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114TH CONGRESS
1ST SESSION

H. R. 2289

[Report No. 114-134]

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

MAY 13, 2015

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

MAY 29, 2015

Additional sponsor: Mr. SESSIONS

MAY 29, 2015

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 13, 2005]

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 “Commodity End-User*
 5 *Relief Act”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *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. Enhanced protections for futures customers.

Sec. 102. Electronic confirmation of customer funds.

Sec. 103. Notice and certifications providing additional customer protections.

Sec. 104. Futures commission merchant compliance.

Sec. 105. Certainty for futures customers and market participants.

TITLE II—COMMODITY FUTURES TRADING COMMISSION REFORMS

Sec. 201. Extension of operations.

Sec. 202. Consideration by the Commodity Futures Trading Commission of the costs and benefits of its regulations and orders.

Sec. 203. Division directors.

Sec. 204. Office of the Chief Economist.

Sec. 205. Procedures governing actions taken by Commission staff.

Sec. 206. Strategic technology plan.

Sec. 207. Internal risk controls.

Sec. 208. Subpoena duration and renewal.

Sec. 209. Applicability of notice and comment requirements of the Administrative Procedure Act to guidance voted on by the Commission.

Sec. 210. Judicial review of Commission rules.

Sec. 211. GAO study on use of Commission resources.

Sec. 212. Disclosure of required data of other registered entities.

Sec. 213. Report on status of any application of metals exchange to register as a foreign board of trade; deadline for action on application.

TITLE III—END-USER RELIEF

Sec. 301. Relief for hedgers utilizing centralized risk management practices.

Sec. 302. Indemnification requirements.

Sec. 303. Transactions with utility special entities.

Sec. 304. Utility special entity defined.

Sec. 305. Utility operations-related swap.

Sec. 306. End-users not treated as financial entities.

Sec. 307. Reporting of illiquid swaps so as to not disadvantage certain non-financial end-users.

- Sec. 308. Relief for grain elevator operators, farmers, agricultural counterparties, and commercial market participants.*
- Sec. 309. Relief for end-users who use physical contracts with volumetric optionality.*
- Sec. 310. Commission vote required before automatic change of swap dealer de minimis level.*
- Sec. 311. Capital requirements for non-bank swap dealers.*
- Sec. 312. Harmonization with the Jumpstart Our Business Startups Act.*
- Sec. 313. Bona fide hedge defined to protect end-user risk management needs.*
- Sec. 314. Cross-border regulation of derivatives transactions.*
- Sec. 315. Exemption of qualified charitable organizations from designation and regulation as commodity pool operators.*
- Sec. 316. Small bank holding company clearing exemption.*
- Sec. 317. Core principle certainty.*
- Sec. 318. Treatment of Federal Home Loan Bank products.*
- Sec. 319. Treatment of certain funds.*

TITLE IV—TECHNICAL CORRECTIONS

- Sec. 401. Correction of references.*
- Sec. 402. Elimination of obsolete references to dealer options.*
- Sec. 403. Updated trade data publication requirement.*
- Sec. 404. Flexibility for registered entities.*
- Sec. 405. Elimination of obsolete references to electronic trading facilities.*
- Sec. 406. Elimination of obsolete reference to alternative swap execution facilities.*
- Sec. 407. Elimination of redundant references to types of registered entities.*
- Sec. 408. Clarification of Commission authority over swaps trading.*
- Sec. 409. Elimination of obsolete reference to the Commodity Exchange Commission.*
- Sec. 410. Elimination of obsolete references to derivative transaction execution facilities.*
- Sec. 411. Elimination of obsolete references to exempt boards of trade.*
- Sec. 412. Elimination of report due in 1986.*
- Sec. 413. Compliance report flexibility.*
- Sec. 414. Miscellaneous corrections.*

1 **TITLE I—CUSTOMER**
 2 **PROTECTIONS**
 3 **SEC. 101. ENHANCED PROTECTIONS FOR FUTURES CUS-**
 4 **TOMERS.**

5 *Section 17 of the Commodity Exchange Act (7 U.S.C.*
 6 *21) is amended by adding at the end the following:*
 7 “(s) A registered futures association shall—
 8 “(1) require each member of the association that
 9 is a futures commission merchant to maintain writ-

1 *ten policies and procedures regarding the mainte-*
2 *nance of—*

3 *“(A) the residual interest of the member, as*
4 *described in section 1.23 of title 17, Code of Fed-*
5 *eral Regulations, in any customer segregated*
6 *funds account of the member, as identified in*
7 *section 1.20 of such title, and in any foreign fu-*
8 *tures and foreign options customer secured*
9 *amount funds account of the member, as identi-*
10 *fied in section 30.7 of such title; and*

11 *“(B) the residual interest of the member, as*
12 *described in section 22.2(e)(4) of such title, in*
13 *any cleared swaps customer collateral account of*
14 *the member, as identified in section 22.2 of such*
15 *title; and*

16 *“(2) establish rules to govern the withdrawal,*
17 *transfer or disbursement by any member of the asso-*
18 *ciation, that is a futures commission merchant, of the*
19 *member’s residual interest in customer segregated*
20 *funds as provided in such section 1.20, in foreign fu-*
21 *tures and foreign options customer secured amount*
22 *funds, identified as provided in such section 30.7, and*
23 *from a cleared swaps customer collateral, identified as*
24 *provided in such section 22.2.”.*

1 **SEC. 102. ELECTRONIC CONFIRMATION OF CUSTOMER**
2 **FUNDS.**

3 *Section 17 of the Commodity Exchange Act (7 U.S.C.*
4 *21), as amended by section 101 of this Act, is amended by*
5 *adding at the end the following:*

6 *“(t) A registered futures association shall require any*
7 *member of the association that is a futures commission mer-*
8 *chant to—*

9 *“(1) use an electronic system or systems to report*
10 *financial and operational information to the associa-*
11 *tion or another party designated by the registered fu-*
12 *tures association, including information related to*
13 *customer segregated funds, foreign futures and foreign*
14 *options customer secured amount funds accounts, and*
15 *cleared swaps customer collateral, in accordance with*
16 *such terms, conditions, documentation standards, and*
17 *regular time intervals as are established by the reg-*
18 *istered futures association;*

19 *“(2) instruct each depository, including any*
20 *bank, trust company, derivatives clearing organiza-*
21 *tion, or futures commission merchant, holding cus-*
22 *tomers segregated funds under section 1.20 of title 17,*
23 *Code of Federal Regulations, foreign futures and for-*
24 *foreign options customer secured amount funds under*
25 *section 30.7 of such title, or cleared swap customer*
26 *funds under section 22.2 of such title, to report bal-*

1 *ances in the futures commission merchant’s section*
2 *1.20 customer segregated funds, section 30.7 foreign*
3 *futures and foreign options customer secured amount*
4 *funds, and section 22.2 cleared swap customer funds,*
5 *to the registered futures association or another party*
6 *designated by the registered futures association, in the*
7 *form, manner, and interval prescribed by the reg-*
8 *istered futures association; and*

9 *“(3) hold section 1.20 customer segregated funds,*
10 *section 30.7 foreign futures and foreign options cus-*
11 *tomers secured amount funds and section 22.2 cleared*
12 *swaps customer funds in a depository that reports the*
13 *balances in these accounts of the futures commission*
14 *merchant held at the depository to the registered fu-*
15 *tures association or another party designated by the*
16 *registered futures association in the form, manner,*
17 *and interval prescribed by the registered futures asso-*
18 *ciation.”.*

19 **SEC. 103. NOTICE AND CERTIFICATIONS PROVIDING ADDI-**
20 **TIONAL CUSTOMER PROTECTIONS.**

21 *Section 17 of the Commodity Exchange Act (7 U.S.C.*
22 *21), as amended by sections 101 and 102 of this Act, is*
23 *amended by adding at the end the following:*

24 *“(u) A futures commission merchant that has adjusted*
25 *net capital in an amount less than the amount required*

1 *by regulations established by the Commission or a self-regu-*
2 *latory organization of which the futures commission mer-*
3 *chant is a member shall immediately notify the Commission*
4 *and the self-regulatory organization of this occurrence.*

5 “(v) *A futures commission merchant that does not hold*
6 *a sufficient amount of funds in segregated accounts for fu-*
7 *tures customers under section 1.20 of title 17, Code of Fed-*
8 *eral Regulations, in foreign futures and foreign options se-*
9 *cured amount accounts for foreign futures and foreign op-*
10 *tions secured amount customers under section 30.7 of such*
11 *title, or in segregated accounts for cleared swap customers*
12 *under section 22.2 of such title, as required by regulations*
13 *established by the Commission or a self-regulatory organiza-*
14 *tion of which the futures commission merchant is a member,*
15 *shall immediately notify the Commission and the self-regu-*
16 *latory organization of this occurrence.*

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

23 **SEC. 104. FUTURES COMMISSION MERCHANT COMPLIANCE.**

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

1 (1) *by redesignating paragraphs (1) and (2) as*
2 *subparagraphs (A) and (B);*

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

5 (3) *by adding at the end the following new para-*
6 *graph:*

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

16 **(b) CONFORMING AMENDMENT.**—*Section 4d(h) of such*
17 *Act (7 U.S.C. 6d(h)) is amended by striking “Notwith-*
18 *standing subsection (a)(2)” and inserting “Notwith-*
19 *standing subsection (a)(1)(B)”.*

20 **SEC. 105. CERTAINTY FOR FUTURES CUSTOMERS AND MAR-**
21 **KET PARTICIPANTS.**

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

24 (1) *by striking “and” at the end of paragraph*
25 *(4);*

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

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

4 “(6) *that cash, securities, or other property of the*
5 *estate of a commodity broker, including the trading or*
6 *operating accounts of the commodity broker and com-*
7 *modities held in inventory by the commodity broker,*
8 *shall be included in customer property, subject to any*
9 *otherwise unavoidable security interest, or otherwise*
10 *unavoidable contractual offset or netting rights of*
11 *creditors (including rights set forth in a rule or bylaw*
12 *of a derivatives clearing organization or a clearing*
13 *agency) in respect of such property, but only to the*
14 *extent that the property that is otherwise customer*
15 *property is insufficient to satisfy the net equity*
16 *claims of public customers (as such term may be de-*
17 *finied by the Commission by rule or regulation) of the*
18 *commodity broker.”.*

19 ***TITLE II—COMMODITY FUTURES***
20 ***TRADING COMMISSION RE-***
21 ***FORMS***

22 ***SEC. 201. EXTENSION OF OPERATIONS.***

23 *Section 12(d) of the Commodity Exchange Act (7*
24 *U.S.C. 16(d)) is amended by striking “2013” and inserting*
25 *“2019”.*

