

113TH CONGRESS
2^D 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.

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

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”.

1 SEC. 2. TABLE OF CONTENTS.

2 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—CUSTOMER PROTECTIONS

- Sec. 101. Short title.
- Sec. 102. Enhanced protections for futures customers.
- Sec. 103. Electronic confirmation of customer funds.
- Sec. 104. Notice and certifications providing additional customer protections.
- Sec. 105. Futures commission merchant compliance.
- Sec. 106. Certainty for futures customers and market participants.
- Sec. 107. Study on high-frequency trading.

TITLE II—COMMODITY FUTURES TRADING COMMISSION REFORMS

- Sec. 201. Short title.
- Sec. 202. Extension of operations.
- Sec. 203. Consideration by the Commodity Futures Trading Commission of the costs and benefits of its regulations and orders.
- Sec. 204. Division directors.
- Sec. 205. Office of the Chief Economist.
- Sec. 206. Procedures governing actions taken without a commission vote.
- Sec. 207. Strategic technology plan.
- Sec. 208. Internal risk controls.
- Sec. 209. Subpoena duration and renewal.
- Sec. 210. Implementation plan for Commission rulemakings.
- Sec. 211. Applicability of notice and comment requirements of the Administrative Procedure Act to guidance voted on by the Commission.
- Sec. 212. Judicial review of Commission rules.
- Sec. 213. GAO study on adequacy of CFTC resources.

TITLE III—END-USER RELIEF

- Sec. 301. Short title.

Subtitle A—End-User Exemption From Margin Requirements

- Sec. 311. End-user margin requirements.
- Sec. 312. Implementation.

Subtitle B—Inter-Affiliate Swaps

- Sec. 321. Treatment of affiliate transactions.

Subtitle C—Indemnification Requirements Related to Swap Data Repositories

- Sec. 331. Indemnification requirements.

Subtitle D—Relief for Municipal Utilities

- Sec. 341. Transactions with utility special entities.
- Sec. 342. Utility special entity defined.
- Sec. 343. Utility operations-related swap.

Subtitle E—End-User Regulatory Relief

- Sec. 351. End users not treated as financial entities.
 Sec. 352. Reporting of illiquid swaps so as to not disadvantage certain non-financial end users.
 Sec. 353. Relief for grain elevator operators, farmers, agricultural counterparties, and commercial market participants.
 Sec. 354. Relief for end users who use physical contracts with volumetric optionality.
 Sec. 355. Commission vote required before automatic change of swap dealer de minimis level.
 Sec. 356. Capital requirements for non-bank swap dealers.
 Sec. 357. Harmonization with the Jumpstart Our Business Startups Act.
 Sec. 358. Bona fide hedge defined to protect end user risk management needs.
 Sec. 359. Cross-border regulation of derivatives transactions.

Subtitle F—Effective Date

- Sec. 371. Effective date.

1 **TITLE I—CUSTOMER**
 2 **PROTECTIONS**

3 **SEC. 101. SHORT TITLE.**

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

6 **SEC. 102. ENHANCED PROTECTIONS FOR FUTURES CUS-**
 7 **TOMERS.**

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

10 “(s) A registered futures association shall—

11 “(1) require each member of the association
 12 that is a futures commission merchant to maintain
 13 written policies and procedures regarding the main-
 14 tenance of—

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

1 segregated funds account of the member, as identi-
2 fied in section 1.20 of such title, and in any for-
3 eign futures and foreign options customer se-
4 cured amount funds account of the member, as
5 identified in section 30.7 of such title; and

6 “(B) the residual interest of the member,
7 as described in section 22.2(e)(4) of such title,
8 in any cleared swaps customer collateral ac-
9 count of the member, as identified in section
10 22.2 of such title; and

11 “(2) establish rules to govern the withdrawal,
12 transfer or disbursement by any member of the asso-
13 ciation, that is a futures commission merchant, of
14 the member’s residual interest in customer seg-
15 regated funds as provided in such section 1.20, in
16 foreign futures and foreign options customer secured
17 amount funds, identified as provided in such section
18 30.7, and from a cleared swaps customer collateral,
19 identified as provided in such section 22.2.”.

20 **SEC. 103. ELECTRONIC CONFIRMATION OF CUSTOMER**
21 **FUNDS.**

22 Section 17 of the Commodity Exchange Act (7 U.S.C.
23 21), as amended by section 102 of this Act, is amended
24 by adding at the end the following:

1 “(t) A registered futures association shall require any
2 member of the association that is a futures commission
3 merchant to—

4 “(1) use an electronic system or systems to re-
5 port financial and operational information to the as-
6 sociation, including information related to customer
7 segregated funds, foreign futures and foreign options
8 customer secured amount funds accounts, and
9 cleared swaps customer collateral, in accordance
10 with such terms, conditions, documentation stand-
11 ards, and regular time intervals as are established
12 by the association;

13 “(2) instruct each depository, including any
14 bank, trust company, derivatives clearing organiza-
15 tion, or futures commission merchant, holding cus-
16 tomer segregated funds under section 1.20 of title
17 17, Code of Federal Regulations, foreign futures and
18 foreign options customer secured amount funds
19 under section 30.7 of such title, or cleared swap cus-
20 tomer funds under section 22.2 of such title, to re-
21 port balances in the futures commission merchant’s
22 section 1.20 customer segregated funds, section 30.7
23 foreign futures and foreign options customer secured
24 amount funds, and section 22.2 cleared swap cus-
25 tomer funds, to the registered futures association or

1 another party designated by the registered futures
2 association, in the form, manner, and interval pre-
3 scribed by the registered futures association; and

4 “(3) hold section 1.20 customer segregated
5 funds, section 30.7 foreign futures and foreign op-
6 tions customer secured amount funds and section
7 22.2 cleared swaps customer funds in a depository
8 that reports the balances in these accounts of the fu-
9 tures commission merchant held at the depository to
10 the registered futures association or another party
11 designated by the registered futures association in
12 the form, manner, and interval prescribed by the
13 registered futures association.”.

