

114TH CONGRESS
2D SESSION

H. R. 5592

To amend the Commodity Exchange Act to clarify which fees the Commodity Futures Trading Commission may assess and collect, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2016

Mr. CUMMINGS introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Financial Services, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Commodity Exchange Act to clarify which fees the Commodity Futures Trading Commission may assess and collect, 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 “Derivatives Oversight
5 and Taxpayer Protection Act”.

1 **TITLE I—STRENGTHENING**
2 **OVERSIGHT AND ENFORCEMENT**

3 **SEC. 101. FEES TO RECOVER COSTS.**

4 (a) IN GENERAL.—The Commodity Exchange Act is
5 amended by inserting after section 10 (7 U.S.C. 17) the
6 following:

7 **“SEC. 11. FEES TO RECOVER COSTS.**

8 “(a) RECOVERY OF CERTAIN COSTS OF ANNUAL AP-
9 PROPRIATION.—

10 “(1) IN GENERAL.—Effective beginning Octo-
11 ber 1, 2016, so as to recover the costs to the Fed-
12 eral Government of the annual appropriation to the
13 Commission by Congress, the Commission shall as-
14 sess and collect fees under this subsection.

15 “(2) REQUIREMENTS.—Subject to paragraph
16 (3), the Commission may—

17 “(A) assess fees to recover the costs of the
18 regulatory services provided by the Commission;
19 and

20 “(B) assess fees from registered entities
21 and persons registered under this Act.

22 “(3) SERVICE FEES.—The Commission may as-
23 sess fees to recover the costs of the following regu-
24 latory services provided by the Commission:

1 “(A) Designated contract market compli-
2 ance examinations.

3 “(B) Foreign board of trade registration
4 reviews.

5 “(C) Swap execution facility designation
6 reviews.

7 “(D) Swap data repository registration re-
8 views.

9 “(E) Designated contract market designa-
10 tion reviews.

11 “(F) Swap execution facility compliance
12 examinations.

13 “(G) Swap data repository compliance re-
14 views.

15 “(H) Designated contract market contract
16 review and approvals.

17 “(I) Swap execution facility contract re-
18 view and approvals.

19 “(J) Designated contract market contract
20 certification and rule reviews.

21 “(K) Swap execution facility contract cer-
22 tification and rule reviews.

23 “(L) Swap data repository rule reviews.

24 “(M) Reviews of mergers, transfers, and
25 other action requests from designated contract

1 markets, swap execution facilities, and swap
2 data repositories.

3 “(N) Designated self-regulatory organiza-
4 tion financial surveillance reviews.

5 “(O) Registered futures association compli-
6 ance program reviews.

7 “(P) Derivatives clearing organization re-
8 views.

9 “(Q) Futures commission merchant exami-
10 nations.

11 “(R) Registered foreign exchange dealer
12 examinations.

13 “(S) Swap dealer registration reviews.

14 “(T) Swap dealer examinations.

15 “(U) Other entity registration, reviews, or
16 examinations, or other regulatory services pro-
17 vided by the Commission.

18 “(4) FEE RATES.—Fees assessed shall—

19 “(A) be reasonably related to the cost to
20 the Commission of providing the services of the
21 Commission;

22 “(B) take into consideration the full-time
23 equivalent number of employees performing the
24 services, overhead costs, and other factors that

1 the Commission determines are necessary in the
2 public interest;

3 “(C) support market access for smaller
4 market participants hedging or mitigating com-
5 mercial or agricultural risk, including farmers
6 and ranchers; and

7 “(D) minimize negative impacts on market
8 liquidity and maintain the efficiency, competi-
9 tiveness, and financial integrity of futures and
10 swaps markets in the United States.

11 “(5) COLLECTION OF FEES.—The Commission
12 shall collect fees paid in accordance with paragraph
13 (2) in a manner and within such time as determined
14 by the Commission.