1 **SEC. 202. CONSIDERATION BY THE COMMODITY FUTURES**
2 **TRADING COMMISSION OF THE COSTS AND**
3 **BENEFITS OF ITS REGULATIONS AND OR-**
4 **DERS.**

5 *Section 15(a) of the Commodity Exchange Act (7*
6 *U.S.C. 19(a)) is amended—*

7 *(1) by striking paragraphs (1) and (2) and in-*
8 *serting the following:*

9 *“(1) IN GENERAL.—Before promulgating a regu-*
10 *lation under this Act or issuing an order (except as*
11 *provided in paragraph (3)), the Commission, through*
12 *the Office of the Chief Economist, shall assess and*
13 *publish in the regulation or order the costs and bene-*
14 *fits, both qualitative and quantitative, of the proposed*
15 *regulation or order, and the proposed regulation or*
16 *order shall state its statutory justification.*

17 *“(2) CONSIDERATIONS.—In making a reasoned*
18 *determination of the costs and the benefits, the Com-*
19 *mission shall evaluate—*

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

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

25 *“(C) considerations of the impact on market*
26 *liquidity in the futures and swaps markets;*

1 “(D) considerations of price discovery;

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

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

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

9 “(H) the costs of complying with the pro-
10 posed regulation or order by all regulated enti-
11 ties, including a methodology for quantifying the
12 costs (recognizing that some costs are difficult to
13 quantify);

14 “(I) whether the proposed regulation or
15 order is inconsistent, incompatible, or duplica-
16 tive of other Federal regulations or orders;

17 “(J) the cost to the Commission of imple-
18 menting the proposed regulation or order by the
19 Commission staff, including a methodology for
20 quantifying the costs;

21 “(K) whether, in choosing among alter-
22 native regulatory approaches, those approaches
23 maximize net benefits (including potential eco-
24 nomic and other benefits, distributive impacts,
25 and equity); and

1 “(L) other public interest considerations.”;

2 and

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

4 “(4) *JUDICIAL REVIEW.*—Notwithstanding sec-
5 tion 24(d), a court shall affirm a Commission assess-
6 ment of costs and benefits under this subsection, un-
7 less the court finds the assessment to be an abuse of
8 discretion.”.

9 **SEC. 203. DIVISION DIRECTORS.**

10 Section 2(a)(6)(C) of the Commodity Exchange Act (7
11 U.S.C. 2(a)(6)(C)) is amended by inserting “, and the heads
12 of the units shall serve at the pleasure of the Commission”
13 before the period.

14 **SEC. 204. OFFICE OF THE CHIEF ECONOMIST.**

15 (a) *IN GENERAL.*—Section 2(a) of the Commodity Ex-
16 change Act (7 U.S.C. 2(a)) is amended by adding at the
17 end the following:

18 “(16) *OFFICE OF THE CHIEF ECONOMIST.*—

19 “(A) *ESTABLISHMENT.*—There is estab-
20 lished in the Commission the Office of the Chief
21 Economist.

22 “(B) *HEAD.*—The Office of the Chief Econo-
23 mist shall be headed by the Chief Economist, who
24 shall be appointed by the Commission and serve
25 at the pleasure of the Commission.

1 “(C) *FUNCTIONS.*—*The Chief Economist*
 2 *shall report directly to the Commission and per-*
 3 *form such functions and duties as the Commis-*
 4 *sion may prescribe.*

5 “(D) *PROFESSIONAL STAFF.*—*The Commis-*
 6 *sion shall appoint such other economists as may*
 7 *be necessary to assist the Chief Economist in*
 8 *performing such economic analysis, regulatory*
 9 *cost-benefit analysis, or research any member of*
 10 *the Commission may request.”.*

11 (b) *CONFORMING AMENDMENT.*—*Section 2(a)(6)(A) of*
 12 *such Act (7 U.S.C. 2(a)(6)(A)) is amended by striking “(4)*
 13 *and (5) of this subsection” and inserting “(4), (5), and*
 14 *(16)”.*

15 **SEC. 205. PROCEDURES GOVERNING ACTIONS TAKEN BY**
 16 **COMMISSION STAFF.**

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

19 (1) *by striking “(12) The” and inserting the fol-*
 20 *lowing:*

21 “(12) *RULES AND REGULATIONS.*—

22 “(A) *IN GENERAL.*—*Subject to the other*
 23 *provisions of this paragraph, the”;* and

24 (2) *by adding after and below the end the fol-*
 25 *lowing new subparagraph:*

1 “(B) *NOTICE TO COMMISSIONERS.*—*The*
2 *Commission shall develop and publish internal*
3 *procedures governing the issuance by any divi-*
4 *sion or office of the Commission of any response*
5 *to a formal, written request or petition from any*
6 *member of the public for an exemptive, a no-ac-*
7 *tion, or an interpretive letter and such proce-*
8 *dures shall provide that the commissioners be*
9 *provided with the final version of the matter to*
10 *be issued with sufficient notice to review the*
11 *matter prior to its issuance.”.*

12 **SEC. 206. STRATEGIC TECHNOLOGY PLAN.**

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

16 “(17) *STRATEGIC TECHNOLOGY PLAN.*—

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

24 “(B) *CONTENTS.*—*The plan shall—*

1 “(i) include for each related division or
2 office a detailed technology strategy focused
3 on market surveillance and risk detection,
4 market data collection, aggregation, inter-
5 pretation, standardization, harmonization,
6 normalization, validation, streamlining or
7 other data analytic processes, and internal
8 management and protection of data col-
9 lected by the Commission, including a de-
10 tailed accounting of how the funds provided
11 for technology will be used and the prior-
12 ities that will apply in the use of the funds;
13 and

14 “(ii) set forth annual goals to be ac-
15 complished and annual budgets needed to
16 accomplish the goals.”.

17 **SEC. 207. INTERNAL RISK CONTROLS.**

18 Section 2(a)(12) of the Commodity Exchange Act (7
19 U.S.C. 2(a)(12)), as amended by section 205 of this Act,
20 is amended by adding at the end the following:

21 “(C) **INTERNAL RISK CONTROLS.**—The Com-
22 mission, in consultation with the Chief Econo-
23 mist, shall develop comprehensive internal risk
24 control mechanisms to safeguard and govern the
25 storage of all market data by the Commission,

1 *all market data sharing agreements of the Com-*
2 *mission, and all academic research performed at*
3 *the Commission using market data.”.*

4 **SEC. 208. SUBPOENA DURATION AND RENEWAL.**

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

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

9 “(5) SUBPOENA.—

10 “(A) *IN GENERAL.—For*”; and

11 (2) *by adding after and below the end the fol-*
12 *lowing:*

13 “(B) *OMNIBUS ORDERS OF INVESTIGA-*
14 *TION.—*

15 “(i) *DURATION AND RENEWAL.—An*
16 *omnibus order of investigation shall not be*
17 *for an indefinite duration and may be re-*
18 *newed only by Commission action.*

19 “(ii) *DEFINITION.—In clause (i), the*
20 *term ‘omnibus order of investigation’ means*
21 *an order of the Commission authorizing 1 of*
22 *more members of the Commission or its staff*
23 *to issue subpoenas under subparagraph (A)*
24 *to multiple persons in relation to a par-*
25 *ticular subject matter area.”.*

1 **SEC. 209. APPLICABILITY OF NOTICE AND COMMENT RE-**
2 **QUIREMENTS OF THE ADMINISTRATIVE PRO-**
3 **CEDURE ACT TO GUIDANCE VOTED ON BY**
4 **THE COMMISSION.**

5 *Section 2(a)(12) of the Commodity Exchange Act (7*
6 *U.S.C. 2(a)(12)), as amended by sections 205 and 207 of*
7 *this Act, is amended by adding at the end the following:*

8 *“(D) APPLICABILITY OF NOTICE AND COM-*
9 *MENT RULES TO GUIDANCE VOTED ON BY THE*
10 *COMMISSION.—The notice and comment require-*
11 *ments of section 553 of title 5, United States*
12 *Code, shall also apply with respect to any Com-*
13 *mission statement or guidance, including inter-*
14 *pretive rules, general statements of policy, or*
15 *rules of Commission organization, procedure, or*
16 *practice, that has the effect of implementing, in-*
17 *terpreting or prescribing law or policy and that*
18 *is voted on by the Commission.”.*

19 **SEC. 210. JUDICIAL REVIEW OF COMMISSION RULES.**

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

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

23 *“(a) A person adversely affected by a rule of the Com-*
24 *mission promulgated under this Act may obtain review of*
25 *the rule in the United States Court of Appeals for the Dis-*
26 *trict of Columbia Circuit or the United States Court of Ap-*

1 *peals for the circuit where the party resides or has the prin-*
2 *cipal place of business, by filing in the court, within 60*
3 *days after publication in the Federal Register of the entry*
4 *of the rule, a written petition requesting that the rule be*
5 *set aside.*

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

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

17 “(d) *The court shall affirm and enforce the rule unless*
18 *the Commission’s action in promulgating the rule is found*
19 *to be arbitrary, capricious, an abuse of discretion, or other-*
20 *wise not in accordance with law; contrary to constitutional*
21 *right, power, privilege, or immunity; in excess of statutory*
22 *jurisdiction, authority, or limitations, or short of statutory*
23 *right; or without observance of procedure required by law.”.*

1 **SEC. 211. GAO STUDY ON USE OF COMMISSION RESOURCES.**

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

5 (1) *assesses whether the resources of the Commis-*
6 *sion are sufficient to enable the Commission to effec-*
7 *tively carry out the duties of the Commission;*

8 (2) *examines the expenditures of the Commission*
9 *on hardware, software, and analytical processes de-*
10 *signed to protect customers in the areas of—*

11 (A) *market surveillance and risk detection;*

12 *and*

13 (B) *market data collection, aggregation, in-*
14 *terpretation, standardization, harmonization,*
15 *and streamlining;*

16 (3) *analyzes the additional workload undertaken*
17 *by the Commission, and ascertains where self-regu-*
18 *latory organizations could be more effectively utilized;*
19 *and*

20 (4) *examines existing and emerging post-trade*
21 *risk reduction services in the swaps market, the no-*
22 *tional amount of risk reduction transactions provided*
23 *by the services, and the effects the services have on fi-*
24 *nancial stability, including—*

25 (A) *market surveillance and risk detection;*

1 (B) market data collection, aggregation, in-
 2 terpretation, standardization, harmonization,
 3 and streamlining; and

4 (C) oversight and compliance work by mar-
 5 ket participants and regulators.