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

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

19 “(u) A futures commission merchant that has ad-
20 justed net capital in an amount less than the amount re-
21 quired by regulations established by the Commission or
22 a self-regulatory organization of which the futures com-
23 mission merchant is a member shall immediately notify
24 the Commission and the self-regulatory organization of
25 this occurrence.

1 “(v) A futures commission merchant that does not
2 hold a sufficient amount of funds in segregated accounts
3 for futures customers under section 1.20 of title 17, Code
4 of Federal Regulations, in foreign futures and foreign op-
5 tions secured amount accounts for foreign futures and for-
6 eign options secured amount customers under section 30.7
7 of such title, or in segregated accounts for cleared swap
8 customers under section 22.2 of such title, as required by
9 regulations established by the Commission or a self-regu-
10 latory organization of which the futures commission mer-
11 chant is a member, shall immediately notify the Commis-
12 sion and the self-regulatory organization of this occur-
13 rence.

14 “(w) Within such time period established by the Com-
15 mission after the end of each fiscal year, a futures com-
16 mission merchant shall file with the Commission a report
17 from the chief compliance officer of the futures commis-
18 sion merchant containing an assessment of the internal
19 compliance programs of the futures commission mer-
20 chant.”.

21 **SEC. 105. FUTURES COMMISSION MERCHANT COMPLIANCE.**

22 (a) IN GENERAL.—Section 4d(a) of the Commodity
23 Exchange Act (7 U.S.C. 6d(a)) is amended—

1 (1) by redesignating paragraphs (1) and (2) as
2 subparagraphs (A) and (B) and by moving the mar-
3 gins of such subparagraphs two ems to the right;

4 (2) by inserting “(1)” before “It shall be unlaw-
5 ful”; and

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

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

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

21 **SEC. 106. CERTAINTY FOR FUTURES CUSTOMERS AND MAR-**
22 **KET PARTICIPANTS.**

23 Section 20(a) of the Commodity Exchange Act (7
24 U.S.C. 24(a)) is amended—

1 (1) by striking “and” at the end of paragraph
2 (4);

3 (2) by striking the period at the end of para-
4 graph (5) and inserting “; and”; and

5 (3) by adding at the end the following:

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

16 **SEC. 107. STUDY ON HIGH-FREQUENCY TRADING.**

17 (a) **IN GENERAL.**—Not later than one year after the
18 date of the enactment of this Act, the Commodity Futures
19 Trading Commission shall submit to the Committee on
20 Agriculture of the House of Representatives and the Com-
21 mittee on Agriculture, Nutrition, and Forestry of the Sen-
22 ate a report examining the effect of the practice commonly
23 referred to as high-frequency trading on markets under
24 its jurisdiction.

1 (b) SPECIFIC AREAS EXAMINED IN REPORT.—In
2 preparing the report submitted under subsection (a), the
3 Commission shall particularly examine each of the fol-
4 lowing areas:

5 (1) The technology, personnel, or other re-
6 sources the Commission may require for purposes of
7 monitoring the effect of high-frequency trading.

8 (2) The role such trading plays in providing
9 market liquidity.

10 (3) Whether the technology creates discrep-
11 ancies in the marketplace between market partici-
12 pants.

13 (4) Whether the existing authority of the Com-
14 mission with respect to such trading is sufficient to
15 meet the Commission’s mission to—

16 (A) protect market participants and the
17 public from fraud, manipulation, abusive prac-
18 tices, and systemic risk related to derivatives;
19 and

20 (B) foster transparent, open, competitive,
21 and financially sound markets.

1 **TITLE II—COMMODITY FUTURES**
2 **TRADING COMMISSION RE-**
3 **FORMS**

4 **SEC. 201. SHORT TITLE.**

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

7 **SEC. 202. EXTENSION OF OPERATIONS.**

8 Section 12(d) of the Commodity Exchange Act (7
9 U.S.C. 16(d)) is amended by striking “2013” and insert-
10 ing “2018”.

11 **SEC. 203. CONSIDERATION BY THE COMMODITY FUTURES**
12 **TRADING COMMISSION OF THE COSTS AND**
13 **BENEFITS OF ITS REGULATIONS AND OR-**
14 **DERS.**

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

18 “(1) IN GENERAL.—Before promulgating a reg-
19 ulation under this Act or issuing an order (except as
20 provided in paragraph (3)), the Commission,
21 through the Office of the Chief Economist, shall as-
22 sess and publish in the regulation or order the costs
23 and benefits, both qualitative and quantitative, of
24 the proposed regulation or order, and the proposed

1 regulation or order shall state its statutory justifica-
2 tion.

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

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

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

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

13 “(D) considerations of price discovery;

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

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

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

21 “(H) the costs of complying with the pro-
22 posed regulation or order by all regulated enti-
23 ties, including a methodology for quantifying
24 the costs (recognizing that some costs are dif-
25 ficult to quantify);

1 “(I) whether the proposed regulation or
2 order is inconsistent, incompatible, or duplica-
3 tive of other Federal regulations or orders;

4 “(J) whether, in choosing among alter-
5 native regulatory approaches, those approaches
6 maximize net benefits (including potential eco-
7 nomic and other benefits, distributive impacts,
8 and equity); and

9 “(K) other public interest considerations.”.