15 “(b) PUBLICATION.—Not later than 60 days after the
16 date on which a law providing a regular appropriation to
17 the Commission for a fiscal year is enacted, the Commis-
18 sion shall publish in the Federal Register—

19 “(1) notices of the fee rates for the fiscal year,
20 including any estimates or projections on which the
21 fees are based; and

22 “(2) a schedule of fees for the fiscal year, in-
23 cluding an explanation of the method used for calcu-
24 lating applicable fee rates.

25 “(c) DEPOSIT OF FEES.—

1 “(1) OFFSETTING COLLECTIONS.—Fees col-
2 lected under subsection (a) for any fiscal year—

3 “(A) shall be deposited and credited as off-
4 setting collections to the account providing ap-
5 propriations to the Commission; and

6 “(B) except as provided in subsection (e),
7 shall not be collected or available for obligation
8 for any fiscal year except to the extent provided
9 in advance in appropriation Acts.

10 “(2) GENERAL REVENUES PROHIBITED.—No
11 fees collected under subsection (a) shall be deposited
12 and credited as general revenue of the Treasury.

13 “(d) FEE ORDERS.—

14 “(1) ANNUAL ADJUSTMENT.—For each fiscal
15 year, the Commission shall by order set the fees ap-
16 plicable under subsection (a) for the fiscal year at
17 rates that are reasonably likely to produce aggregate
18 fee collections under this section that are equal to
19 the costs to the Federal Government of the annual
20 appropriation to the Commission by Congress.

21 “(2) MID-YEAR ADJUSTMENT.—

22 “(A) IN GENERAL.—For each fiscal year,
23 the Commission shall determine, not later than
24 March 1 of the fiscal year, whether, based on
25 the actual fees collected during the first 5

1 months of the fiscal year, the collections gen-
2 erated under the fee rates determined under
3 paragraph (1) for the fiscal year are reasonably
4 likely to be 10 percent (or more) greater or less
5 than the annual appropriation to the Commis-
6 sion for the fiscal year.

7 “(B) ADJUSTMENT.—

8 “(i) IN GENERAL.—If the Commission
9 makes an affirmative determination, the
10 Commission shall by order, not later than
11 March 1, adjust the fees for the fiscal year
12 to rates that are reasonably likely to
13 produce aggregate fee collections under
14 this section that are equal to the cost to
15 the Federal Government of the annual ap-
16 propriation to the Commission by Con-
17 gress.

18 “(ii) FACTORS.—The fee rates shall
19 be assessed based on the same factors de-
20 scribed in subsection (a).

21 “(e) LAPSE OF APPROPRIATION.—If on the first day
22 of a fiscal year a regular appropriation to the Commission
23 has not been enacted, the Commission shall continue to
24 collect (as offsetting collections) the fees and assessments
25 under subsection (a) at the rates in effect on September

1 30 of the preceding fiscal year, until 90 days after the
 2 date a regular appropriation is enacted.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 2(d) of the Commodity Exchange
 5 Act (7 U.S.C. 2(d)) is amended by striking “and 9”
 6 and inserting “9, and 11”.

7 (2) Section 4(c)(1)(A)(i)(I) of the Commodity
 8 Exchange Act (7 U.S.C. 6(c)(1)(A)(i)(I)) is amended
 9 by inserting “11,” after “8e,”.

10 (3) Section 15(a)(3) of the Commodity Ex-
 11 change Act (7 U.S.C. 19(a)(3)) is amended by add-
 12 ing at the end the following:

13 “(D) An action under section 11.”.