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

12 **SEC. 212. DISCLOSURE OF REQUIRED DATA OF OTHER REG-**
 13 **ISTERED ENTITIES.**

14 Section 8 of the Commodity Exchange Act (7 U.S.C.
 15 12) is amended by adding at the end the following:

16 “(j) *DISCLOSURE OF REQUIRED DATA OF OTHER*
 17 *REGISTERED ENTITIES*.—

18 “(1) *Except as provided in this subsection, the*
 19 *Commission may not be compelled to disclose any*
 20 *proprietary information provided to the Commission,*
 21 *except that nothing in this subsection—*

22 “(A) *authorizes the Commission to withhold*
 23 *information from Congress; or*

24 “(B) *prevents the Commission from—*

1 “(i) *complying with a request for in-*
2 *formation from any other Federal depart-*
3 *ment or agency, any State or political sub-*
4 *division thereof, or any foreign government*
5 *or any department, agency, or political sub-*
6 *division thereof requesting the report or in-*
7 *formation for purposes within the scope of*
8 *its jurisdiction, upon an agreement of con-*
9 *fidentiality to protect the information in a*
10 *manner consistent with this paragraph and*
11 *subsection (e); or*

12 “(ii) *making a disclosure made pursu-*
13 *ant to a court order in connection with an*
14 *administrative or judicial proceeding*
15 *brought under this Act, in any receivership*
16 *proceeding involving a receiver appointed*
17 *in a judicial proceeding brought under this*
18 *Act, or in any bankruptcy proceeding in*
19 *which the Commission has intervened or in*
20 *which the Commission has the right to ap-*
21 *pear and be heard under title 11 of the*
22 *United States Code.*

23 “(2) *Any proprietary information of a com-*
24 *modity trading advisor or commodity pool operator*
25 *ascertained by the Commission in connection with*

1 *Form CPO-PQR, Form CTA-PR, and any successor*
2 *forms thereto, shall be subject to the same limitations*
3 *on public disclosure, as any facts ascertained during*
4 *an investigation, as provided by subsection (a); pro-*
5 *vided, however, that the Commission shall not be pre-*
6 *cluded from publishing aggregate information com-*
7 *plied from such forms, to the extent such aggregate in-*
8 *formation does not identify any individual person or*
9 *firm, or such person's proprietary information.*

10 *“(3) For purposes of section 552 of title 5,*
11 *United States Code, this subsection, and the informa-*
12 *tion contemplated herein, shall be considered a statute*
13 *described in subsection (b)(3)(B) of such section 552.*

14 *“(4) For purposes of the definition of propri-*
15 *etary information in paragraph (5), the records and*
16 *reports of any client account or commodity pool to*
17 *which a commodity trading advisor or commodity*
18 *pool operator registered under this title provides serv-*
19 *ices that are filed with the Commission on Form*
20 *CPO-PQR, CTA-PR, and any successor forms thereto,*
21 *shall be deemed to be the records and reports of the*
22 *commodity trading advisor or commodity pool oper-*
23 *ator, respectively.*

24 *“(5) For purposes of this section, proprietary in-*
25 *formation of a commodity trading advisor or com-*

1 *modity pool operator includes sensitive, non-public*
 2 *information regarding—*

3 *“(A) the commodity trading advisor, com-*
 4 *modity pool operator or the trading strategies of*
 5 *the commodity trading advisor or commodity*
 6 *pool operator;*

7 *“(B) analytical or research methodologies of*
 8 *a commodity trading advisor or commodity pool*
 9 *operator;*

10 *“(C) trading data of a commodity trading*
 11 *advisor or commodity pool operator; and*

12 *“(D) computer hardware or software con-*
 13 *taining intellectual property of a commodity*
 14 *trading advisor or commodity pool operator;”.*

15 **SEC. 213. REPORT ON STATUS OF ANY APPLICATION OF**
 16 **METALS EXCHANGE TO REGISTER AS A FOR-**
 17 **EIGN BOARD OF TRADE; DEADLINE FOR AC-**
 18 **TION ON APPLICATION.**

19 *(a) REPORT TO CONGRESS.—Within 90 days after the*
 20 *date of the enactment of this section, the Commodity Fu-*
 21 *tures Trading Commission shall submit to the Congress a*
 22 *written report on—*

23 *(1) the status of the review by the Commission*
 24 *of any application submitted by a metals exchange to*

1 register with the Commission under section 4(b)(1) of
2 the Commodity Exchange Act; and

3 (2) the status of Commission negotiations with
4 foreign regulators regarding aluminum warehousing.

5 (b) *DEADLINE FOR ACTION.*—Not later than Sep-
6 tember 30, 2016, the Commission shall take action on any
7 such application submitted to the Commission on or before
8 August 14, 2012.

9 **TITLE III—END-USER RELIEF**

10 **SEC. 301. RELIEF FOR HEDGERS UTILIZING CENTRALIZED** 11 **RISK MANAGEMENT PRACTICES.**

12 (a) *IN GENERAL.*—

13 (1) *COMMODITY EXCHANGE ACT AMENDMENT.*—
14 Section 2(h)(7)(D)(i) of the Commodity Exchange Act
15 (7 U.S.C. 2(h)(7)(D)(i)) is amended to read as fol-
16 lows:

17 “(i) *IN GENERAL.*—An affiliate of a
18 person that qualifies for an exception under
19 subparagraph (A) (including an affiliate
20 entity predominantly engaged in providing
21 financing for the purchase of the merchan-
22 dise or manufactured goods of the person)
23 may qualify for the exception only if the af-
24 filiate enters into the swap to hedge or miti-
25 gate the commercial risk of the person or

1 *other affiliate of the person that is not a fi-*
2 *nancial entity, provided that if the hedge or*
3 *mitigation of such commercial risk is ad-*
4 *ressed by entering into a swap with a*
5 *swap dealer or major swap participant, an*
6 *appropriate credit support measure or other*
7 *mechanism must be utilized.”.*

8 **(b) APPLICABILITY OF CREDIT SUPPORT MEASURE**
9 **REQUIREMENT.**—*The requirements in section 2(h)(7)(D)(i)*
10 *of the Commodity Exchange Act, as amended by subsection*
11 *(a), requiring that a credit support measure or other mecha-*
12 *nism be utilized if the transfer of commercial risk referred*
13 *to in such section is addressed by entering into a swap with*
14 *a swap dealer or major swap participant shall not apply*
15 *with respect to swaps entered into before the date of the*
16 *enactment of this Act.*

17 **SEC. 302. INDEMNIFICATION REQUIREMENTS.**

18 **(a) DERIVATIVES CLEARING ORGANIZATIONS.**—*Sec-*
19 *tion 5b(k)(5) of the Commodity Exchange Act (7 U.S.C. 7a-*
20 *1(k)(5)) is amended to read as follows:*

21 **“(5) CONFIDENTIALITY AGREEMENT.**—*Before the*
22 *Commission may share information with any entity*
23 *described in paragraph (4), the Commission shall re-*
24 *ceive a written agreement from each entity stating*
25 *that the entity shall abide by the confidentiality re-*

1 *quirements described in section 8 relating to the in-*
2 *formation on swap transactions that is provided.”.*

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

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

12 **SEC. 303. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.**

13 *Section 1a(49) of the Commodity Exchange Act (7*
14 *U.S.C. 1a(49)) is amended by adding at the end the fol-*
15 *lowing:*

16 *“(E) CERTAIN TRANSACTIONS WITH A UTIL-*
17 *ITY SPECIAL ENTITY.—*

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

21 *“(ii) In making a determination to ex-*
22 *empt pursuant to subparagraph (D), the*
23 *Commission shall treat a utility operations-*
24 *related swap entered into with a utility spe-*
25 *cial entity, as defined in section*

1 4s(h)(2)(D), as if it were entered into with
2 an entity that is not a special entity, as de-
3 fined in section 4s(h)(2)(C).”.

4 **SEC. 304. UTILITY SPECIAL ENTITY DEFINED.**

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

8 “(D) *UTILITY SPECIAL ENTITY*.—For pur-
9 poses of this Act, the term ‘utility special entity’
10 means a special entity, or any instrumentality,
11 department, or corporation of or established by a
12 State or political subdivision of a State, that—

13 “(i) owns or operates, or anticipates
14 owning or operating, an electric or natural
15 gas facility or an electric or natural gas op-
16 eration;

17 “(ii) supplies, or anticipates sup-
18 plying, natural gas and or electric energy to
19 another utility special entity;

20 “(iii) has, or anticipates having, pub-
21 lic service obligations under Federal, State,
22 or local law or regulation to deliver electric
23 energy or natural gas service to customers;
24 or

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

4 **SEC. 305. UTILITY OPERATIONS-RELATED SWAP.**

5 (a) SWAP FURTHER DEFINED.—Section
6 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.
7 1a(47)(A)(iii)) is amended—

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

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

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

13 “(XXIII) a utility operations-re-
14 lated swap;”.

15 (b) UTILITY OPERATIONS-RELATED SWAP DEFINED.—
16 Section 1a of such Act (7 U.S.C. 1a) is amended by adding
17 at the end the following:

18 “(52) UTILITY OPERATIONS-RELATED SWAP.—
19 The term ‘utility operations-related swap’ means a
20 swap that—

21 “(A) is entered into by a utility to hedge or
22 mitigate a commercial risk;

23 “(B) is not a contract, agreement, or trans-
24 action based on, derived on, or referencing—

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

3 “(ii) except as used for fuel for electric
4 energy generation, a metal, agricultural
5 commodity, or crude oil or gasoline com-
6 modity of any grade; or

7 “(iii) any other commodity or category
8 of commodities identified for this purpose in
9 a rule or order adopted by the Commission
10 in consultation with the appropriate Fed-
11 eral and State regulatory commissions; and
12 “(C) is associated with—

13 “(i) the generation, production, pur-
14 chase, or sale of natural gas or electric en-
15 ergy, the supply of natural gas or electric
16 energy to a utility, or the delivery of nat-
17 ural gas or electric energy service to utility
18 customers;

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

21 “(iii) compliance with an electric sys-
22 tem reliability obligation;

23 “(iv) compliance with an energy, en-
24 ergy efficiency, conservation, or renewable
25 energy or environmental statute, regulation,

1 or government order applicable to a utility;

2 or

3 “(v) any other electric energy or nat-
4 ural gas swap to which a utility is a
5 party.”.