10 **SEC. 204. DIVISION DIRECTORS.**

11 Section 2(a)(6)(C) of the Commodity Exchange Act
12 (7 U.S.C. 2(a)(6)(C)) is amended by inserting “, and the
13 heads of the units shall serve at the pleasure of the Com-
14 mission, report directly to the Commission, and perform
15 such functions and duties as the Commission may pre-
16 scribe” before the period.

17 **SEC. 205. OFFICE OF THE CHIEF ECONOMIST.**

18 (a) IN GENERAL.—Section 2(a) of the Commodity
19 Exchange Act (7 U.S.C. 2(a)) is amended by adding at
20 the end the following:

21 “(17) OFFICE OF THE CHIEF ECONOMIST.—

22 “(A) ESTABLISHMENT.—There is estab-
23 lished in the Commission the Office of the Chief
24 Economist.

1 “(B) HEAD.—The Office of the Chief
 2 Economist shall be headed by the Chief Econo-
 3 mist, who shall be appointed by the Commission
 4 and serve at the pleasure of the Commission.

5 “(C) FUNCTIONS.—The Chief Economist
 6 shall report directly to the Commission and per-
 7 form such functions and duties as the Commis-
 8 sion may prescribe.

9 “(D) PROFESSIONAL STAFF.—The Com-
 10 mission shall appoint such other economists as
 11 may be necessary to assist the Chief Economist
 12 in performing such economic analysis, regu-
 13 latory cost-benefit analysis, or research the
 14 Commission may direct.”.

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

18 **SEC. 206. PROCEDURES GOVERNING ACTIONS TAKEN WITH-**
 19 **OUT A COMMISSION VOTE.**

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

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

24 “(12) RULES AND REGULATIONS.—

1 “(A) IN GENERAL.—Subject to the other
2 provisions of this paragraph, the”;

3 (2) by adding after and below the end the fol-
4 lowing new subparagraph:

5 “(B) NOTICE TO COMMISSION.—

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

17 “(ii) OPPORTUNITY FOR MEETING RE-
18 QUIRED.—After receiving a copy of the
19 matter provided in accordance with clause
20 (i), any member of the Commission may
21 request that the Commission hold a meet-
22 ing to review the matter, and the Chair-
23 man shall immediately put any such re-
24 quest for a meeting before the Commis-
25 sion, and if the Commission decides to hold

1 the meeting by a majority vote, the matter
2 may not be issued until the Commission
3 has concluded the meeting.

4 “(iii) LIMITATIONS ON APPLICA-
5 BILITY.—By a majority vote, the Commis-
6 sion may waive the 7-day prior notice re-
7 quirement of clause (i) when the Commis-
8 sion finds that requiring such a notice
9 would be impracticable, unnecessary, or
10 contrary to the public interest.”.

11 **SEC. 207. STRATEGIC TECHNOLOGY PLAN.**

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

15 “(18) STRATEGIC TECHNOLOGY PLAN.—

16 “(A) IN GENERAL.—Every 5 years, the
17 Commission shall develop and submit to the
18 Committee on Agriculture of the House of Rep-
19 resentatives and the Committee on Agriculture,
20 Nutrition, and Forestry of the Senate a detailed
21 plan focused on the acquisition and use of tech-
22 nology by the Commission.

23 “(B) CONTENTS.—The plan shall—

24 “(i) include for each related division
25 or office a detailed technology strategy fo-

1 cused exclusively on market surveillance
2 and risk detection, market data collection,
3 aggregation, interpretation, standardiza-
4 tion, harmonization, streamlining, and in-
5 ternal management and protection of data
6 collected by the Commission, including a
7 detailed accounting of how the funds pro-
8 vided for technology will be used and the
9 priorities that will apply in the use of the
10 funds; and

11 “(ii) set forth annual goals to be ac-
12 complished and annual budgets needed to
13 accomplish the goals.”.

14 **SEC. 208. INTERNAL RISK CONTROLS.**

15 (a) IN GENERAL.—Section 2(a)(12) of the Com-
16 modity Exchange Act (7 U.S.C. 2(a)(12)), as amended by
17 section 206 of this Act, is amended by adding at the end
18 the following:

19 “(C) INTERNAL RISK CONTROLS.—The
20 Commission staff and the Chief Economist shall
21 develop comprehensive internal risk control
22 mechanisms to safeguard and govern the stor-
23 age of all market data by the Commission, all
24 market data sharing agreements of the Com-

1 mission, and all academic research performed at
2 the Commission using market data.”.

3 (b) REPORTS TO THE CONGRESS.—

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

11 (2) TIMING.—The Commission shall submit the
12 1st report required by paragraph (1) within 60 days
13 after the date of the enactment of this Act, and the
14 2nd such report within 120 days after such date of
15 enactment.

16 **SEC. 209. SUBPOENA DURATION AND RENEWAL.**

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

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

21 “(5) SUBPOENA.—

22 “(A) IN GENERAL.—For”; and

23 (2) by adding after and below the end the fol-
24 lowing:

1 “(B) CONTENT OF SUBPOENA ORDER.—An
2 order of the Commission authorizing the
3 issuance of a subpoena—

4 “(i) shall state in good faith the pur-
5 pose of the investigation;

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

9 “(iii) shall not be for an indefinite du-
10 ration.