14 **SEC. 102. CIVIL PENALTIES AND FINES UNDER THE COM-**
 15 **MODITY EXCHANGE ACT AND RELATED EN-**
 16 **FORCEMENT ACTIONS.**

17 (a) CIVIL PENALTIES GENERALLY.—Section
 18 6(c)(10) of the Commodity Exchange Act (7 U.S.C. 9(10))
 19 is amended by striking subparagraph (C) and inserting
 20 the following:

21 “(C) assess such person—

22 “(i) a civil penalty of not more than
 23 an amount equal to the greater of—

1 “(I) \$1,000,000, in the case of a
2 person who is an individual, for each
3 violation;

4 “(II) \$10,000,000, in the case of
5 any person other than an individual,
6 for each violation;

7 “(III) triple the monetary gain to
8 the person and all other persons act-
9 ing in concert with the person, for
10 each such violation; or

11 “(IV) triple the total amount of
12 losses to persons proximately caused
13 by each such violation; or

14 “(ii) a civil penalty of triple the max-
15 imum amount otherwise available under
16 clause (i) if the person, within 5 years pre-
17 ceding the violation, has been—

18 “(I) found in a proceeding
19 brought by the Commission, or by
20 agreement of settlement to which the
21 Commission is a party, to have reck-
22 lessly, knowingly, or willfully violated
23 any provision of this Act or of the
24 rules, regulations, or orders of the
25 Commission thereunder;

1 “(II) found in a proceeding
2 brought by the Securities and Ex-
3 change Commission, or by agreement
4 of settlement to which the Securities
5 and Exchange Commission is a party,
6 to have recklessly, knowingly, or will-
7 fully violated any provision of the Se-
8 curities Act of 1933, the Securities
9 Exchange Act of 1934, the Invest-
10 ment Company Act of 1940, or the
11 Investment Advisers Act of 1940, or
12 of the rules, regulations, or orders of
13 the Securities and Exchange Commis-
14 sion thereunder;

15 “(III) found in a proceeding
16 brought by the Federal Energy Regu-
17 latory Commission, or by agreement
18 of settlement to which the Federal
19 Energy Regulatory Commission is a
20 party, to have recklessly, knowingly,
21 or willfully violated any provision of
22 the Federal Power Act (16 U.S.C.
23 792 et seq.), the Natural Gas Act (15
24 U.S.C. 717 et seq.), the Public Utility
25 Regulatory Policies Act of 1978 (16

1 U.S.C. 2601 et seq.), the Natural Gas
2 Policy Act of 1978 (15 U.S.C. 3301
3 et seq.), or the rules, regulations, or
4 orders of the Federal Energy Regu-
5 latory Commission issued thereunder;

6 “(IV) convicted of any criminal
7 violation of this Act or of the rules,
8 regulations, or orders of the Commis-
9 sion thereunder;

10 “(V) convicted of any criminal
11 violation of the Securities Act of
12 1933, the Securities Exchange Act of
13 1934, the Investment Company Act of
14 1940, or the Investment Advisers Act
15 of 1940, or of the rules, regulations,
16 or orders of the Securities and Ex-
17 change Commission thereunder; or

18 “(VI) convicted of any other
19 criminal offense that involves any con-
20 duct, transaction, advice or activity
21 related to any commodity interest, as
22 that term is defined by the Commis-
23 sion, or security-based swap; and”.

24 (b) FINES AND CIVIL PENALTIES RELATED TO VIO-
25 LATION OF CEASE AND DESIST ORDER.—Section 6(d) of

1 the Commodity Exchange Act (7 U.S.C. 13b) is amend-
2 ed—

3 (1) by inserting “(1)” after “(d)”;

4 (2) by striking “\$140,000 or triple the mone-
5 tary gain to such person,” and inserting “(A)
6 \$1,000,000, in the case of a person who is an indi-
7 vidual, for each violation, (B) \$10,000,000, in the
8 case of any person other than an individual, for each
9 violation, (C) triple the monetary gain to the person
10 and all other persons acting in concert with the per-
11 son, for each such violation, or (D) triple the total
12 amount of losses to persons proximately caused by
13 each such violation,”; and

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

15 “(2) A person may be held liable for a civil penalty
16 in triple the amount otherwise available for a violation
17 under this subsection if the person, within 5 years pre-
18 ceding such violation, has been—