6 **SEC. 306. END-USERS NOT TREATED AS FINANCIAL ENTI-**
7 **TIES.**

8 (a) *IN GENERAL.*—Section 2(h)(7)(C)(iii) of the Com-
9 modity Exchange Act (7 U.S.C. 2(h)(7)(C)(iii)) is amended
10 to read as follows:

11 “(iii) *LIMITATION.*—Such definition
12 shall not include an entity—

13 “(I) whose primary business is
14 providing financing, and who uses de-
15 rivatives for the purpose of hedging un-
16 derlying commercial risks related to
17 interest rate and foreign currency ex-
18 posures, 90 percent or more of which
19 arise from financing that facilitates the
20 purchase or lease of products, 90 per-
21 cent or more of which are manufac-
22 tured by the parent company or an-
23 other subsidiary of the parent com-
24 pany; or

1 “(II) who is not supervised by a
2 prudential regulator, and is not de-
3 scribed in any of subclauses (I)
4 through (VII) of clause (i), and—

5 “(aa) is a commercial mar-
6 ket participant; or

7 “(bb) enters into swaps, con-
8 tracts for future delivery, and
9 other derivatives on behalf of, or
10 to hedge or mitigate the commer-
11 cial risk of, whether directly or in
12 the aggregate, affiliates that are
13 not so supervised or described.”.

14 (b) *COMMERCIAL MARKET PARTICIPANT DEFINED.*—

15 (1) *IN GENERAL.*—Section 1a of such Act (7
16 U.S.C. 1a), as amended by section 305(b) of this Act,
17 is amended by redesignating paragraphs (8) through
18 (52) as paragraphs (9) through (53), respectively, and
19 by inserting after paragraph (6) the following:

20 “(8) *COMMERCIAL MARKET PARTICIPANT.*—The
21 term ‘commercial market participant’ means any
22 producer, processor, merchant, or commercial user of
23 an exempt or agricultural commodity, or the products
24 or byproducts of such a commodity.”.

25 (2) *CONFORMING AMENDMENTS.*—

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

3 (i) in subparagraph (A) of paragraph
4 (18) (as so redesignated by paragraph (1) of
5 this subsection), in the matter preceding
6 clause (i), by striking “(18)(A)” and insert-
7 ing “(19)(A)”; and

8 (ii) in subparagraph (A)(vii) of para-
9 graph (19) (as so redesignated by para-
10 graph (1) of this subsection), in the matter
11 following subclause (III), by striking
12 “(17)(A)” and inserting “(18)(A)”.

13 (B) Section 4(c)(1)(A)(i)(I) of such Act (7
14 U.S.C. 6(c)(1)(A)(i)(I)) is amended by striking
15 “(7), paragraph (18)(A)(vii)(III), paragraphs
16 (23), (24), (31), (32), (38), (39), (41), (42), (46),
17 (47), (48), and (49)” and inserting “(8), para-
18 graph (19)(A)(vii)(III), paragraphs (24), (25),
19 (32), (33), (39), (40), (42), (43), (47), (48), (49),
20 and (50)”.

21 (C) Section 4q(a)(1) of such Act (7 U.S.C.
22 60-1(a)(1)) is amended by striking “1a(9)” and
23 inserting “1a(10)”.

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

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

7 (F) Section 4t(b)(1)(C) of such Act (7
8 U.S.C. 6t(b)(1)(C)) is amended by striking
9 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

10 (G) Section 5(d)(23) of such Act (7 U.S.C.
11 7(d)(23)) is amended by striking “1a(47)(A)(v)”
12 and inserting “1a(48)(A)(v)”.

13 (H) Section 5(e)(1) of such Act (7 U.S.C.
14 7(e)(1)) is amended by striking “1a(9)” and in-
15 serting “1a(10)”.

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

19 (J) Section 5h(f)(10)(A)(iii) of such Act (7
20 U.S.C. 7b-3(f)(10)(A)(iii)) is amended by strik-
21 ing “1a(47)(A)(v)” and inserting
22 “1a(48)(A)(v)”.

23 (K) Section 21(f)(4)(C) of such Act (7
24 U.S.C. 24a(f)(4)(C)) is amended by striking
25 “1a(48)” and inserting “1a(49)”.

1 **SEC. 307. 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 Com-*
7 *mission” and inserting “Except as provided in sub-*
8 *paragraph (D), the Commission”; and*

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

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

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

22 *“(ii) The Commission shall ensure that*
23 *the swap transaction information referred*
24 *to in clause (i) of this subparagraph is*
25 *available to the public no sooner than 30*
26 *days after the swap transaction has been ex-*

1 *ecuted or at such later date as the Commis-*
2 *sion determines appropriate to protect the*
3 *identity of participants and positions in il-*
4 *liquid markets and to prevent the elimi-*
5 *nation or reduction of market liquidity.*

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

12 **SEC. 308. RELIEF FOR GRAIN ELEVATOR OPERATORS,**
13 **FARMERS, AGRICULTURAL COUNTERPARTIES,**
14 **AND COMMERCIAL MARKET PARTICIPANTS.**

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

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

20 *“Except as provided in section 4(a)(3), a member of*
21 *a designated contract market or a swap execution facility*
22 *that is not registered with the Commission and not required*
23 *to be registered with the Commission in any capacity shall*
24 *satisfy the recordkeeping requirements of this Act and any*
25 *recordkeeping rule, order, or regulation under this Act by*

1 *maintaining a written record of each transaction in a con-*
2 *tract for future delivery, option on a future, swap,*
3 *swaption, trade option, or related cash or forward trans-*
4 *action. The written record shall be sufficient if it includes*
5 *the final agreement between the parties and the material*
6 *economic terms of the transaction.”.*

7 **SEC. 309. RELIEF FOR END-USERS WHO USE PHYSICAL CON-**
8 **TRACTS WITH VOLUMETRIC OPTIONALITY.**

9 *Section 1a(48)(B)(ii) of the Commodity Exchange Act*
10 *(7 U.S.C. 1a(47)(B)(ii)), as so redesignated by section*
11 *306(b)(1) of this Act, is amended to read as follows:*

12 *“(ii) any purchase or sale of a non-*
13 *financial commodity or security for deferred*
14 *shipment or delivery, so long as the trans-*
15 *action is intended to be physically settled,*
16 *including any stand-alone or embedded op-*
17 *tion for which exercise results in a physical*
18 *delivery obligation;”.*

19 **SEC. 310. COMMISSION VOTE REQUIRED BEFORE AUTO-**
20 **MATIC CHANGE OF SWAP DEALER DE MINIMIS**
21 **LEVEL.**

22 *Section 1a(50)(D) of the Commodity Exchange Act (7*
23 *U.S.C. 1a(49)(D)), as so redesignated by section 306(b)(1)*
24 *of this Act, is amended—*

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

3 “(D) *EXCEPTION.*—

4 “(i) *IN GENERAL.*—*The Commission*”;

5 *and*

6 (2) *by adding after and below the end the fol-*
 7 *lowing new clause:*

8 “(ii) *DE MINIMIS QUANTITY.*—*The de*
 9 *minimis quantity of swap dealing described*
 10 *in clause (i) shall be set at a quantity of*
 11 *\$8,000,000,000, and may be amended or*
 12 *changed only through a new affirmative ac-*
 13 *tion of the Commission undertaken by rule*
 14 *or regulation.”.*

15 **SEC. 311. CAPITAL REQUIREMENTS FOR NON-BANK SWAP**
 16 **DEALERS.**

17 (a) *COMMODITY EXCHANGE ACT.*—*Section 4s(e) of the*
 18 *Commodity Exchange Act (7 U.S.C. 6s(e)) is amended—*

19 (1) *in paragraph (2)(B), by inserting “in con-*
 20 *sultation with the prudential regulators and the Secu-*
 21 *rities and Exchange Commission” before “shall”; and*

22 (2) *in paragraph (3)(D)—*

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

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

2 “(iii) *FINANCIAL MODELS.*—To the ex-
3 tent that swap dealers and major swap par-
4 ticipants that are banks are permitted to
5 use financial models approved by the pru-
6 dential regulators or the Securities and Ex-
7 change Commission to calculate minimum
8 capital requirements and minimum initial
9 and variation margin requirements, includ-
10 ing the use of non-cash collateral, the Com-
11 mission shall, in consultation with the pru-
12 dential regulators and the Securities and
13 Exchange Commission, permit the use of
14 comparable financial models by swap deal-
15 ers and major swap participants that are
16 not banks.”.

17 **SEC. 312. HARMONIZATION WITH THE JUMPSTART OUR**
18 **BUSINESS STARTUPS ACT.**

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

21 (1) revise section 4.7(b) of title 17, Code of Fed-
22 eral Regulations, in the matter preceding paragraph
23 (1), to read as follows:

24 “(b) Relief available to commodity pool operators.
25 Upon filing the notice required by paragraph (d) of this

1 *section, and subject to compliance with the conditions speci-*
2 *fied in paragraph (d) of this section, any registered com-*
3 *modity pool operator who sells participations in a pool sole-*
4 *ly to qualified eligible persons in an offering which qualifies*
5 *for exemption from the registration requirements of the Se-*
6 *curities Act pursuant to section 4(2) of that Act or pursuant*
7 *to Regulation S, 17 CFR 230.901 et seq., and any bank*
8 *registered as a commodity pool operator in connection with*
9 *a pool that is a collective trust fund whose securities are*
10 *exempt from registration under the Securities Act pursuant*
11 *to section 3(a)(2) of that Act and are sold solely to qualified*
12 *eligible persons, may claim any or all of the following relief*
13 *with respect to such pool:”; and*

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

16 *“(i) Interests in the pool are exempt*
17 *from registration under the Securities Act of*
18 *1933, and such interests are offered and sold*
19 *pursuant to section 4 of the Securities Act*
20 *of 1933 and the regulations thereunder;”.*

21 **SEC. 313. BONA FIDE HEDGE DEFINED TO PROTECT END-**
22 **USER RISK MANAGEMENT NEEDS.**

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

25 *(1) in paragraph (1)—*

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

3 (B) by striking “future for which” and in-
4 serting “future, to be determined by the Commis-
5 sion, for which either an appropriate swap is
6 available or”;

7 (2) in paragraph (2)—

8 (A) in the matter preceding subparagraph
9 (A), by striking “subsection (a)(2)” and all that
10 follows through “position as” and inserting
11 “paragraphs (2) and (5) of subsection (a) for
12 swaps, contracts of sale for future delivery, or
13 options on the contracts or commodities, a bona
14 fide hedging transaction or position is”; and

