.—Such definition shall not include an entity—

“(I) whose primary business is providing financing, and who uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company; or

“(II) who is not supervised by a prudential regulator, and is not described in any of subclauses (I) through (VII) of clause (i), and—

“(aa) is a commercial market participant and is considered a financial entity under clause (i)(VIII) because the entity predominantly engages in physical delivery contracts; or
“(bb) enters into swaps, contracts for future delivery, and other derivatives on behalf of, or to hedge or mitigate the commercial risk of, whether directly or in the aggregate, affiliates that are not so supervised or described.”.

(b) Commercial Market Participant Defined.—

(1) In General.—Section 1a of such Act (7 U.S.C. 1a) is amended by redesignating paragraphs (8) through (51) as paragraphs (9) through (52), respectively, and by inserting after paragraph (6) the following:

“(7) Commercial market participant.—The term ‘commercial market participant’ means any producer, processor, merchant, or commercial user of an exempt or agricultural commodity, or the products or byproducts of such a commodity.”.

(2) Conforming Amendments.—

(A) Section 1a of such Act (7 U.S.C. 1a) is amended—

(i) in subparagraph (A) of paragraph (18) (as so redesignated by paragraph (1) of this subsection), in the matter preceding
clause (i), by striking “(18)(A)” and inserting “(19)(A)”; and

(ii) in subparagraph (A)(vii) of paragraph (19) (as so redesignated by paragraph (1) of this subsection), in the matter following subclause (III), by striking “(17)(A)” and inserting “(18)(A)”.

(B) Section 4(c)(1)(A)(i)(I) of such Act (7 U.S.C. 6(c)(1)(A)(i)(I)) is amended by striking “(7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49)” and inserting “(8), paragraph (19)(A)(vii)(III), paragraphs (24), (25), (32), (33), (39), (40), (42), (43), (47), (48), (49), and (50)”.

(C) Section 4q(a)(1) of such Act (7 U.S.C. 6o–1(a)(1)) is amended by striking “1a(9)” and inserting “1a(10)”.

(D) Section 4s(f)(1)(D) of such Act (7 U.S.C. 6s(f)(1)(D)) is amended by striking “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

(E) Section 4s(h)(5)(A)(i) of such Act (7 U.S.C. 6s(h)(5)(A)(i)) is amended by striking “1a(18)” and inserting “1a(19)”. 
(F) Section 4t(b)(1)(C) of such Act (7 U.S.C. 6t(b)(1)(C)) is amended by striking “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

(G) Section 5(d)(23) of such Act (7 U.S.C. 7(d)(23)) is amended by striking “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

(H) Section 5(e)(1) of such Act (7 U.S.C. 7(e)(1)) is amended by striking “1a(9)” and inserting “1a(10)”.

(I) Section 5b(k)(3)(A) of such Act (7 U.S.C. 7a–1(k)(3)(A)) is amended by striking “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

(J) Section 5e(e)(4)(B) of such Act (7 U.S.C. 7a–2(e)(4)(B)) is amended by striking “1a(10)” and inserting “1a(11)”.


(L) Section 21(f)(4)(C) of such Act (7 U.S.C. 24a(f)(4)(C)) is amended by striking “1a(48)” and inserting “1a(49)”.
Section 2(a)(13) of the Commodity Exchange Act (7 U.S.C. 2(a)(13)) is amended—

(1) in subparagraph (C), by striking “The Commission” and inserting “Except as provided in subparagraph (D), the Commission”; and

(2) by redesignating subparagraphs (D) through (G) as subparagraphs (E) through (H), respectively, and inserting after subparagraph (C) the following:

“(D) Requirements for swap transactions in illiquid markets.—Notwithstanding subparagraph (C):

“(i) The Commission shall provide by rule for the public reporting of swap transactions, including price and volume data, in illiquid markets that are not cleared and entered into by a non-financial entity that is hedging or mitigating commercial risk in accordance with subsection (h)(7)(A).

“(ii) The Commission shall ensure that the swap transaction information referred to in clause (i) of this subparagraph is available to the public no sooner than 30

days after the swap transaction has been executed or at such later date as the Commission determines appropriate to protect the identity of participants and positions in illiquid markets and to prevent the elimination or reduction of market liquidity.

“(iii) In this subparagraph, the term ‘illiquid markets’ means any market in which the volume and frequency of trading in swaps is at such a level as to allow identification of individual market participants.”.

SEC. 353. RELIEF FOR GRAIN ELEVATOR OPERATORS, FARMERS, AGRICULTURAL COUNTERPARTIES, AND COMMERCIAL MARKET PARTICIPANTS.

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

“SEC. 4u. RECORDKEEPING REQUIREMENTS APPLICABLE TO NON-REGISTERED MEMBERS OF CERTAIN REGISTERED ENTITIES.

“Except as provided in section 4(a)(3), a member of a designated contract market or a swap execution facility that is not registered with the Commission and not required to be registered with the Commission in any capac-
ity shall satisfy the recordkeeping requirements of this Act and any recordkeeping rule, order, or regulation under this Act by maintaining a written record of each transaction in a contract for future delivery, option on a future, swap, swaption, trade option, or related cash or forward transaction. The written record shall be sufficient if it includes the final agreement between the parties and the material economic terms of the transaction and is identifiable and searchable by transaction.”.

SEC. 354. RELIEF FOR END USERS WHO USE PHYSICAL CONTRACTS WITH VOLUMETRIC OPTIONALITY.

Section 1a(47)(B)(ii) of the Commodity Exchange Act (7 U.S.C. 1a(47)(B)(ii)) is amended to read as follows:

“(ii) any purchase or sale of a non-financial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled, including any stand-alone or embedded option for which—

“(I) exercise results in a physical delivery obligation;

“(II) cannot be severed or marketed separately from the overall
transaction for the purpose of financial settlement; and

“(III) both parties are commercial market participants.”.

SEC. 355. COMMISSION VOTE REQUIRED BEFORE AUTOMATIC CHANGE OF SWAP DEALER DE MINIMIS LEVEL.

Section 1a(49)(D) of the Commodity Exchange Act (7 U.S.C. 1a(49)(D)) is amended—

(1) by striking all that precedes “shall exempt” and inserting the following:

“(D) DE MINIMIS EXCEPTION.—

“(i) IN GENERAL.—The Commission”;

and

(2) by adding after and below the end the following new clause:

“(ii) The de minimis quantity of swap dealing as described in clause (i) that is currently set at a quantity of $8,000,000,000 shall only be amended or reduced through a new affirmative action of the Commission undertaken by rule or regulation.”.
SEC. 356. CAPITAL REQUIREMENTS FOR NON-BANK SWAP DEALERS.

Section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)) is amended—

(1) in paragraph (2)(B), by inserting “, in consultation with the prudential regulators and the Securities and Exchange Commission,” before “shall”; and

(2) in paragraph (3)(D)—

(A) in clause (ii), by striking “shall, to the maximum extent practicable,” and inserting “shall”; and

(B) by adding at the end the following:

“(iii) FINANCIAL MODELS.—To the extent that swap dealers and major swap participants that are banks are permitted to use financial models approved by the prudential regulators or the Securities and Exchange Commission to calculate minimum capital requirements and minimum initial and variation margin requirements, including the use of non-cash collateral, the Commission shall, in consultation with the prudential regulators and the Securities and Exchange Commission, permit the use of comparable financial models by

...
swap dealers and major swap participants
that are not banks.”.

SEC. 357. HARMONIZATION WITH THE JUMPSTART OUR
BUSINESS STARTUPS ACT.

Within 90 days after the date of the enactment of
this Act, the Commodity Futures Trading Commission
shall—

(1) revise section 4.7(b) of title 17, Code of
Federal Regulations, in the matter preceding para-
graph (1), to read as follows:

“(b) Relief available to commodity pool operators.
Upon filing the notice required by paragraph (d) of this
section, and subject to compliance with the conditions
specified in paragraph (d) of this section, any registered
commodity pool operator who sells participations in a pool
solely to qualified eligible persons in an offering which
qualifies for exemption from the registration requirements
of the Securities Act pursuant to section 4(2) of that Act
or pursuant to Regulation S, 17 CFR 230.901 et seq., and
any bank registered as a commodity pool operator in con-
nection with a pool that is a collective trust fund whose
securities are exempt from registration under the Securi-
ties Act pursuant to section 3(a)(2) of that Act and are
sold solely to qualified eligible persons, may claim any or
all of the following relief with respect to such pool:”;
and
(2) revise section 4.13(a)(3)(i) of such title to read as follows:

“(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold pursuant to section 4 of the Securities Act of 1933 and the regulations thereunder;”.

SEC. 358. BONA FIDE HEDGE DEFINED TO PROTECT END USER RISK MANAGEMENT NEEDS.

Section 4a(c) of the Commodity Exchange Act (7 U.S.C. 6a(c)) is amended—

(1) in paragraph (1)—

(A) by striking “may” and inserting “shall”; and

(B) by striking “future for which” and inserting “future, to be determined by the Commission, for which either an appropriate swap is available or”;;

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking “subsection (a)(2)” and all that follows through “position as” and inserting “paragraphs (2) and (5) of subsection (a) for swaps, contracts of sale for future delivery, or options on the contracts or commodities, a bona fide hedging transaction or position is”; and
(B) in subparagraph (A)(ii), by striking “of risks” and inserting “or management of current or anticipated risks”; and

(3) by adding at the end the following:

“(3) The Commission may further define, by rule or regulation, what constitutes a bona fide hedging transaction, provided that the rule or regulation is consistent with the requirements of subparagraphs (A) and (B) of paragraph (2).”.

SEC. 359. CROSS-BORDER REGULATION OF DERIVATIVES TRANSACTIONS.

(a) RULES REQUIRED.—Within 180 days after the date of the enactment of this Act, the Commodity Futures Trading Commission shall issue rules that address—

(1) the nature of the connections to the United States that require a non-U.S. person to register as a swap dealer or major swap participant under the Commodity Exchange Act and the regulations issued under such Act;

(2) which of the United States swaps requirements shall apply to the swap activities of non-U.S. persons, U.S. persons, and their branches, agencies, subsidiaries, and affiliates outside of the United States and the extent to which such requirements shall apply; and
(3) the circumstances under which a non-U.S. person in compliance with the regulatory requirements of a foreign jurisdiction shall be exempt from United States swaps requirements.

(b) Rule in Accordance With APA Required.—No guidance, memorandum of understanding, or any such other agreement may satisfy the requirement to issue a rule from the Commission in accordance with section 553 of title 5, United States Code.

(c) General Application to Countries or Administrative Regions Having 9 Largest Markets.—

(1) General Application.—In issuing rules under this section, the Commission shall provide that a non-U.S. person in compliance with the swaps regulatory requirements of a country or administrative region that has 1 of the 9 largest swap markets by notional amount in the calendar year preceding issuance of such rules, or other foreign jurisdiction as determined by the Commission, shall be exempt from United States swaps requirements in accordance with the schedule set forth in paragraph (2), unless the Commission determines that the regulatory requirements of the country or administrative region or other foreign jurisdiction are not broadly equivalent to United States swaps requirements.
(2) Effective date schedule.—The exemption described in paragraph (1) and set forth under the rules required by this section shall apply to persons or transactions relating to or involving—

(A) countries or administrative regions described in such paragraph, or any other foreign jurisdiction as determined by the Commission, accounting for the 5 largest swap markets by notional amount in the calendar year preceding issuance of such rules, on the date on which final rules are issued under this section; and

(B) the remaining countries or administrative regions described in such paragraph, and any other foreign jurisdiction as determined by the Commission, 1 year after the date on which such rules are issued.

(3) Criteria.—In such rules, the Commission shall establish criteria for determining that 1 or more categories of regulatory requirements of a country or administrative region described in paragraph (1) or other foreign jurisdiction is not broadly equivalent to United States swaps requirements and shall determine the appropriate application of certain United States swap requirements to persons or transactions relating to or involving the country or
administrative region or other foreign jurisdiction. The criteria shall include the scope and objectives of the regulatory requirements of a country or administrative region described in paragraph (1) or other foreign jurisdiction as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the country or administrative region or other foreign jurisdiction, and such other factors as the Commission, by rule, determines to be necessary or appropriate in the public interest.

(4) REQUIRED ASSESSMENT.—Beginning on the date on which final rules are issued under this section, the Commission shall begin to assess the regulatory requirements of countries or administrative regions described in paragraph (1), as the Commission determines appropriate, in accordance with the criteria established pursuant to this subsection, to determine if 1 or more categories of regulatory requirements of such a country or administrative region or other foreign jurisdiction is not broadly equivalent to United States swaps requirements.

(d) REPORT TO CONGRESS.—If the Commission makes the determination described in subsection (c)(1) that the regulatory requirements of a country or adminis-
trative region described in such subsection or other foreign jurisdiction are not broadly equivalent to United States swaps requirements, the Commission shall articulate the basis for the determination in a written report transmitted to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 30 days of the determination. The determination shall not be effective until the transmission of the report.

(c) **Definitions.**—As used in this section and for purposes of the rules issued pursuant to this section, the following definitions apply:

(1) The term “U.S. person”—

(A) means—

(i) any natural person resident in the United States;

(ii) any partnership, corporation, trust, or other legal person organized or incorporated under the laws of the United States or having its principal place of business in the United States;

(iii) any account (whether discretionary or non-discretionary) of a U.S. person; and
(iv) any other person as the Commission may further define to more effectively carry out the purposes of this section; and

(B) does not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, their agencies and pension plans, and any other similar international organizations and their agencies and pension plans.

(2) The term “United States swaps requirements” means the provisions relating to swaps contained in the Commodity Exchange Act (7 U.S.C. 1a et seq.) that were added by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and any rules or regulations prescribed by the Commodity Futures Trading Commission pursuant to such provisions.

(f) CONFORMING AMENDMENT.—Section 4(c)(1)(A) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)(A)) is amended by inserting “or except as necessary to effectuate section 361 of the Customer Protection and End User Relief Act,” after “to grant exemptions,”.
Subtitle F—Effective Date

SEC. 371. EFFECTIVE DATE.

The amendments made by this title shall take effect as if enacted on July 21, 2010.