11 “(C) RENEWAL.—An order issued under
12 this paragraph may be renewed only by Com-
13 mission action.”.

14 **SEC. 210. IMPLEMENTATION PLAN FOR COMMISSION**
15 **RULEMAKINGS.**

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

19 “(E) REQUIREMENT TO PUBLISH IMPLE-
20 MENTATION PLAN FOR COMMISSION RULES.—

21 The Commission shall direct its staff to develop
22 and publish in any proposed rule a plan for—

23 “(i) when and for how long the pro-
24 posed rule will be subject to public com-
25 ment; and

1 “(ii) by when compliance with the
2 final rule will be required.”.

3 **SEC. 211. APPLICABILITY OF NOTICE AND COMMENT RE-**
4 **QUIREMENTS OF THE ADMINISTRATIVE PRO-**
5 **CEDURE ACT TO GUIDANCE VOTED ON BY**
6 **THE COMMISSION.**

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

11 “(F) APPLICABILITY OF NOTICE AND COM-
12 MENT RULES TO GUIDANCE VOTED ON BY THE
13 COMMISSION.—The notice and comment re-
14 quirements of chapter 5 of title 5, United
15 States Code, shall also apply with respect to
16 any guidance issued by the Commission after
17 being voted on by the Commission.”.

18 **SEC. 212. JUDICIAL REVIEW OF COMMISSION RULES.**

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

21 **“SEC. 24. JUDICIAL REVIEW OF COMMISSION RULES.**

22 “(a) A person aggrieved by a final rule of the Com-
23 mission under this Act may obtain review of the rule in
24 the United States Court of Appeals for the District of Co-
25 lumbia Circuit or the United States Court of Appeals for

1 the circuit where the party resides, by filing in the court,
2 within 60 days after publication in the Federal Register
3 of the entry of the rule, a written petition requesting that
4 the rule be modified or set aside in whole or in part.

5 “(b) A copy of the petition shall be transmitted forth-
6 with by the clerk of the court to an officer designated by
7 the Commission for that purpose. Thereupon the Commis-
8 sion shall file in the court the record on which the rule
9 complained of is entered, as provided in section 2112 of
10 title 28, United States Code, and the Federal Rules of
11 Appellate Procedure.

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

16 “(d) The findings of the Commission as to the facts
17 identified by the Commission as the basis, in whole or in
18 part, of the rule, if supported by substantial evidence, are
19 conclusive. The court shall affirm and enforce the rule un-
20 less the Commission’s action in promulgating the rule is
21 found to be arbitrary, capricious, an abuse of discretion,
22 or otherwise not in accordance with law; contrary to con-
23 stitutional right, power, privilege, or immunity; in excess
24 of statutory jurisdiction, authority, or limitations, or short

1 of statutory right; or without observance of procedure re-
2 quired by law.

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

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

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

18 (1) assesses whether the resources of the Com-
19 mission are sufficient to enable the Commission to
20 effectively carry out the duties of the Commission;
21 and

22 (2) examines the prior expenditures of the Com-
23 mission on hardware, software, and analytical proc-
24 esses designed to protect customers in the areas
25 of—

1 (A) market surveillance and risk detection;
2 and
3 (B) market data collection, aggregation,
4 interpretation, standardization, harmonization,
5 and streamlining.

6 (b) REPORT.—Not later than 180 days after the date
7 of the enactment of this Act, the Comptroller General of
8 the United States shall submit to the Committee on Agri-
9 culture of the House of Representatives and the Com-
10 mittee on Agriculture, Nutrition, and Forestry of the Sen-
11 ate a report that contains the results of the study.

12 **TITLE III—END-USER RELIEF**

13 **SEC. 301. SHORT TITLE.**

14 This title may be cited as the “End-User Relief and
15 Market Certainty Act”.

16 **Subtitle A—End-User Exemption** 17 **From Margin Requirements**

18 **SEC. 311. END-USER MARGIN REQUIREMENTS.**

19 Section 4s(e) of the Commodity Exchange Act (7
20 U.S.C. 6s(e)) is amended by adding at the end the fol-
21 lowing new paragraph:

22 “(4) **APPLICABILITY WITH RESPECT TO**
23 **COUNTERPARTIES.**—The requirements of paragraphs
24 (2)(A)(ii) and (2)(B)(ii), including the initial and
25 variation margin requirements imposed by rules

1 adopted pursuant to paragraphs (2)(A)(ii) and
2 (2)(B)(ii), shall not apply to a swap in which a
3 counterparty qualifies for an exception under section
4 2(h)(7)(A), or an exemption issued under section
5 4(c)(1) from the requirements of section 2(h)(1)(A)
6 for cooperative entities as defined in such exemption,
7 or satisfies the criteria in section 2(h)(7)(D).”.

8 **SEC. 312. IMPLEMENTATION.**

9 The amendment made by this subtitle shall be imple-
10 mented—

11 (1) without regard to—

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

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

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

19 (3) such that paragraph (1) shall apply solely
20 to changes to rules and regulations, or proposed
21 rules and regulations, that are limited to and di-
22 rectly a consequence of the amendment.