15 (B) in subparagraph (A)(ii), by striking “of
16 risks” and inserting “or management of current
17 or anticipated risks”; and

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

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

1 **SEC. 314. CROSS-BORDER REGULATION OF DERIVATIVES**
2 **TRANSACTIONS.**

3 (a) *RULEMAKING REQUIRED.*—*Within 1 year after the*
4 *date of the enactment of this Act, the Commodity Futures*
5 *Trading Commission shall issue a rule that addresses—*

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

11 (2) *which of the United States swaps require-*
12 *ments apply to the swap activities of non-U.S. per-*
13 *sons and U.S. persons and their branches, agencies,*
14 *subsidiaries, and affiliates outside of the United*
15 *States, and the extent to which the requirements*
16 *apply; and*

17 (3) *the circumstances under which a U.S. person*
18 *or non-U.S. person in compliance with the swaps reg-*
19 *ulatory requirements of a foreign jurisdiction shall be*
20 *exempt from United States swaps requirements.*

21 (b) *CONTENT OF THE RULE.*—

22 (1) *CRITERIA.*—*In the rule, the Commission*
23 *shall establish criteria for determining that 1 or more*
24 *categories of the swaps regulatory requirements of a*
25 *foreign jurisdiction are comparable to and as com-*

1 *prehensive as United States swaps requirements. The*
2 *criteria shall include—*

3 *(A) the scope and objectives of the swaps*
4 *regulatory requirements of the foreign jurisdic-*
5 *tion;*

6 *(B) the effectiveness of the supervisory com-*
7 *pliance program administered;*

8 *(C) the enforcement authority exercised by*
9 *the foreign jurisdiction; and*

10 *(D) such other factors as the Commission,*
11 *by rule, determines to be necessary or appro-*
12 *priate in the public interest.*

13 (2) *COMPARABILITY.—In the rule, the Commis-*
14 *sion shall—*

15 *(A) provide that any non-U.S. person or*
16 *any transaction between two non-U.S. persons*
17 *shall be exempt from United States swaps re-*
18 *quirements if the person or transaction is in*
19 *compliance with the swaps regulatory require-*
20 *ments of a foreign jurisdiction which the Com-*
21 *mission has determined to be comparable to and*
22 *as comprehensive as United States swaps re-*
23 *quirements; and*

24 *(B) set forth the circumstances in which a*
25 *U.S. person or a transaction between a U.S. per-*

1 son and a non-U.S. person shall be exempt from
2 United States swaps requirements if the person
3 or transaction is in compliance with the swaps
4 regulatory requirements of a foreign jurisdiction
5 which the Commission has determined to be com-
6 parable to and as comprehensive as United
7 States swaps requirements.

8 (3) *OUTCOMES-BASED COMPARISON.*—*In devel-*
9 *oping and applying the criteria, the Commission*
10 *shall emphasize the results and outcomes of, rather*
11 *than the design and construction of, foreign swaps*
12 *regulatory requirements.*

13 (4) *RISK-BASED RULEMAKING.*—*In the rule, the*
14 *Commission shall not take into account, for the pur-*
15 *poses of determining the applicability of United*
16 *States swaps requirements, the location of personnel*
17 *that arrange, negotiate, or execute swaps.*

18 (5) *No part of any rulemaking under this section*
19 *shall limit the Commission’s antifraud or*
20 *antimanipulation authority.*

21 (c) *APPLICATION OF THE RULE.*—

22 (1) *ASSESSMENTS OF FOREIGN JURISDIC-*
23 *TIONS.*—*Beginning on the date on which a final rule*
24 *is issued under this section, the Commission shall*
25 *begin to assess the swaps regulatory requirements of*

1 *foreign jurisdictions, in the order the Commission de-*
2 *termines appropriate, in accordance with the criteria*
3 *established pursuant to subsection (b)(1). Following*
4 *each assessment, the Commission shall determine, by*
5 *rule or by order, whether the swaps regulatory re-*
6 *quirements of the foreign jurisdiction are comparable*
7 *to and as comprehensive as United States swaps re-*
8 *quirements.*

9 (2) *SUBSTITUTED COMPLIANCE FOR UNASSESSED*
10 *MAJOR MARKETS.—Beginning 18 months after the*
11 *date of enactment of this Act—*

12 (A) *the swaps regulatory requirements of*
13 *each of the 8 foreign jurisdictions with the larg-*
14 *est swaps markets, as calculated by notional*
15 *value during the 12-month period ending with*
16 *such date of enactment, except those with respect*
17 *to which a determination has been made under*
18 *paragraph (1), shall be considered to be com-*
19 *parable to and as comprehensive as United*
20 *States swaps requirements; and*

21 (B) *a non-U.S. person or a transaction be-*
22 *tween 2 non-U.S. persons shall be exempt from*
23 *United States swaps requirements if the person*
24 *or transaction is in compliance with the swaps*

1 *regulatory requirements of any of such*
2 *unexcepted foreign jurisdictions.*

3 (3) *SUSPENSION OF SUBSTITUTED COMPLI-*
4 *ANCE.—If the Commission determines, by rule or by*
5 *order, that—*

6 (A) *the swaps regulatory requirements of a*
7 *foreign jurisdiction are not comparable to and as*
8 *comprehensive as United States swaps require-*
9 *ments, using the categories and criteria estab-*
10 *lished under subsection (b)(1);*

11 (B) *the foreign jurisdiction does not exempt*
12 *from its swaps regulatory requirements U.S. per-*
13 *sons who are in compliance with United States*
14 *swaps requirements; or*

15 (C) *the foreign jurisdiction is not providing*
16 *equivalent recognition of, or substituted compli-*
17 *ance for, registered entities (as defined in section*
18 *1a(41) of the Commodity Exchange Act) domi-*
19 *ciled in the United States,*

20 *the Commission may suspend, in whole or in part, a*
21 *determination made under paragraph (1) or a consid-*
22 *eration granted under paragraph (2).*

23 (d) *PETITION FOR REVIEW OF FOREIGN JURISDICTION*
24 *PRACTICES.—A registered entity, commercial market par-*
25 *ticipant (as defined in section 1a(7) of the Commodity Ex-*

1 *change Act), or Commission registrant (within the meaning*
2 *of such Act) who petitions the Commission to make or*
3 *change a determination under subsection (c)(1) or (c)(3) of*
4 *this section shall be entitled to expedited consideration of*
5 *the petition. A petition shall include any evidence or other*
6 *supporting materials to justify why the petitioner believes*
7 *the Commission should make or change the determination.*
8 *Petitions under this section shall be considered by the Com-*
9 *mission any time following the enactment of this Act. With-*
10 *in 180 days after receipt of a petition for a rulemaking*
11 *under this section, the Commission shall take final action*
12 *on the petition. Within 90 days after receipt of a petition*
13 *to issue an order or change an order issued under this sec-*
14 *tion, the Commission shall take final action on the petition.*

15 *(e) REPORT TO CONGRESS.—If the Commission makes*
16 *a determination described in this section through an order,*
17 *the Commission shall articulate the basis for the determina-*
18 *tion in a written report published in the Federal Register*
19 *and transmitted to the Committee on Agriculture of the*
20 *House of Representatives and Committee on Agriculture,*
21 *Nutrition, and Forestry of the Senate within 15 days of*
22 *the determination. The determination shall not be effective*
23 *until 15 days after the committees receive the report.*

1 (f) *DEFINITIONS.*—*As used in this Act and for pur-*
2 *poses of the rules issued pursuant to this Act, the following*
3 *definitions apply:*

4 (1) *U.S. PERSON.*—*The term “U.S. person”*—

5 (A) *means*—

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

8 (ii) *any partnership, corporation,*
9 *trust, or other legal person organized or in-*
10 *corporated under the laws of the United*
11 *States or having its principal place of busi-*
12 *ness in the United States;*

13 (iii) *any account (whether discre-*
14 *tionary or non-discretionary) of a U.S. per-*
15 *son; and*

16 (iv) *any other person as the Commis-*
17 *sion may further define to more effectively*
18 *carry out the purposes of this section; and*

19 (B) *does not include the International Mon-*
20 *etary Fund, the International Bank for Recon-*
21 *struction and Development, the Inter-American*
22 *Development Bank, the Asian Development*
23 *Bank, the African Development Bank, the United*
24 *Nations, their agencies or pension plans, or any*

1 *other similar international organizations or*
2 *their agencies or pension plans.*

3 (2) *UNITED STATES SWAPS REQUIREMENTS.—*

4 *The term “United States swaps requirements” means*
5 *the provisions relating to swaps contained in the*
6 *Commodity Exchange Act (7 U.S.C. 1a et seq.) that*
7 *were added by title VII of the Dodd-Frank Wall*
8 *Street Reform and Consumer Protection Act (15*
9 *U.S.C. 8301 et seq.) and any rules or regulations pre-*
10 *scribed by the Commodity Futures Trading Commis-*
11 *sion pursuant to such provisions.*

12 (3) *FOREIGN JURISDICTION.—The term “foreign*
13 *jurisdiction” means any national or supranational*
14 *political entity with common rules governing swaps*
15 *transactions.*

16 (4) *SWAPS REGULATORY REQUIREMENTS.—The*
17 *term “swaps regulatory requirements” means any*
18 *provisions of law, and any rules or regulations pursu-*
19 *ant to the provisions, governing swaps transactions or*
20 *the counterparties to swaps transactions.*

21 (g) *CONFORMING AMENDMENT.—Section 4(c)(1)(A) of*
22 *the Commodity Exchange Act (7 U.S.C. 6(c)(1)(A)) is*
23 *amended by inserting “or except as necessary to effectuate*
24 *the purposes of the Commodity End-User Relief Act,” after*
25 *“to grant exemptions,”.*

1 **SEC. 315. EXEMPTION OF QUALIFIED CHARITABLE ORGANI-**
2 **ZATIONS FROM DESIGNATION AND REGULA-**
3 **TION AS COMMODITY POOL OPERATORS.**

4 (a) *EXCLUSION FROM DEFINITION OF COMMODITY*
5 *POOL.*—Section 1a(11) of the Commodity Exchange Act (7
6 U.S.C. 1a(10)), as so redesignated by section 306(b)(1) of
7 this Act, is amended by adding at the end the following:

8 “(C) *EXCLUSION.*—The term ‘commodity
9 pool’ shall not include any investment trust, syn-
10 dicate, or similar form of enterprise excluded
11 from the definition of ‘investment company’ pur-
12 suant to sections 3(c)(10) or 3(c)(14) of the In-
13 vestment Company Act of 1940.”.