19 “(A) found in a proceeding brought by the
20 Commission, or by agreement of settlement to which
21 the Commission is a party, to have recklessly, know-
22 ingly, or willfully violated any provision of this Act
23 or the rules, regulations, or orders of the Commis-
24 sion thereunder;

1 “(B) found in a proceeding brought by the Se-
2 curities and Exchange Commission, or by agreement
3 of settlement to which the Securities and Exchange
4 Commission is a party, to have recklessly, know-
5 ingly, or willfully violated any provision of the Secu-
6 rities Act of 1933, the Securities Exchange Act of
7 1934, the Investment Company Act of 1940, or the
8 Investment Advisers Act of 1940, or of the rules,
9 regulations, or orders of the Securities and Ex-
10 change Commission thereunder;

11 “(C) found in a proceeding brought by the Fed-
12 eral Energy Regulatory Commission, or by agree-
13 ment of settlement to which the Federal Energy
14 Regulatory Commission is a party, to have reck-
15 lessly, knowingly, or willfully violated any provision
16 of the Federal Power Act (16 U.S.C. 792 et seq.),
17 the Natural Gas Act (15 U.S.C. 717 et seq.), the
18 Public Utility Regulatory Policies Act of 1978 (16
19 U.S.C. 2601 et seq.), the Natural Gas Policy Act of
20 1978 (15 U.S.C. 3301 et seq.), or the rules, regula-
21 tions, or orders of the Federal Energy Regulatory
22 Commission issued thereunder;

23 “(D) convicted of any criminal violation of this
24 Act or the rules, regulations, or orders of the Com-
25 mission thereunder;

1 “(E) convicted of any criminal violation of the
2 Securities Act of 1933, the Securities Exchange Act
3 of 1934, the Investment Company Act of 1940, or
4 the Investment Advisers Act of 1940, or of the rules,
5 regulations, or orders of the Securities and Ex-
6 change Commission thereunder; or

7 “(F) convicted of any other criminal offense
8 that involves any conduct, transaction, advice or ac-
9 tivity related to any commodity interest, as that
10 term is defined by the Commission, or security-based
11 swap.”.

12 (c) NONENFORCEMENT OF RULES OF GOVERNMENT
13 OR OTHER VIOLATIONS.—Section 6b of the Commodity
14 Exchange Act (7 U.S.C. 13a) is amended—

15 (1) in the first sentence, by striking “\$500,000
16 for each such violation, or, in any case of manipula-
17 tion or attempted manipulation in violation of sec-
18 tion 6(c), 6(d), or 9(a)(2), a civil penalty of not
19 more than \$1,000,000 for each such violation” and
20 inserting “(A) \$1,000,000, in the case of a person
21 who is an individual, for each violation, (B)
22 \$10,000,000, in the case of any person other than
23 an individual, for each violation, (C) triple the mone-
24 tary gain to the person and all other persons acting
25 in concert with the person, for each such violation,

1 or (D) triple the total amount of losses to persons
2 proximately caused by each such violation, and such
3 civil penalty shall be assessed for each violation on
4 which a failure to enforce or other violation occurs
5 or has occurred; provided that such registered entity,
6 director, officer, agent, or employee may be assessed
7 a civil penalty of triple the amount otherwise avail-
8 able if the person, within 5 years of such violation,
9 has been (i) found in a proceeding brought by the
10 Commission, or by agreement of settlement to which
11 the Commission is a party, to have recklessly, know-
12 ingly, or willfully violated any provision of this Act
13 or the rules, regulations, or orders of the Commis-
14 sion thereunder, (ii) found in a proceeding brought
15 by the Securities and Exchange Commission, or by
16 agreement of settlement to which the Securities and
17 Exchange Commission is a party, to have recklessly,
18 knowingly, or willfully violated any provision of the
19 Securities Act of 1933, the Securities Exchange Act
20 of 1934, the Investment Company Act of 1940, or
21 the Investment Advisers Act of 1940, or of the rules,
22 regulations, or orders of the Securities and Ex-
23 change Commission thereunder, (iii) found in a pro-
24 ceeding brought by the Federal Energy Regulatory
25 Commission, or by agreement of settlement to which