1 **Subtitle B—Inter-Affiliate Swaps**

2 **SEC. 321. TREATMENT OF AFFILIATE TRANSACTIONS.**

3 (a) IN GENERAL.—Section 2(h)(7)(D)(i) of the Com-
4 modity Exchange Act (7 U.S.C. 2(h)(7)(D)(i)) is amended
5 to read as follows:

6 “(i) IN GENERAL.—An affiliate of a
7 person that qualifies for an exception
8 under subparagraph (A) (including affiliate
9 entities predominantly engaged in pro-
10 viding financing for the purchase of the
11 merchandise or manufactured goods of the
12 person) may qualify for the exception only
13 if the affiliate enters into the swap to
14 hedge or mitigate the commercial risk of
15 the person or other affiliate of the person
16 that is not a financial entity, provided that
17 if the transfer of commercial risk is ad-
18 dressed by entering into a swap with a
19 swap dealer or major swap participant, a
20 credit support measure or other mecha-
21 nism is utilized.”.

22 (b) APPLICABILITY OF CREDIT SUPPORT MEASURE
23 REQUIREMENT.—Notwithstanding section 371 of this Act,
24 the requirement in section 2(h)(7)(D)(i) of the Commodity
25 Exchange Act, as amended by subsection (a), requiring

1 that a credit support measure or other mechanism be uti-
2 lized if the transfer of commercial risk referred to in such
3 section is addressed by entering into a swap with a swap
4 dealer or major swap participant, shall not apply with re-
5 spect to swaps entered into before the date of the enact-
6 ment of this Act.

7 **Subtitle C—Indemnification Re-**
8 **quirements Related to Swap**
9 **Data Repositories**

10 **SEC. 331. INDEMNIFICATION REQUIREMENTS.**

11 (a) DERIVATIVES CLEARING ORGANIZATIONS.—Sec-
12 tion 5b(k)(5) of the Commodity Exchange Act (7 U.S.C.
13 7a–1(k)(5)) is amended to read as follows:

14 “(5) CONFIDENTIALITY AGREEMENT.—Before
15 the Commission may share information with any en-
16 tity described in paragraph (4), the Commission
17 shall receive a written agreement from each entity
18 stating that the entity shall abide by the confiden-
19 tiality requirements described in section 8 relating to
20 the information on swap transactions that is pro-
21 vided.”.

22 (b) SWAP DATA REPOSITORIES.—Section 21(d) of
23 such Act (7 U.S.C. 24a(d)) is amended to read as follows:

24 “(d) CONFIDENTIALITY AGREEMENT.—Before the
25 swap data repository may share information with any enti-

1 ty described in subsection (c)(7), the swap data repository
2 shall receive a written agreement from each entity stating
3 that the entity shall abide by the confidentiality require-
4 ments described in section 8 relating to the information
5 on swap transactions that is provided.”.

6 **Subtitle D—Relief for Municipal** 7 **Utilities**

8 **SEC. 341. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.**

9 Section 1a(49) of the Commodity Exchange Act (7
10 U.S.C. 1a(49)) is amended by adding at the end the fol-
11 lowing:

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

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

17 “(ii) In making a determination to ex-
18 empt pursuant to subparagraph (D), the
19 Commission shall treat a utility operations-
20 related swap entered into with a utility
21 special entity, as defined in section
22 4s(h)(2)(D), as if it were entered into with
23 an entity that is not a special entity, as de-
24 fined in section 4s(h)(2)(C).”.

1 **SEC. 342. UTILITY SPECIAL ENTITY DEFINED.**

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

5 “(D) UTILITY SPECIAL ENTITY.—For pur-
6 poses of this Act, the term ‘utility special enti-
7 ty’ means a special entity, or any instrumen-
8 tality, department, or corporation of or estab-
9 lished by a State or political subdivision of a
10 State, that—

11 “(i) owns or operates an electric or
12 natural gas facility or an electric or nat-
13 ural gas operation;

14 “(ii) supplies natural gas and or elec-
15 tric energy to another utility special entity;

16 “(iii) has public service obligations
17 under Federal, State, or local law or regu-
18 lation to deliver electric energy or natural
19 gas service to customers; or

20 “(iv) is a Federal power marketing
21 agency, as defined in section 3 of the Fed-
22 eral Power Act.”.

23 **SEC. 343. UTILITY OPERATIONS-RELATED SWAP.**

24 (a) SWAP FURTHER DEFINED.—Section
25 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.
26 1a(47)(A)(iii)) is amended—

1 (1) by striking “and” at the end of subclause
2 (XXI);

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

5 (3) by adding at the end the following:

6 “(XXIII) a utility operations-re-
7 lated swap;”.

8 (b) UTILITY OPERATIONS-RELATED SWAP DE-
9 FINED.—Section 1a of such Act (7 U.S.C. 1a) is amended
10 by adding at the end the following:

11 “(52) UTILITY OPERATIONS-RELATED SWAP.—

12 The term ‘utility operations-related swap’ means a
13 swap that—

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

16 “(B) is not a contract, agreement, or
17 transaction based on, derived on, or ref-
18 erencing—

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

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

25 “(C) is associated with—

1 “(i) the generation, production, pur-
2 chase, or sale of natural gas or electric en-
3 ergy, the supply of natural gas or electric
4 energy to a utility, or the delivery of nat-
5 ural gas or electric energy service to utility
6 customers;

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

9 “(iii) compliance with an electric sys-
10 tem reliability obligation;

11 “(iv) compliance with an energy, en-
12 ergy efficiency, conservation, or renewable
13 energy or environmental statute, regula-
14 tion, or government order applicable to a
15 utility; or

16 “(v) any other electric energy or nat-
17 ural gas swap to which a utility is a
18 party.”.