14 (b) *INAPPLICABILITY OF PROHIBITION ON USE OF IN-*
15 *STRUMENTALITIES OF INTERSTATE COMMERCE BY UNREG-*
16 *ISTERED COMMODITY TRADING ADVISOR.*—Section 4m of
17 such Act (7 U.S.C. 6m) is amended—

18 (1) in paragraph (1), in the 2nd sentence, by in-
19 serting “: Provided further, That the provisions of
20 this section shall not apply to any commodity trading
21 advisor that is: (A) a charitable organization, as de-
22 fined in section 3(c)(10)(D) of the Investment Com-
23 pany Act of 1940, or a trustee, director, officer, em-
24 ployee, or volunteer of such a charitable organization
25 acting within the scope of the employment or duties
26 of the person with the organization, whose trading ad-

1 *vice is provided only to, or with respect to, 1 or more*
2 *of the following: (i) any such charitable organization,*
3 *or (ii) an investment trust, syndicate or similar form*
4 *of enterprise excluded from the definition of ‘invest-*
5 *ment company’ pursuant to section 3(c)(10) of the In-*
6 *vestment Company Act of 1940; or (B) any plan,*
7 *company, or account described in section 3(c)(14) of*
8 *the Investment Company Act of 1940, any person or*
9 *entity who establishes or maintains such a plan, com-*
10 *pany, or account, or any trustee, director, officer, em-*
11 *ployee, or volunteer for any of the foregoing plans,*
12 *persons, or entities acting within the scope of the em-*
13 *ployment or duties of the person with the organiza-*
14 *tion, whose trading advice is provided only to, or*
15 *with respect to, any investment trust, syndicate, or*
16 *similar form of enterprise excluded from the defini-*
17 *tion of ‘investment company’ pursuant to section*
18 *3(c)(14) of the Investment Company Act of 1940” be-*
19 *fore the period; and*

20 *(2) by adding at the end the following:*

21 *“(4) DISCLOSURE CONCERNING EXCLUDED CHARI-*
22 *TABLE ORGANIZATIONS.—The operator of or advisor to any*
23 *investment trust, syndicate, or similar form of enterprise*
24 *excluded from the definition of ‘commodity pool’ by reason*
25 *of section 1a(10)(C) shall provide, to each donor to the fund,*

1 *trust, syndicate, or similar form of enterprise, at the time*
2 *of the donation or within 90 days after the date of the enact-*
3 *ment of this subsection, whichever is later, written informa-*
4 *tion describing the material terms of the operation of the*
5 *fund, trust, syndicate, or similar form of enterprise.”.*

6 **SEC. 316. SMALL BANK HOLDING COMPANY CLEARING EX-**
7 **EMPTION.**

8 *Section 2(h)(7)(C) of the Commodity Exchange Act (7*
9 *U.S.C. 2(h)(7)(C)) is amended by adding at the end the*
10 *following:*

11 *“(iv) HOLDING COMPANIES.—A deter-*
12 *mination made by the Commission under*
13 *clause (ii) shall, with respect to small banks*
14 *and savings associations, also apply to their*
15 *respective bank holding company (as de-*
16 *defined in section 2 of the Bank Holding*
17 *Company Act of 1956), or savings and loan*
18 *holding company (as defined in section 10*
19 *of the Home Owners’ Loan Act of 1933)), if*
20 *the total consolidated assets of the holding*
21 *company are no greater than the asset*
22 *threshold set by the Commission in deter-*
23 *mining small bank and savings association*
24 *eligibility under clause (ii).”.*

1 **SEC. 317. CORE PRINCIPLE CERTAINTY.**

2 *Section 5h(f) of the Commodity Exchange Act (7*
3 *U.S.C. 7b-3(f)) is amended—*

4 *(1) in paragraph (1)(B), by inserting “except as*
5 *described in this subsection” after “Commission by*
6 *rule or regulation”;*

7 *(2) in paragraph (2), by amending subpara-*
8 *graph (D) to read as follows:*

9 *“(D) have reasonable discretion in estab-*
10 *lishing and enforcing its rules related to trade*
11 *practice surveillance, market surveillance, real-*
12 *time marketing monitoring, and audit trail*
13 *given that a swap execution facility may offer a*
14 *trading system or platform to execute or trade*
15 *swaps through any means of interstate com-*
16 *merce. A swap execution facility shall be respon-*
17 *sible for monitoring trading in swaps only on its*
18 *own facility.”;*

19 *(3) in paragraph (4)(B), by adding at the end*
20 *the following: “A swap execution facility shall be re-*
21 *sponsible for monitoring trading in swaps only on its*
22 *own facility.”;*

23 *(4) in paragraph (6)(B)—*

24 *(A) by striking “shall—” and all that fol-*
25 *lows through “compliance with the” and insert*

1 *“shall monitor the trading activity on its facility*
2 *for compliance with any”*; and

3 *(B) by adding at the end the following: “A*
4 *swap execution facility shall be responsible for*
5 *monitoring positions only on its own facility.”*;

6 *(5) in paragraph (8), by striking “to liquidate”*
7 *and all that follows and inserting “to suspend or cur-*
8 *tail trading in a swap on its own facility.”*;

9 *(6) in paragraph (13)(B), by striking “cover the*
10 *operating costs of the swap execution facility for a 1-*
11 *year period, as calculated on a rolling basis” and in-*
12 *serting “conduct an orderly wind-down of its oper-*
13 *ations”*; and

14 *(7) in paragraph (15)—*

15 *(A) in subparagraph (A), by adding at the*
16 *end the following: “The individual may also per-*
17 *form other responsibilities for the swap execution*
18 *facility.”*;

19 *(B) in subparagraph (B)—*

20 *(i) in clause (i), by inserting “, a com-*
21 *mittee of the board,” after “directly to the*
22 *board”*;

23 *(ii) by striking clauses (iii) through*
24 *(v) and inserting the following:*

1 “(iii) establish and administer policies
2 and procedures that are reasonably designed
3 to resolve any conflicts of interest that may
4 arise;

5 “(iv) establish and administer policies
6 and procedures that reasonably ensure com-
7 pliance with this Act and the rules and reg-
8 ulations issued under this Act, including
9 rules prescribed by the Commission pursu-
10 ant to this section; and”;

11 (iii) by redesignating clause (vi) as
12 clause (v);

13 (C) in subparagraph (C), by striking
14 “(B)(vi)” and inserting “(B)(v)”; and

15 (D) in subparagraph (D)—

16 (i) in clause (i)—

17 (I) by striking “In accordance
18 with rules prescribed by the Commis-
19 sion, the” and inserting “The”; and

20 (II) by striking “and sign”; and

21 (ii) in clause (ii)—

22 (I) in the matter preceding sub-
23 clause (I), by inserting “or senior offi-
24 cer” after “officer”;

1 (II) by amending subclause (I) to
2 read as follows:

3 “*(I) submit each report described*
4 *in clause (i) to the Commission; and*”;
5 and

6 (III) in subclause (II), by insert-
7 ing “*materially*” before “*accurate*”.

8 **SEC. 318. TREATMENT OF FEDERAL HOME LOAN BANK**
9 **PRODUCTS.**

10 Section 1a(2) of the Commodity Exchange Act (7
11 *U.S.C. 1a(2)*) is amended—

- 12 (1) in subparagraph (B), by striking “and”;
13 (2) in subparagraph (C), by striking the period
14 and inserting “; and”; and
15 (3) by adding at the end the following:

16 “*(D) is the Federal Housing Finance Agen-*
17 *cy for any Federal Home Loan Bank (as defined*
18 *in section 2 of the Federal Home Loan Bank*
19 *Act).*”.

20 **SEC. 319. TREATMENT OF CERTAIN FUNDS.**

21 (a) **AMENDMENT TO THE DEFINITION OF COMMODITY**
22 **POOL OPERATOR.**—Section 1a(12) of the Commodity Ex-
23 *change Act (7 U.S.C. 1a(11)), as so redesignated by section*
24 *306(b)(1) of this Act, is amended by adding at the end the*
25 *following:*

1 “(C)(i) *The term ‘commodity pool operator’*
2 *does not include a person who serves as an in-*
3 *vestment adviser to an investment company reg-*
4 *istered pursuant to section 8 of the Investment*
5 *Company Act of 1940 or a subsidiary of such a*
6 *company, if the investment company or sub-*
7 *sidary invests, reinvests, owns, holds, or trades*
8 *in commodity interests limited to only financial*
9 *commodity interests.*

10 “(ii) *For purposes of this subparagraph*
11 *only, the term ‘financial commodity interest’*
12 *means a futures contract, an option on a futures*
13 *contract, or a swap, involving a commodity that*
14 *is not an exempt commodity or an agricultural*
15 *commodity, including any index of financial*
16 *commodity interests, whether cash settled or in-*
17 *volving physical delivery.*

18 “(iii) *For purposes of this subparagraph*
19 *only, the term ‘commodity’ does not include a se-*
20 *curity issued by a real estate investment trust,*
21 *business development company, or issuer of*
22 *asset-backed securities, including any index of*
23 *such securities.”.*

24 (b) *AMENDMENT TO THE DEFINITION OF COMMODITY*
25 *TRADING ADVISOR.—Section 1a(13) of such Act (7 U.S.C.*

1 *1a(12)), as so redesignated by section 306(b)(1) of this Act,*
 2 *is amended by adding at the end the following:*

3 “(E) *The term ‘commodity trading advisor’*
 4 *does not include a person who serves as an in-*
 5 *vestment adviser to an investment company reg-*
 6 *istered pursuant to section 8 of the Investment*
 7 *Company Act of 1940 or a subsidiary of such a*
 8 *company, if the commodity trading advice re-*
 9 *lates only to a financial commodity interest, as*
 10 *defined in paragraph (11)(C)(ii) of this section.*
 11 *For purposes of this subparagraph only, the term*
 12 *‘commodity’ does not include a security issued*
 13 *by a real estate investment trust, business devel-*
 14 *opment company, or issuer of asset-backed secu-*
 15 *rities, including any index of such securities.”.*

16 **TITLE IV—TECHNICAL** 17 **CORRECTIONS**

18 **SEC. 401. CORRECTION OF REFERENCES.**

19 (a) *Section 2(h)(8)(A)(ii) of the Commodity Exchange*
 20 *Act (7 U.S.C. 2(h)(8)(A)(ii)) is amended by striking “5h(f)*
 21 *of this Act” and inserting “5h(g)”.*

22 (b) *Section 5c(c)(5)(C)(i) of such Act (7 U.S.C. 7a-*
 23 *2(c)(5)(C)(i)) is amended by striking “1a(2)(i)” and in-*
 24 *serting “1a(19)(i)”.*

1 (c) Section 23(f) of such Act (7 U.S.C. 26(f)) is amend-
2 ed by striking “section 7064” and inserting “section 706”.