1 the Federal Energy Regulatory Commission is a
2 party, to have recklessly, knowingly, or willfully vio-
3 lated any provision of the Federal Power Act (16
4 U.S.C. 792 et seq.), the Natural Gas Act (15 U.S.C.
5 717 et seq.), the Public Utility Regulatory Policies
6 Act of 1978 (16 U.S.C. 2601 et seq.), the Natural
7 Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), or
8 the rules, regulations, or orders of the Federal En-
9 ergy Regulatory Commission issued thereunder; (iv)
10 convicted of any criminal violation of this Act or the
11 rules, regulations, or orders of the Commission
12 thereunder; (v) convicted of any criminal violation of
13 the Securities Act of 1933, the Securities Exchange
14 Act of 1934, the Investment Company Act of 1940,
15 or the Investment Advisers Act of 1940, or of the
16 rules, regulations, or orders of the Securities and
17 Exchange Commission thereunder; or (vi) convicted
18 of any other criminal offense that involves any con-
19 duct, transaction, advice or activity related to any
20 commodity interest, as that term is defined by the
21 Commission, or security-based swap”; and
22 (2) in the second sentence, by striking
23 “\$500,000” and inserting “\$1,000,000”.

1 (d) ACTION TO ENJOIN OR RESTRAIN VIOLA-
2 TIONS.—Section 6c(d) of the Commodity Exchange Act (7
3 U.S.C. 13a–1(d)) is amended—

4 (1) in paragraph (1), by inserting “a civil pen-
5 alty in the amount of” after “violation”; and

6 (2) by striking subparagraphs (A) and (B) of
7 paragraph (1) and inserting the following:

8 “(A) not more than the greater of—

9 “(i) \$1,000,000, in the case of a per-
10 son who is an individual, for each violation;

11 “(ii) \$10,000,000, in the case of any
12 person other than an individual, for each
13 violation;

14 “(iii) triple the monetary gain to the
15 person and all other persons acting in con-
16 cert with the person, for each such viola-
17 tion; or

18 “(iv) triple the total amount of losses
19 by persons proximately caused by each
20 such violation; or

21 “(B) triple the maximum amount other-
22 wise available under subparagraph (A) if the
23 person, within 5 years preceding the violation,
24 has been—

1 “(i) found in a proceeding brought by
2 the Commission, or by agreement of settle-
3 ment to which the Commission is a party,
4 to have recklessly, knowingly, or willfully
5 violated any provision of this Act or of the
6 rules, regulations, or orders of the Com-
7 mission thereunder;

8 “(ii) found in a proceeding brought by
9 the Securities and Exchange Commission,
10 or by agreement of settlement to which the
11 Securities and Exchange Commission is a
12 party, to have recklessly, knowingly, or
13 willfully violated any provision of the Secu-
14 rities Act of 1933, the Securities Exchange
15 Act of 1934, the Investment Company Act
16 of 1940, or the Investment Advisers Act of
17 1940, or of the rules, regulations, or or-
18 ders of the Commission thereunder;

19 “(iii) found in a proceeding brought
20 by the Federal Energy Regulatory Com-
21 mission, or by agreement of settlement to
22 which the Federal Energy Regulatory
23 Commission is a party, to have recklessly,
24 knowingly, or willfully violated any provi-
25 sion of the Federal Power Act (16 U.S.C.