19 **Subtitle E—End-User Regulatory** 20 **Relief**

21 **SEC. 351. END USERS NOT TREATED AS FINANCIAL ENTI-** 22 **TIES.**

23 (a) IN GENERAL.—Section 2(h)(7)(C)(iii) of the
24 Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(iii)) is
25 amended to read as follows:

1 “(iii) LIMITATION.—Such definition
2 shall not include an entity—

3 “(I) whose primary business is
4 providing financing, and who uses de-
5 rivatives for the purpose of hedging
6 underlying commercial risks related to
7 interest rate and foreign currency ex-
8 posures, 90 percent or more of which
9 arise from financing that facilitates
10 the purchase or lease of products, 90
11 percent or more of which are manu-
12 factured by the parent company or
13 another subsidiary of the parent com-
14 pany; or

15 “(II) who is not supervised by a
16 prudential regulator, and is not de-
17 scribed in any of subclauses (I)
18 through (VII) of clause (i), and—

19 “(aa) is a commercial mar-
20 ket participant and is considered
21 a financial entity under clause
22 (i)(VIII) because the entity pre-
23 dominantly engages in physical
24 delivery contracts; or

1 “(bb) enters into swaps,
2 contracts for future delivery, and
3 other derivatives on behalf of, or
4 to hedge or mitigate the commer-
5 cial risk of, whether directly or in
6 the aggregate, affiliates that are
7 not so supervised or described.”.

8 (b) COMMERCIAL MARKET PARTICIPANT DE-
9 FINED.—

10 (1) IN GENERAL.—Section 1a of such Act (7
11 U.S.C. 1a) is amended by redesignating paragraphs
12 (8) through (51) as paragraphs (9) through (52), re-
13 spectively, and by inserting after paragraph (6) the
14 following:

15 “(7) COMMERCIAL MARKET PARTICIPANT.—The
16 term ‘commercial market participant’ means any
17 producer, processor, merchant, or commercial user
18 of an exempt or agricultural commodity, or the prod-
19 ucts or byproducts of such a commodity.”.

20 (2) CONFORMING AMENDMENTS.—

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

23 (i) in subparagraph (A) of paragraph
24 (18) (as so redesignated by paragraph (1)
25 of this subsection), in the matter preceding

1 clause (i), by striking “(18)(A)” and in-
2 serting “(19)(A)”;

3 (ii) in subparagraph (A)(vii) of para-
4 graph (19) (as so redesignated by para-
5 graph (1) of this subsection), in the matter
6 following subclause (III), by striking
7 “(17)(A)” and inserting “(18)(A)”.

8 (B) Section 4(c)(1)(A)(i)(I) of such Act (7
9 U.S.C. 6(c)(1)(A)(i)(I)) is amended by striking
10 “(7), paragraph (18)(A)(vii)(III), paragraphs
11 (23), (24), (31), (32), (38), (39), (41), (42),
12 (46), (47), (48), and (49)” and inserting “(8),
13 paragraph (19)(A)(vii)(III), paragraphs (24),
14 (25), (32), (33), (39), (40), (42), (43), (47),
15 (48), (49), and (50)”.

16 (C) Section 4q(a)(1) of such Act (7 U.S.C.
17 6o–1(a)(1)) is amended by striking “1a(9)” and
18 inserting “1a(10)”.

19 (D) Section 4s(f)(1)(D) of such Act (7
20 U.S.C. 6s(f)(1)(D)) is amended by striking
21 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

22 (E) Section 4s(h)(5)(A)(i) of such Act (7
23 U.S.C. 6s(h)(5)(A)(i)) is amended by striking
24 “1a(18)” and inserting “1a(19)”.

1 (F) Section 4t(b)(1)(C) of such Act (7
2 U.S.C. 6t(b)(1)(C)) is amended by striking
3 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

4 (G) Section 5(d)(23) of such Act (7 U.S.C.
5 7(d)(23)) is amended by striking
6 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

7 (H) Section 5(e)(1) of such Act (7 U.S.C.
8 7(e)(1)) is amended by striking “1a(9)” and in-
9 serting “1a(10)”.

10 (I) Section 5b(k)(3)(A) of such Act (7
11 U.S.C. 7a-1(k)(3)(A)) is amended by striking
12 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

13 (J) Section 5c(c)(4)(B) of such Act (7
14 U.S.C. 7a-2(c)(4)(B)) is amended by striking
15 “1a(10)” and inserting “1a(11)”.

16 (K) Section 5h(f)(10)(A)(iii) of such Act
17 (7 U.S.C. 7b-3(f)(10)(A)(iii)) is amended by
18 striking “1a(47)(A)(v)” and inserting
19 “1a(48)(A)(v)”.

20 (L) Section 21(f)(4)(C) of such Act (7
21 U.S.C. 24a(f)(4)(C)) is amended by striking
22 “1a(48)” and inserting “1a(49)”.

1 **SEC. 352. REPORTING OF ILLIQUID SWAPS SO AS TO NOT**
2 **DISADVANTAGE CERTAIN NON-FINANCIAL**
3 **END USERS.**

4 Section 2(a)(13) of the Commodity Exchange Act (7
5 U.S.C. 2(a)(13)) is amended—

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

9 (2) by redesignating subparagraphs (D)
10 through (G) as subparagraphs (E) through (H), re-
11 spectively, and inserting after subparagraph (C) the
12 following:

13 “(D) REQUIREMENTS FOR SWAP TRANS-
14 ACTIONS IN ILLIQUID MARKETS.—Notwith-
15 standing subparagraph (C):

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

23 “(ii) The Commission shall ensure
24 that the swap transaction information re-
25 ferred to in clause (i) of this subparagraph
26 is available to the public no sooner than 30

1 days after the swap transaction has been
2 executed or at such later date as the Com-
3 mission determines appropriate to protect
4 the identity of participants and positions in
5 illiquid markets and to prevent the elimi-
6 nation or reduction of market liquidity.

7 “(iii) In this subparagraph, the term
8 ‘illiquid markets’ means any market in
9 which the volume and frequency of trading
10 in swaps is at such a level as to allow iden-
11 tification of individual market partici-
12 pants.”.

13 **SEC. 353. RELIEF FOR GRAIN ELEVATOR OPERATORS,**
14 **FARMERS, AGRICULTURAL COUNTERPAR-**
15 **TIES, AND COMMERCIAL MARKET PARTICI-**
16 **PANTS.**

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

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

22 “Except as provided in section 4(a)(3), a member of
23 a designated contract market or a swap execution facility
24 that is not registered with the Commission and not re-
25 quired to be registered with the Commission in any capac-

1 ity shall satisfy the recordkeeping requirements of this Act
2 and any recordkeeping rule, order, or regulation under
3 this Act by maintaining a written record of each trans-
4 action in a contract for future delivery, option on a future,
5 swap, swaption, trade option, or related cash or forward
6 transaction. The written record shall be sufficient if it in-
7 cludes the final agreement between the parties and the
8 material economic terms of the transaction and is identifi-
9 able and searchable by transaction.”.

10 **SEC. 354. RELIEF FOR END USERS WHO USE PHYSICAL**
11 **CONTRACTS WITH VOLUMETRIC OPTIONALI-**
12 **TY.**

13 Section 1a(47)(B)(ii) of the Commodity Exchange
14 Act (7 U.S.C. 1a(47)(B)(ii)) is amended to read as fol-
15 lows:

16 “(ii) any purchase or sale of a non-
17 financial commodity or security for de-
18 ferred shipment or delivery, so long as the
19 transaction is intended to be physically set-
20 tled, including any stand-alone or embed-
21 ded option for which—

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

24 “(II) cannot be severed or mar-
25 keted separately from the overall

1 transaction for the purpose of finan-
2 cial settlement; and

3 “(III) both parties are commer-
4 cial market participants.”.

5 **SEC. 355. COMMISSION VOTE REQUIRED BEFORE AUTO-**
6 **MATIC CHANGE OF SWAP DEALER DE MINI-**
7 **MIS LEVEL.**

8 Section 1a(49)(D) of the Commodity Exchange Act
9 (7 U.S.C. 1a(49)(D)) is amended—

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

12 “(D) DE MINIMIS EXCEPTION.—

13 “(i) IN GENERAL.—The Commission”;

14 and

15 (2) by adding after and below the end the fol-
16 lowing new clause:

17 “(ii) The de minimis quantity of swap
18 dealing as described in clause (i) that is
19 currently set at a quantity of
20 \$8,000,000,000 shall only be amended or
21 reduced through a new affirmative action
22 of the Commission undertaken by rule or
23 regulation.”.

1 **SEC. 356. CAPITAL REQUIREMENTS FOR NON-BANK SWAP**
2 **DEALERS.**

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

5 (1) in paragraph (2)(B), by inserting “, in con-
6 sultation with the prudential regulators and the Se-
7 curities and Exchange Commission,” before “shall”;
8 and

9 (2) in paragraph (3)(D)—

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

13 (B) by adding at the end the following:

14 “(iii) **FINANCIAL MODELS.**—To the
15 extent that swap dealers and major swap
16 participants that are banks are permitted
17 to use financial models approved by the
18 prudential regulators or the Securities and
19 Exchange Commission to calculate min-
20 imum capital requirements and minimum
21 initial and variation margin requirements,
22 including the use of non-cash collateral,
23 the Commission shall, in consultation with
24 the prudential regulators and the Securi-
25 ties and Exchange Commission, permit the
26 use of comparable financial models by

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

3 **SEC. 357. HARMONIZATION WITH THE JUMPSTART OUR**
4 **BUSINESS STARTUPS ACT.**

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

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

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

1 (2) revise section 4.13(a)(3)(i) of such title to
2 read as follows:

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

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

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

11 (1) in paragraph (1)—

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

14 (B) by striking “future for which” and in-
15 serting “future, to be determined by the Com-
16 mission, for which either an appropriate swap is
17 available or”;

18 (2) in paragraph (2)—

19 (A) in the matter preceding subparagraph
20 (A), by striking “subsection (a)(2)” and all that
21 follows through “position as” and inserting
22 “paragraphs (2) and (5) of subsection (a) for
23 swaps, contracts of sale for future delivery, or
24 options on the contracts or commodities, a bona
25 fide hedging transaction or position is”; and

1 (B) in subparagraph (A)(ii), by striking
2 “of risks” and inserting “or management of
3 current or anticipated risks”; and

4 (3) by adding at the end the following:

5 “(3) The Commission may further define, by
6 rule or regulation, what constitutes a bona fide
7 hedging transaction, provided that the rule or regu-
8 lation is consistent with the requirements of sub-
9 paragraphs (A) and (B) of paragraph (2).”.

10 **SEC. 359. CROSS-BORDER REGULATION OF DERIVATIVES**

11 **TRANSACTIONS.**

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

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

20 (2) which of the United States swaps require-
21 ments shall apply to the swap activities of non-U.S.
22 persons, U.S. persons, and their branches, agencies,
23 subsidiaries, and affiliates outside of the United
24 States and the extent to which such requirements
25 shall apply; and

1 (3) the circumstances under which a non-U.S.
2 person in compliance with the regulatory require-
3 ments of a foreign jurisdiction shall be exempt from
4 United States swaps requirements.

5 (b) **RULE IN ACCORDANCE WITH APA REQUIRED.**—
6 No guidance, memorandum of understanding, or any such
7 other agreement may satisfy the requirement to issue a
8 rule from the Commission in accordance with section 553
9 of title 5, United States Code.

10 (c) **GENERAL APPLICATION TO COUNTRIES OR AD-**
11 **MINISTRATIVE REGIONS HAVING 9 LARGEST MARKETS.**—

12 (1) **GENERAL APPLICATION.**—In issuing rules
13 under this section, the Commission shall provide
14 that a non-U.S. person in compliance with the swaps
15 regulatory requirements of a country or administra-
16 tive region that has 1 of the 9 largest swap markets
17 by notional amount in the calendar year preceding
18 issuance of such rules, or other foreign jurisdiction
19 as determined by the Commission, shall be exempt
20 from United States swaps requirements in accord-
21 ance with the schedule set forth in paragraph (2),
22 unless the Commission determines that the regu-
23 latory requirements of the country or administrative
24 region or other foreign jurisdiction are not broadly
25 equivalent to United States swaps requirements.

1 (2) EFFECTIVE DATE SCHEDULE.—The exemp-
2 tion described in paragraph (1) and set forth under
3 the rules required by this section shall apply to per-
4 sons or transactions relating to or involving—

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

12 (B) the remaining countries or administra-
13 tive regions described in such paragraph, and
14 any other foreign jurisdiction as determined by
15 the Commission, 1 year after the date on which
16 such rules are issued.

17 (3) CRITERIA.—In such rules, the Commission
18 shall establish criteria for determining that 1 or
19 more categories of regulatory requirements of a
20 country or administrative region described in para-
21 graph (1) or other foreign jurisdiction is not broadly
22 equivalent to United States swaps requirements and
23 shall determine the appropriate application of cer-
24 tain United States swap requirements to persons or
25 transactions relating to or involving the country or

1 administrative region or other foreign jurisdiction.
2 The criteria shall include the scope and objectives of
3 the regulatory requirements of a country or adminis-
4 trative region described in paragraph (1) or other
5 foreign jurisdiction as well as the effectiveness of the
6 supervisory compliance program administered, and
7 the enforcement authority exercised, by the country
8 or administrative region or other foreign jurisdiction,
9 and such other factors as the Commission, by rule,
10 determines to be necessary or appropriate in the
11 public interest.

12 (4) REQUIRED ASSESSMENT.—Beginning on the
13 date on which final rules are issued under this sec-
14 tion, the Commission shall begin to assess the regu-
15 latory requirements of countries or administrative
16 regions described in paragraph (1), as the Commis-
17 sion determines appropriate, in accordance with the
18 criteria established pursuant to this subsection, to
19 determine if 1 or more categories of regulatory re-
20 quirements of such a country or administrative re-
21 gion or other foreign jurisdiction is not broadly
22 equivalent to United States swaps requirements.

23 (d) REPORT TO CONGRESS.—If the Commission
24 makes the determination described in subsection (c)(1)
25 that the regulatory requirements of a country or adminis-

1 trative region described in such subsection or other foreign
2 jurisdiction are not broadly equivalent to United States
3 swaps requirements, the Commission shall articulate the
4 basis for the determination in a written report transmitted
5 to the Committee on Agriculture of the House of Rep-
6 resentatives and the Committee on Agriculture, Nutrition,
7 and Forestry of the Senate within 30 days of the deter-
8 mination. The determination shall not be effective until
9 the transmission of the report.

10 (e) DEFINITIONS.—As used in this section and for
11 purposes of the rules issued pursuant to this section, the
12 following definitions apply:

13 (1) The term “U.S. person”—

14 (A) means—

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

17 (ii) any partnership, corporation,
18 trust, or other legal person organized or
19 incorporated under the laws of the United
20 States or having its principal place of busi-
21 ness in the United States;

22 (iii) any account (whether discre-
23 tionary or non-discretionary) of a U.S. per-
24 son; and

1 (iv) any other person as the Commis-
2 sion may further define to more effectively
3 carry out the purposes of this section; and
4 (B) does not include the International
5 Monetary Fund, the International Bank for Re-
6 construction and Development, the Inter-Amer-
7 ican Development Bank, the Asian Development
8 Bank, the African Development Bank, the
9 United Nations, their agencies and pension
10 plans, and any other similar international orga-
11 nizations and their agencies and pension plans.

12 (2) The term “United States swaps require-
13 ments” means the provisions relating to swaps con-
14 tained in the Commodity Exchange Act (7 U.S.C. 1a
15 et seq.) that were added by title VII of the Dodd-
16 Frank Wall Street Reform and Consumer Protection
17 Act, and any rules or regulations prescribed by the
18 Commodity Futures Trading Commission pursuant
19 to such provisions.

20 (f) CONFORMING AMENDMENT.—Section 4(c)(1)(A)
21 of the Commodity Exchange Act (7 U.S.C. 6(c)(1)(A)) is
22 amended by inserting “or except as necessary to effectuate
23 section 361 of the Customer Protection and End User Re-
24 lief Act,” after “to grant exemptions,”.

1 **Subtitle F—Effective Date**

2 **SEC. 371. EFFECTIVE DATE.**

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

○