3 **SEC. 402. ELIMINATION OF OBSOLETE REFERENCES TO**
4 **DEALER OPTIONS.**

5 (a) *IN GENERAL.*—Section 4c of the Commodity Ex-
6 change Act (7 U.S.C. 6c) is amended by striking subsections
7 (d) and (e) and redesignating subsections (f) and (g) as sub-
8 sections (d) and (e), respectively.

9 (b) *CONFORMING AMENDMENTS.*—

10 (1) Section 2(d) of such Act (7 U.S.C. 2(d)) is
11 amended by striking “(g) of” and inserting “(e) of”.

12 (2) Section 4f(a)(4)(A)(i) of such Act (7 U.S.C.
13 6f(a)(4)(A)(i)) is amended by striking “, (d), (e), and
14 (g)” and inserting “and (e)”.

15 (3) Section 4k(5)(A) of such Act (7 U.S.C.
16 6k(5)(A)) is amended by striking “, (d), (e), and (g)”
17 and inserting “and (e)”.

18 (4) Section 5f(b)(1)(A) of such Act (7 U.S.C. 7b-
19 1(b)(1)(A)) is amended by striking “, (e) and (g)”
20 and inserting “and (e)”.

21 (5) Section 9(a)(2) of such Act (7 U.S.C.
22 13(a)(2)) is amended by striking “through (e)” and
23 inserting “and (c)”.

1 **SEC. 403. UPDATED TRADE DATA PUBLICATION REQUIRE-**
2 **MENT.**

3 *Section 4g(e) of the Commodity Exchange Act (7*
4 *U.S.C. 6g(e)) is amended by striking “exchange” and in-*
5 *serting “each designated contract market and swap execu-*
6 *tion facility”.*

7 **SEC. 404. FLEXIBILITY FOR REGISTERED ENTITIES.**

8 *Section 5c(b) of the Commodity Exchange Act (7*
9 *U.S.C. 7a-2(b)) is amended by striking “contract market,*
10 *derivatives transaction execution facility, or electronic trad-*
11 *ing facility” each place it appears and inserting “registered*
12 *entity”.*

13 **SEC. 405. ELIMINATION OF OBSOLETE REFERENCES TO**
14 **ELECTRONIC TRADING FACILITIES.**

15 *(a) Section 1a(19)(A)(x) of the Commodity Exchange*
16 *Act (7 U.S.C. 1a(18)(A)(x)), as so redesignated by section*
17 *306(b)(1) of this Act, is amended by striking “(other than*
18 *an electronic trading facility with respect to a significant*
19 *price discovery contract)”.*

20 *(b) Section 1a(41) of such Act (7 U.S.C. 1a(40)), as*
21 *so redesignated by section 306(b)(1) of this Act, is amend-*
22 *ed—*

23 *(1) by adding “and” at the end of subparagraph*
24 *(D); and*

25 *(2) by striking all that follows “section 21” and*
26 *inserting a period.*

1 (c) Section 4a(e) of such Act (7 U.S.C. 6a(e)) is
2 amended—

3 (1) in the 1st sentence—

4 (A) by striking “or by any electronic trad-
5 ing facility”;

6 (B) by striking “or on an electronic trading
7 facility”; and

8 (C) by striking “or electronic trading facil-
9 ity” each place it appears; and

10 (2) in the 2nd sentence, by striking “or electronic
11 trading facility with respect to a significant price
12 discovery contract”.

13 (d) Section 4g(a) of such Act (7 U.S.C. 6g(a)) is
14 amended by striking “any significant price discovery con-
15 tract traded or executed on an electronic trading facility
16 or”.

17 (e) Section 4i of such Act (7 U.S.C. 6i) is amended—

18 (1) by striking “, or any significant price dis-
19 covery contract traded or executed on an electronic
20 trading facility or any agreement, contract, or trans-
21 action that is treated by a derivatives clearing orga-
22 nization, whether registered or not registered, as fun-
23 gible with a significant price discovery contract”; and

24 (2) by striking “or electronic trading facility”

1 (f) Section 6(b) of such Act (7 U.S.C. 8(b)) is amended
2 by striking “or electronic trading facility” each place it ap-
3 pears.

4 (g) Section 12(e)(2) of such Act (7 U.S.C. 16(e)(2))
5 is amended by striking “in the case of—” and all that fol-
6 lows and inserting “in the case of an agreement, contract,
7 or transaction that is excluded from this Act under section
8 2(c) or 2(f) of this Act or title IV of the Commodity Futures
9 Modernization Act of 2000, or exempted under section 4(c)
10 of this Act (regardless of whether any such agreement, con-
11 tract, or transaction is otherwise subject to this Act).”.

12 **SEC. 406. ELIMINATION OF OBSOLETE REFERENCE TO AL-**
13 **TERNATIVE SWAP EXECUTION FACILITIES.**

14 Section 5h(h) of the Commodity Exchange Act (7
15 U.S.C. 7b-3(h)) is amended by striking “alternative” before
16 “swap”.

17 **SEC. 407. ELIMINATION OF REDUNDANT REFERENCES TO**
18 **TYPES OF REGISTERED ENTITIES.**

19 Section 6b of the Commodity Exchange Act (7 U.S.C.
20 13a) is amended in the 1st sentence by striking “as set forth
21 in sections 5 through 5c”.

22 **SEC. 408. CLARIFICATION OF COMMISSION AUTHORITY**
23 **OVER SWAPS TRADING.**

24 Section 8a of the Commodity Exchange Act (7 U.S.C.
25 12a) is amended—

1 (1) in paragraph (7)—

2 (A) by inserting “the protection of swaps
3 traders and to assure fair dealing in swaps, for”
4 after “appropriate for”;

5 (B) in subparagraph (A), by inserting
6 “swaps or” after “conditions in”; and

7 (C) in subparagraph (B), by inserting “or
8 swaps” after “future delivery”; and

9 (2) in paragraph (9)—

10 (A) by inserting “swap or” after “or liq-
11 uidation of any”; and

12 (B) by inserting “swap or” after “margin
13 levels on any”.

14 **SEC. 409. ELIMINATION OF OBSOLETE REFERENCE TO THE**
15 **COMMODITY EXCHANGE COMMISSION.**

16 Section 13(c) of the Commodity Exchange Act (7
17 U.S.C. 13c(c)) is amended by striking “or the Commission”.

18 **SEC. 410. ELIMINATION OF OBSOLETE REFERENCES TO DE-**
19 **RIVATIVE TRANSACTION EXECUTION FACILI-**
20 **TIES.**

21 (a) Section 1a(13)(B)(vi) of the Commodity Exchange
22 Act (7 U.S.C. 1a(12)(B)(vi)), as so redesignated by section
23 306(b)(1) of this Act, is amended by striking “derivatives
24 transaction execution facility” and inserting “swap execu-
25 tion facility”.

1 (b) Section 1a(35) of such Act (7 U.S.C. 1a(34)), as
2 so redesignated by section 306(b)(1) of this Act, is amended
3 by striking “or derivatives transaction execution facility”
4 each place it appears.

5 (c) Section 1a(36)(B)(iii)(I) of such Act (7 U.S.C.
6 1a(35)(B)(iii)(I)), as so redesignated by section 306(b)(1)
7 of this Act, is amended by striking “or registered derivatives
8 transaction execution facility”.

9 (d) Section 2(a)(1)(C)(ii) of such Act (7 U.S.C.
10 2(a)(1)(C)(ii)) is amended—

11 (1) by striking “, or register a derivatives trans-
12 action execution facility that trades or executes,”;

13 (2) by striking “, and no derivatives transaction
14 execution facility shall trade or execute such contracts
15 of sale (or options on such contracts) for future deliv-
16 ery”; and

17 (3) by striking “or the derivatives transaction
18 execution facility,”.

19 (e) Section 2(a)(1)(C)(v)(I) of such Act (7 U.S.C.
20 2(a)(1)(C)(v)(I)) is amended by striking “, or any deriva-
21 tives transaction execution facility on which such contract
22 or option is traded,”.

23 (f) Section 2(a)(1)(C)(v)(II) of such Act (7 U.S.C.
24 2(a)(1)(C)(v)(II)) is amended by striking “or derivatives
25 transaction execution facility” each place it appears.

1 (g) Section 2(a)(1)(C)(v)(V) of such Act (7 U.S.C.
2 2(a)(1)(C)(v)(V)) is amended by striking “or registered de-
3 rivatives transaction execution facility”.

4 (h) Section 2(a)(1)(D)(i) of such Act (7 U.S.C.
5 2(a)(1)(D)(i)) is amended in the matter preceding subclause
6 (I)—

7 (1) by striking “in, or register a derivatives
8 transaction execution facility”; and

9 (2) by striking “, or registered as a derivatives
10 transaction execution facility for,”.

11 (i) Section 2(a)(1)(D)(i)(IV) of such Act (7 U.S.C.
12 2(a)(1)(D)(i)(IV)) is amended by striking “registered de-
13 rivatives transaction execution facility,” each place it ap-
14 pears.

15 (j) Section 2(a)(1)(D)(ii)(I) of such Act (7 U.S.C.
16 2(a)(1)(D)(ii)(I)) is amended to read as follows:

17 “(I) the transaction is conducted on or subject to
18 the rules of a board of trade that has been designated
19 by the Commission as a contract market in such secu-
20 rity futures product; or”.

21 (k) Section 2(a)(1)(D)(ii)(II) of such Act (7 U.S.C.
22 2(a)(1)(D)(ii)(II)) is amended by striking “or registered de-
23 rivatives transaction execution facility”.

1 (l) Section 2(a)(1)(D)(ii)(III) of such Act (7 U.S.C.
2 2(a)(1)(D)(ii)(III)) is amended by striking “or registered
3 derivatives transaction execution facility member”.

4 (m) Section 2(a)(9)(B)(ii) of such Act (7 U.S.C.
5 2(a)(9)(B)(ii)) is amended—

6 (1) by striking “or registration” each place it
7 appears;

8 (2) by striking “or derivatives transaction execu-
9 tion facility” each place it appears;

10 (3) by striking “or register”;

11 (4) by striking “, registering,”; and

12 (5) by striking “, registration,”.