1 792 et seq.), the Natural Gas Act (15
2 U.S.C. 717 et seq.), the Public Utility Reg-
3 ulatory Policies Act of 1978 (16 U.S.C.
4 2601 et seq.), the Natural Gas Policy Act
5 of 1978 (15 U.S.C. 3301 et seq.), or the
6 rules, regulations, or orders of the Federal
7 Energy Regulatory Commission issued
8 thereunder;

9 “(iv) convicted of any criminal viola-
10 tion of this Act or of the rules, regulations,
11 or orders of the Commission thereunder;

12 “(v) convicted of any criminal viola-
13 tion of the Securities Act of 1933, the Se-
14 curities Exchange Act of 1934, the Invest-
15 ment Company Act of 1940, or the Invest-
16 ment Advisers Act of 1940, or of the rules,
17 regulations, or orders of the Securities and
18 Exchange Commission thereunder; or

19 “(vi) convicted of any other criminal
20 offense that involves any conduct, trans-
21 action, advice or activity related to any
22 commodity interest, as that term is defined
23 by the Commission, or security-based
24 swap.”.

1 (e) CRIMINAL PENALTIES.—Section 9(a) of the Com-
2 modity Exchange Act (7 U.S.C. 13(a)) is amended in the
3 matter preceding paragraph (1) by inserting after
4 “\$1,000,000” the following: “in the case of an individual
5 for each violation or \$10,000,000 in the case of any person
6 other than an individual for each violation,”.

7 (f) STATUTE OF LIMITATIONS.—Section 9 of the
8 Commodity Exchange Act (7 U.S.C. 13) is amended by
9 adding at the end the following:

10 “(f) STATUTE OF LIMITATIONS.—

11 “(1) IN GENERAL.—An action, suit or pro-
12 ceeding for the enforcement of any civil fine, pen-
13 alty, or forfeiture, pecuniary or otherwise, shall not
14 be entertained unless commenced within 10 years
15 after the date when the cause of action first accrued
16 if, within the same period, the offender or the prop-
17 erty is found within the United States in order that
18 proper service may be made thereon.

19 “(2) ACCRUAL.—A cause of action accrues as
20 of the date the Commission learns of facts sufficient
21 to give the Commission notice that a violation has
22 occurred.”.

23 (g) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date that is 90 days
25 after the date of the enactment of this Act.

1 **SEC. 103. CLOSING THE CROSS-BORDER LOOPHOLE.**

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

4 (1) by redesignating paragraphs (1) and (2) as
5 subparagraphs (A) and (B), respectively;

6 (2) in the matter preceding subparagraph (A),
7 as so redesignated, by striking “The provisions” and
8 inserting the following:

9 “(1) IN GENERAL.—The provisions”;

10 (3) in paragraph (1), as so designated—

11 (A) in subparagraph (A), as so redesign-
12 ated, by striking “or” at the end;

13 (B) in subparagraph (B), as so redesign-
14 ated, by striking the period at the end and in-
15 serting “; or”; and

16 (C) by adding at the end the following:

17 “(C) except as provided in paragraph (2),
18 involve a swaps transaction in which a financial
19 entity that is domiciled or organized in the
20 United States, or a subsidiary entity that is
21 majority owned or controlled by a financial enti-
22 ty that is domiciled or organized in the United
23 States, bears swaps-related risks.”; and

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

25 “(2) SUBSTITUTED COMPLIANCE.—Notwith-
26 standing paragraph (1)(C), the Commission may

1 allow a swaps transaction that involves a subsidiary
 2 entity that is majority owned or controlled by a fi-
 3 nancial entity that is domiciled or organized in the
 4 United States to be conducted in whole or in part
 5 under the rules and oversight of a foreign jurisdic-
 6 tion if the Commission determines, by rule, that—

7 “(A) the applicable elements of the foreign
 8 rules are substantively equivalent to, or offer
 9 greater protection than, the applicable rules in
 10 the United States; and

11 “(B) enforcement of and oversight with re-
 12 spect to the rules described in subparagraph
 13 (A) is not less stringent than enforcement of
 14 and oversight with respect to the applicable
 15 rules in the United States.”.

16 **SEC. 104. PROVIDING OVERSIGHT OF FOREIGN EXCHANGE**
 17 **SWAPS.**

18 Section 1a(47) of the Commodity Exchange Act (7
 19 U.S.C. 1a(47)) is amended by striking subparagraph (E)
 20 and inserting the following:

21 “(E) TREATMENT OF FOREIGN EXCHANGE
 22 SWAPS AND FORWARDS.—Foreign exchange
 23 swaps and foreign exchange forwards shall be
 24 considered swaps under this paragraph.”.

1 **SEC. 105. IMPROVING DATA SHARING BETWEEN REGU-**
2 **LATORS.**

3 Section 21 of the Commodity Exchange Act (7 U.S.C.
4 24a) is amended by adding at the end the following:

5 “(i) DATA SHARING.—The Commission shall make
6 data with respect to any person that is required to be reg-
7 istered as a swap data repository under this section avail-
8 able to any other financial regulatory agency—

9 “(1) upon request; and

10 “(2) as soon as is practicable after receiving a
11 request.”.

12 **SEC. 106. IMPROVING DATA QUALITY AND ACCESSIBILITY.**

13 Section 4s of the Commodity Exchange Act (7 U.S.C.
14 6s) is amended by adding at the end the following:

15 “(m) DATA QUALITY AND ACCESSIBILITY.—

16 “(1) IN GENERAL.—Not later than 2 years
17 after the date of enactment of this subsection, the
18 Commission and the Securities and Exchange Com-
19 mission shall determine whether the data that swap
20 dealers registered under this section provide to swap
21 data repositories—

22 “(A) are accurate; and

23 “(B) use consistent and standardized for-
24 mats that allow that data to be aggregated and
25 analyzed by regulators.

1 “(2) PENALTY.—The Commission shall revoke
2 the license of any swap dealer that the Commission
3 and the Securities and Exchange Commission has
4 found violated paragraph (1).”.

5 **TITLE II—SHIFTING DERIVA-**
6 **TIVES RISKS FROM TAX-**
7 **PAYERS TO FINANCIAL INSTI-**
8 **TUTIONS**

9 **SEC. 201. ENDING FAVORABLE TREATMENT OF DERIVA-**
10 **TIVES IN BANKRUPTCY.**

11 Section 560 of title 11, United States Code, is re-
12 pealed.

13 **SEC. 202. REVERSING THE CFTC’S INTERAFFILIATE MAR-**
14 **GIN EXCEPTION.**

15 Not later than 180 days after the date of enactment
16 of this Act, the Commodity Futures Trading Commission
17 shall modify the rule on margin requirements entitled
18 “Margin Requirements for Uncleared Swaps for Swap
19 Dealers and Major Swap Participants” (81 Fed. Reg. 636
20 (January 6, 2016)) to require entities to collect margin
21 in all interaffiliate swaps.

1 **SEC. 203. BANNING CLOSEOUT NETTING FOR CAPITAL PUR-**
2 **POSES; ENSURING MINIMUM CAPITAL.**

3 Section 165(b)(1) of the Financial Stability Act of
4 2010 (12 U.S.C. 5365(b)(1)) is amended by adding at the
5 end the following:

6 “(C) CONSOLIDATED ASSETS.—

7 “(i) DEFINITION.—In this subpara-
8 graph, the term ‘covered financial institu-
9 tion’ means—

10 “(I) a swap dealer registered
11 under section 4s of the Commodity
12 Exchange Act (7 U.S.C. 6s);

13 “(II) a security-based swap deal-
14 er, as defined in section 3(a) of the
15 Securities Exchange Act of 1934 (15
16 U.S.C. 78c(a));

17 “(III) an insured depository in-
18 stitution, as defined in section 3 of
19 the Federal Deposit Insurance Act
20 (12 U.S.C. 1813);

21 “(IV) a nonbank financial com-
22 pany supervised by the Board of Gov-
23 ernors;

24 “(V) a major swap participant,
25 as defined in section 1a of the Com-
26modity Exchange Act (7 U.S.C. 1a);

1 “(VI) a bank holding company
2 described in subsection (a); and

3 “(VII) any subsidiary of a bank
4 holding company described in sub-
5 section (a).

6 “(ii) IN GENERAL.—For purposes of
7 determining the amount of capital required
8 under the risk-based capital requirements
9 and leverage limits required under sub-
10 paragraph (A)(i), consolidated assets shall
11 include the fair value and potential future
12 exposure of derivatives exposures, without
13 recognizing the benefits of any netting ar-
14 rangement, unless the netting arrange-
15 ment—

16 “(I)(aa) is documented under a
17 formal master netting agreement or
18 other formal arrangement with a de-
19 rivatives clearing organization reg-
20 istered with a primary Federal finan-
21 cial regulatory agency; and

22 “(bb) meets financial standards
23 approved by the Board of Governors
24 and the Corporation; or

1 “(II)(aa) is documented under a
2 formal master netting agreement with
3 a counterparty; and

4 “(bb) requires the covered finan-
5 cial institution, as a matter of ongoing
6 business practice, to—

7 “(AA) exchange collateral
8 daily for the fulfillment of vari-
9 ation margin requirements on a
10 net basis; and

11 “(BB) fulfill all contractual
12 payment requirements, including
13 payments for contract determina-
14 tion, on a net basis, with such
15 net exchange of collateral and
16 payments encompassing all de-
17 rivatives exposures covered by the
18 formal arrangement.

19 “(D) TOTAL DERIVATIVES RISK EXPO-
20 SURES.—For purposes of determining the
21 amount of capital required under leverage limits
22 required under subparagraph (A)(i)—

23 “(i) total derivatives risk exposures
24 shall not be assessed at a level less than 2
25 percent of total gross notional derivatives

1 contracts to which the covered financial in-
2 stitution, as defined in subparagraph
3 (C)(i), is a party; and

4 “(ii) such leverage limits shall not
5 vary for derivatives exposures as compared
6 to other assets.”.

7 **SEC. 204. REPORT ON CLEARINGHOUSES.**

8 (a) IN GENERAL.—Not later than 1 year after the
9 date of enactment of this Act, the Commodity Futures
10 Trading Commission, the Office of the Comptroller of the
11 Currency, the Federal Deposit Insurance Corporation, and
12 the Board of Governors of the Federal Reserve System
13 shall jointly publish a report that answers the following
14 questions:

15 (1) Are prefunded default funds at major clear-
16 inghouses, along with prefunded liquidity resources,
17 adequate to absorb losses and continue operations in
18 the event of the failure of multiple large clearing
19 members during a systemic stress event affecting the
20 financial system as a whole?

21 (2) Are capital and liquidity resources associ-
22 ated with cleared derivatives at clearinghouse mem-
23 bers adequate to meet clearinghouse capital and
24 margin calls that might occur during a systemic
25 stress event associated with the failure of multiple

1 large clearing members during a systemic stress
2 event?

3 (3) Based on planned resource levels at clear-
4 inghouses and major clearing members, in what
5 ways might a lack of prefunded resources at a clear-
6 ing house, or the level of member capital and liquid-
7 ity resources associated with cleared derivatives, con-
8 tribute to increased financial system stress during a
9 systemic event?

10 (4) How would the answers to the questions in
11 paragraphs (1) through (3) be affected if portfolio
12 correlation levels in clearinghouse margin and de-
13 fault fund models were significantly lower than those
14 assumed in current risk models?

15 (5) Are such lower correlation levels possible in
16 a stress event?

17 (6) Are capital levels held by clearinghouses
18 currently adequate to align risk management incen-
19 tives between clearinghouses themselves, their mem-
20 bers, and end user clients of their members?

21 (7) Do the fiduciary duties of clearinghouse
22 management to their stockholders in any way con-
23 flict with the public interest?

24 (b) POLICY RECOMMENDATIONS.—The report re-
25 quired under subsection (a) shall contain policy rec-

1 ommendations associated with the answers to the ques-
2 tions posed under paragraphs (1) through (7) of that sub-
3 section.

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