13 (n) Section 2(c)(2) of such Act (7 U.S.C. 2(c)(2)) is
14 amended by striking “or a derivatives transaction execution
15 facility” each place it appears.

16 (o) Section 4(a)(1) of such Act (7 U.S.C. 6(a)(1)) is
17 amended by striking “or derivatives transaction execution
18 facility”.

19 (p) Section 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is
20 amended—

21 (1) by striking “or registered” after “des-
22 ignated”; and

23 (2) by striking “or derivatives transaction execu-
24 tion facility”.

1 (q) Section 4a(a)(1) of such Act (7 U.S.C. 6a(a)(1))
2 is amended—

3 (1) by striking “or derivatives transaction execu-
4 tion facilities”; and

5 (2) by striking “or derivatives transaction execu-
6 tion facility”.

7 (r) Section 4a(e) of such Act (7 U.S.C. 6a(e)) is
8 amended—

9 (1) by striking “, derivatives transaction execu-
10 tion facility,” each place it appears; and

11 (2) by striking “or derivatives transaction execu-
12 tion facility”.

13 (s) Section 4c(e) of such Act (7 U.S.C. 6c(g)), as so
14 redesignated by section 402(a) of this Act, is amended by
15 striking “or derivatives transaction execution facility” each
16 place it appears.

17 (t) Section 4d of such Act (7 U.S.C. 6d) is amended
18 by striking “or derivatives transaction execution facility”
19 each place it appears.

20 (u) Section 4e of such Act (7 U.S.C. 6e) is amended
21 by striking “or derivatives transaction execution facility”.

22 (v) Section 4f(b) of such Act (7 U.S.C. 6f(b)) is amend-
23 ed by striking “or derivatives transaction execution facil-
24 ity” each place it appears.

1 (w) Section 4i of such Act (7 U.S.C. 6i) is amended
2 by striking “or derivatives transaction execution facility”.

3 (x) Section 4j(a) of such Act (7 U.S.C. 6j(a)) is amend-
4 ed by striking “and registered derivatives transaction exe-
5 cution facility”.

6 (y) Section 4p(a) of such Act (7 U.S.C. 6p(a)) is
7 amended by striking “, or derivatives transaction execution
8 facilities”.

9 (z) Section 4p(b) of such Act (7 U.S.C. 6p(b)) is
10 amended by striking “derivatives transaction execution fa-
11 cility,”.

12 (aa) Section 5c(f) of such Act (7 U.S.C. 7a-2(f)) is
13 amended by striking “and registered derivatives transaction
14 execution facility”.

15 (bb) Section 5c(f)(1) of such Act (7 U.S.C. 7a-2(f)(1))
16 is amended by striking “or registered derivatives trans-
17 action execution facility”.

18 (cc) Section 6 of such Act (7 U.S.C. 8) is amended—

19 (1) by striking “or registered”;

20 (2) by striking “or derivatives transaction execu-
21 tion facility” each place it appears; and

22 (3) by striking “or registration” each place it
23 appears.

24 (dd) Section 6a(a) of such Act (7 U.S.C. 10a(a)) is
25 amended—

1 (1) *by striking “or registered”;*

2 (2) *by striking “or a derivatives transaction exe-*
3 *cution facility”;* and

4 (3) *by inserting “shall” before “exclude” the first*
5 *place such term appears.*

6 (ee) *Section 6a(b) of such Act (7 U.S.C. 10a(b)) is*
7 *amended—*

8 (1) *by striking “or registered”; and*

9 (2) *by striking “or a derivatives transaction exe-*
10 *cution facility”.*

11 (ff) *Section 6d(1) of such Act (7 U.S.C. 13a-2(1)) is*
12 *amended by striking “derivatives transaction execution fa-*
13 *cility,”.*

14 **SEC. 411. ELIMINATION OF OBSOLETE REFERENCES TO EX-**
15 **EMPT BOARDS OF TRADE.**

16 (a) *Section 1a(19)(A)(x) of the Commodity Exchange*
17 *Act (7 U.S.C. 1a(18)(A)(x)), as so redesignated by section*
18 *306(b)(1) of this Act, is amended by striking “or an exempt*
19 *board of trade”.*

20 (b) *Section 12(e)(1)(B)(i) of such Act (7 U.S.C.*
21 *16(e)(1)(B)(i)) is amended by striking “or exempt board*
22 *of trade”.*

1 **SEC. 412. ELIMINATION OF REPORT DUE IN 1986.**

2 *Section 26 of the Futures Trading Act of 1978 (7*
3 *U.S.C. 16a) is amended by striking subsection (b) and re-*
4 *designating subsection (c) as subsection (b).*

5 **SEC. 413. COMPLIANCE REPORT FLEXIBILITY.**

6 *Section 4s(k)(3)(B) of the Commodity Exchange Act*
7 *(7 U.S.C. 6s(k)(3)(B)) is amended to read as follows:*

8 *“(B) REQUIREMENTS.—A compliance re-*
9 *port under subparagraph (A) shall—*

10 *“(i) include a certification that, under*
11 *penalty of law, the compliance report is*
12 *materially accurate and complete; and*

13 *“(ii) be furnished at such time as the*
14 *Commission determines by rule, regulation,*
15 *or order, to be appropriate.”.*

16 **SEC. 414. MISCELLANEOUS CORRECTIONS.**

17 *(a) Section 1a(13)(A)(i)(II) of the Commodity Ex-*
18 *change Act (7 U.S.C. 1a(12)(A)(i)(II)), as so redesignated*
19 *by section 306(b)(1) of this Act, is amended by adding at*
20 *the end a semicolon.*

21 *(b) Section 2(a)(1)(C)(ii)(III) of such Act (7 U.S.C.*
22 *2(a)(1)(C)(ii)(III)) is amended by moving the provision 2*
23 *ems to the right.*

24 *(c) Section 2(a)(1)(C)(iii) of such Act (7 U.S.C.*
25 *2(a)(1)(C)(iii)) is amended by moving the provision 2 ems*
26 *to the right.*

1 (d) Section 2(a)(1)(C)(iv) of such Act (7 U.S.C.
2 2(a)(1)(C)(iv)) is amended by striking “under or” and in-
3 serting “under”.

4 (e) Section 2(a)(1)(C)(v) of such Act (7 U.S.C.
5 2(a)(1)(C)(v)) is amended by moving the provision 2 ems
6 to the right.

7 (f) Section 2(a)(1)(C)(v)(VI) of such Act (7 U.S.C.
8 2(a)(1)(C)(v)(VI)) is amended by striking “III” and insert-
9 ing “(III)”.

10 (g) Section 2(c)(1) of such Act (7 U.S.C. 2(c)(1)) is
11 amended by striking the 2nd comma.

12 (h) Section 4(c)(3)(H) of such Act (7 U.S.C.
13 6(c)(3)(H)) is amended by striking “state” and inserting
14 “State”.

15 (i) Section 4c(c) of such Act (7 U.S.C. 6c(c)) is amend-
16 ed to read as follows:

17 “(c) The Commission shall issue regulations to con-
18 tinue to permit the trading of options on contract markets
19 under such terms and conditions that the Commission from
20 time to time may prescribe.”.

21 (j) Section 4d(b) of such Act (7 U.S.C. 6d(b)) is
22 amended by striking “paragraph (2) of this section” and
23 inserting “subsection (a)(2)”.

24 (k) Section 4f(c)(3)(A) of such Act (7 U.S.C.
25 6f(c)(3)(A)) is amended by striking the 1st comma.

1 (l) Section 4f(c)(4)(A) of such Act (7 U.S.C.
2 6f(c)(4)(A)) is amended by striking “in developing” and in-
3 serting “In developing”.

4 (m) Section 4f(c)(4)(B) of such Act (7 U.S.C.
5 6f(c)(4)(B)) is amended by striking “1817(a)” and insert-
6 ing “1817(a)”.

7 (n) Section 5 of such Act (7 U.S.C. 7) is amended by
8 redesignating subsections (c) through (e) as subsections (b)
9 through (d), respectively.

10 (o) Section 5b of such Act (7 U.S.C. 7a-1) is amended
11 by redesignating subsection (k) as subsection (j).

12 (p) Section 5f(b)(1) of such Act (7 U.S.C. 7b-1(b)(1))
13 is amended by striking “section 5f” and inserting “this sec-
14 tion”.

15 (q) Section 6(a) of such Act (7 U.S.C. 8(a)) is amended
16 by striking “the the” and inserting “the”.

17 (r) Section 8a of such Act (7 U.S.C. 12a) is amended
18 in each of paragraphs (2)(E) and (3)(B) by striking “Inves-
19 tors” and inserting “Investor”.

20 (s) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2)) is
21 amended by striking “subsection 4c” and inserting “section
22 4c”.

23 (t) Section 12(b)(4) of such Act (7 U.S.C. 16(b)(4))
24 is amended by moving the provision 2 ems to the left.

1 (u) Section 14(a)(2) of such Act (7 U.S.C. 18(a)(2))
2 is amended by moving the provision 2 ems to the left.

3 (v) Section 17(b)(9)(D) of such Act (7 U.S.C.
4 21(b)(9)(D)) is amended by striking the semicolon and in-
5 serting a period.

6 (w) Section 17(b)(10)(C)(ii) of such Act (7 U.S.C.
7 21(b)(10)(C)(ii)) is amended by striking “and” at the end.

8 (x) Section 17(b)(11) of such Act (7 U.S.C. 21(b)(11))
9 is amended by striking the period and inserting a semi-
10 colon.

11 (y) Section 17(b)(12) of such Act (7 U.S.C. 21(b)(12))
12 is amended—

13 (1) by striking “(A)”; and

14 (2) by striking the period and inserting “; and”.

15 (z) Section 17(b)(13) of such Act (7 U.S.C. 21(b)(13))
16 is amended by striking “A” and inserting “a”.

17 (aa) Section 17 of such Act (7 U.S.C. 21), as amended
18 by sections 101 through 103 of this Act, is amended by re-
19 designating subsection (q), as added by section 233(5) of
20 Public Law 97–444, and subsections (s) through (w) as sub-
21 sections (r) through (x), respectively.

22 (bb) Section 22(b)(3) of such Act (7 U.S.C. 25(b)(3))
23 is amended by striking “of registered” and inserting “of
24 a registered”.

- 1 *(cc) Section 22(b)(4) of such Act (7 U.S.C. 25(b)(4))*
- 2 *is amended by inserting a comma after “entity”.*

Union Calendar No. 97

114TH CONGRESS
1ST Session

H. R. 2289

[Report No. 114-134]

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.

MAY 29, 2015

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed