

JUNE 12, 2014

RULES COMMITTEE PRINT 113-47
TEXT OF H.R. 4413, CUSTOMER PROTECTION AND
END USER RELIEF ACT

[Showing text based on H.R. 4413 as reported by the Committee on Agriculture, H.R. 634, H.R. 677, H.R. 742, H.R. 1003, H.R. 1256, H.R. 3814, H.R. 4267, and H.R. 4330.]

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Customer Protection
3 and End-User Relief Act”.

4 SEC. 2. TABLE OF CONTENTS.

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

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

TITLE I—CUSTOMER PROTECTIONS

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Sec. 104. Notice and certifications providing additional customer protections.
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- Sec. 371. Effective date.

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

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

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

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

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

10 “(s) A registered futures association shall—

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

15 “(A) the residual interest of the member,
16 as described in section 1.23 of title 17, Code of
17 Federal Regulations, in any customer seg-
18 regated funds account of the member, as identi-
19 fied in section 1.20 of such title, and in any for-
20 eign futures and foreign options customer se-
21 cured amount funds account of the member, as
22 identified in section 30.7 of such title; and

23 “(B) the residual interest of the member,
24 as described in section 22.2(e)(4) of such title,
25 in any cleared swaps customer collateral ac-

1 count of the member, as identified in section
2 22.2 of such title; and

3 “(2) establish rules to govern the withdrawal,
4 transfer or disbursement by any member of the asso-
5 ciation, that is a futures commission merchant, of
6 the member’s residual interest in customer seg-
7 regated funds as provided in such section 1.20, in
8 foreign futures and foreign options customer secured
9 amount funds, identified as provided in such section
10 30.7, and from a cleared swaps customer collateral,
11 identified as provided in such section 22.2.”.

12 **SEC. 103. ELECTRONIC CONFIRMATION OF CUSTOMER**
13 **FUNDS.**

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

17 “(t) A registered futures association shall require any
18 member of the association that is a futures commission
19 merchant to—

20 “(1) use an electronic system or systems to re-
21 port financial and operational information to the as-
22 sociation, including information related to customer
23 segregated funds, foreign futures and foreign options
24 customer secured amount funds accounts, and
25 cleared swaps customer collateral, in accordance

1 with such terms, conditions, documentation stand-
2 ards, and regular time intervals as are established
3 by the association;

4 “(2) instruct each depository, including any
5 bank, trust company, derivatives clearing organiza-
6 tion, or futures commission merchant, holding cus-
7 tomer segregated funds under section 1.20 of title
8 17, Code of Federal Regulations, foreign futures and
9 foreign options customer secured amount funds
10 under section 30.7 of such title, or cleared swap cus-
11 tomer funds under section 22.2 of such title, to re-
12 port balances in the futures commission merchant’s
13 section 1.20 customer segregated funds, section 30.7
14 foreign futures and foreign options customer secured
15 amount funds, and section 22.2 cleared swap cus-
16 tomer funds, to the registered futures association or
17 another party designated by the registered futures
18 association, in the form, manner, and interval pre-
19 scribed by the registered futures association; and

20 “(3) hold section 1.20 customer segregated
21 funds, section 30.7 foreign futures and foreign op-
22 tions customer secured amount funds and section
23 22.2 cleared swaps customer funds in a depository
24 that reports the balances in these accounts of the fu-
25 tures commission merchant held at the depository to

1 the registered futures association or another party
2 designated by the registered futures association in
3 the form, manner, and interval prescribed by the
4 registered futures association.”.

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

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

10 “(u) A futures commission merchant that has ad-
11 justed net capital in an amount less than the amount re-
12 quired by regulations established by the Commission or
13 a self-regulatory organization of which the futures com-
14 mission merchant is a member shall immediately notify
15 the Commission and the self-regulatory organization of
16 this occurrence.

17 “(v) A futures commission merchant that does not
18 hold a sufficient amount of funds in segregated accounts
19 for futures customers under section 1.20 of title 17, Code
20 of Federal Regulations, in foreign futures and foreign op-
21 tions secured amount accounts for foreign futures and for-
22 eign options secured amount customers under section 30.7
23 of such title, or in segregated accounts for cleared swap
24 customers under section 22.2 of such title, as required by
25 regulations established by the Commission or a self-regu-

latory organization of which the futures commission merchant is a member, shall immediately notify the Commission and the self-regulatory organization of this occurrence.

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

SEC. 105. FUTURES COMMISSION MERCHANT COMPLIANCE.

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

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

(2) by inserting “(1)” before “It shall be unlawful”; and

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

“(2) Any rules or regulations requiring a futures commission merchant to maintain a residual interest in accounts held for the benefit of customers in amounts at least sufficient to exceed the sum of all uncollected margin deficits of such customers shall provide that a futures

1 commission merchant shall meet its residual interest re-
2 quirement as of the end of each business day calculated
3 as of the close of business on the previous business day.”.

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

8 **SEC. 106. CERTAINTY FOR FUTURES CUSTOMERS AND MAR-**
9 **KET PARTICIPANTS.**

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

12 (1) by striking “and” at the end of paragraph
13 (4);

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

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

17 “(6) that cash, securities, or other property of
18 the estate of a commodity broker, including the
19 trading or operating accounts of the commodity
20 broker and commodities held in inventory by the
21 commodity broker, shall be included in customer
22 property, subject to any otherwise unavoidable secu-
23 rity interest, or otherwise unavoidable contractual
24 offset or netting rights of creditors (including rights
25 set forth in a rule or bylaw of a derivatives clearing

1 organization or a clearing agency) in respect of such
2 property, but only to the extent that the property
3 that is otherwise customer property is insufficient to
4 satisfy the net equity claims of public customers (as
5 such term may be defined by the Commission by
6 rule or regulation) of the commodity broker.”.

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

8 (a) IN GENERAL.—Not later than one year after the
9 date of the enactment of this Act, the Commodity Futures
10 Trading Commission shall submit to the Committee on
11 Agriculture of the House of Representatives and the Com-
12 mittee on Agriculture, Nutrition, and Forestry of the Sen-
13 ate a report examining the effect of the practice commonly
14 referred to as high-frequency trading on markets under
15 its jurisdiction.

16 (b) SPECIFIC AREAS EXAMINED IN REPORT.—In
17 preparing the report submitted under subsection (a), the
18 Commission shall particularly examine each of the fol-
19 lowing areas:

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

23 (2) The role such trading plays in providing
24 market liquidity.

1 (3) Whether the technology creates discrep-
2 ancies in the marketplace between market partici-
3 pants.

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

7 (A) protect market participants and the
8 public from fraud, manipulation, abusive prac-
9 tices, and systemic risk related to derivatives;
10 and

11 (B) foster transparent, open, competitive,
12 and financially sound markets.

13 **TITLE II—COMMODITY FUTURES**
14 **TRADING COMMISSION RE-**
15 **FORMS**

16 **SEC. 201. SHORT TITLE.**

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

19 **SEC. 202. EXTENSION OF OPERATIONS.**

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

1 **SEC. 203. 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 by striking paragraphs (1) and
7 (2) and inserting the following:

8 “(1) IN GENERAL.—Before promulgating a reg-
9 ulation under this Act or issuing an order (except as
10 provided in paragraph (3)), the Commission,
11 through the Office of the Chief Economist, shall as-
12 sess and publish in the regulation or order the costs
13 and benefits, both qualitative and quantitative, of
14 the proposed regulation or order, and the proposed
15 regulation or order shall state its statutory justifica-
16 tion.

17 “(2) CONSIDERATIONS.—In making a reasoned
18 determination of the costs and the benefits, the
19 Commission 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 mar-
26 ket 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
8 its 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
12 the costs (recognizing that some costs are dif-
13 ficult to 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) whether, in choosing among alter-
18 native regulatory approaches, those approaches
19 maximize net benefits (including potential eco-
20 nomic and other benefits, distributive impacts,
21 and equity); and

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

23 **SEC. 204. DIVISION DIRECTORS.**

24 Section 2(a)(6)(C) of the Commodity Exchange Act
25 (7 U.S.C. 2(a)(6)(C)) is amended by inserting “, and the

1 heads of the units shall serve at the pleasure of the Com-
2 mission, report directly to the Commission, and perform
3 such functions and duties as the Commission may pre-
4 scribe” before the period.

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

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

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

10 “(A) ESTABLISHMENT.—There is estab-
11 lished in the Commission the Office of the Chief
12 Economist.

13 “(B) HEAD.—The Office of the Chief
14 Economist shall be headed by the Chief Econo-
15 mist, who shall be appointed by the Commission
16 and serve at the pleasure of the Commission.

17 “(C) FUNCTIONS.—The Chief Economist
18 shall report directly to the Commission and per-
19 form such functions and duties as the Commis-
20 sion may prescribe.

21 “(D) PROFESSIONAL STAFF.—The Com-
22 mission shall appoint such other economists as
23 may be necessary to assist the Chief Economist
24 in performing such economic analysis, regu-

1 latory cost-benefit analysis, or research as the
2 Commission may direct.”.

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

6 **SEC. 206. PROCEDURES GOVERNING ACTIONS TAKEN WITH-**
7 **OUT A COMMISSION VOTE.**

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

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

12 “(12) RULES AND REGULATIONS.—

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

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

17 “(B) NOTICE TO COMMISSION.—The Com-
18 mission shall develop and publish internal pro-
19 cedures governing the issuance by any division
20 or office of the Commission of any response to
21 a formal, written request or petition from any
22 member of the public for an exemptive, a no-ac-
23 tion, or an interpretive letter and such proce-
24 dures shall provide that the Commission be pro-
25 vided with the final version of the matter to be

1 issued with sufficient notice to thoroughly re-
2 view the matter prior to its issuance.”.

3 **SEC. 207. STRATEGIC TECHNOLOGY PLAN.**

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

7 “(18) STRATEGIC TECHNOLOGY PLAN.—

8 “(A) IN GENERAL.—Every 5 years, the
9 Commission shall develop and submit to the
10 Committee on Agriculture of the House of Rep-
11 resentatives and the Committee on Agriculture,
12 Nutrition, and Forestry of the Senate a detailed
13 plan focused on the acquisition and use of tech-
14 nology by the Commission.

15 “(B) CONTENTS.—The plan shall—

16 “(i) include for each related division
17 or office a detailed technology strategy fo-
18 cused on market surveillance and risk de-
19 tection, market data collection, aggrega-
20 tion, interpretation, standardization, har-
21 monization, normalization, validation,
22 streamlining or other data analytic proc-
23 esses, and internal management and pro-
24 tection of data collected by the Commis-
25 sion, including a detailed accounting of

1 how the funds provided for technology will
2 be used and the priorities that will apply in
3 the use of the funds; and

4 “(ii) set forth annual goals to be ac-
5 complished and annual budgets needed to
6 accomplish the goals.”.

7 **SEC. 208. INTERNAL RISK CONTROLS.**

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

12 “(C) INTERNAL RISK CONTROLS.—The
13 Commission, in consultation with the Chief
14 Economist, shall develop comprehensive internal
15 risk control mechanisms to safeguard and gov-
16 ern the storage of all market data by the Com-
17 mission, all market data sharing agreements of
18 the Commission, and all academic research per-
19 formed at the Commission using market data.”.

20 (b) REPORTS TO THE CONGRESS.—

21 (1) CONTENT.—The Commission shall submit
22 to the Committee on Agriculture of the House of
23 Representatives and the Committee on Agriculture,
24 Nutrition, and Forestry of the Senate 2 reports on
25 the progress made in implementing the internal risk

1 controls provided for in section 2(a)(12)(C) of the
2 Commodity Exchange Act.

3 (2) TIMING.—The Commission shall submit the
4 1st report required by paragraph (1) within 60 days
5 after the date of the enactment of this Act, and the
6 2nd such report within 120 days after such date of
7 enactment.

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

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

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

13 “(5) SUBPOENA.—

14 “(A) IN GENERAL.—For”; and

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

17 “(B) CONTENT OF ORDER.—An order of
18 the Commission authorizing the issuance of a
19 subpoena in an investigation shall state in good
20 faith—

21 “(i) the legitimate purpose of the in-
22 vestigation; and

23 “(ii) the information sought by any
24 subpoena order that will be reasonably rel-
25 evant to that purpose.

1 “(C) DURATION AND RENEWAL.—An order
2 issued under this paragraph shall not be for an
3 indefinite duration and may be renewed only by
4 Commission action.”.

5 **SEC. 210. IMPLEMENTATION PLAN FOR COMMISSION**
6 **RULEMAKINGS.**

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

10 “(D) REQUIREMENT TO PUBLISH IMPLE-
11 MENTATION PLAN FOR COMMISSION RULES.—

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

14 “(i) when and for how long the pro-
15 posed rule will be subject to public com-
16 ment; and

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

19 **SEC. 211. APPLICABILITY OF NOTICE AND COMMENT RE-**
20 **QUIREMENTS OF THE ADMINISTRATIVE PRO-**
21 **CEDURE ACT TO GUIDANCE VOTED ON BY**
22 **THE COMMISSION.**

23 Section 2(a)(12) of the Commodity Exchange Act (7
24 U.S.C. 2(a)(12)), as amended by sections 206, 208(a),

1 and 210 of this Act, is amended by adding at the end
2 the following:

3 “(E) APPLICABILITY OF NOTICE AND COM-
4 MENT RULES TO GUIDANCE VOTED ON BY THE
5 COMMISSION.—The notice and comment re-
6 quirements of chapter 5 of title 5, United
7 States Code, shall also apply with respect to
8 any guidance issued by the Commission.”.

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

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

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

13 “(a) A person adversely affected by a rule of the
14 Commission promulgated under this Act may obtain re-
15 view of the rule in the United States Court of Appeals
16 for the District of Columbia Circuit or the United States
17 Court of Appeals for the circuit where the party resides
18 or has the principal place of business, by filing in the
19 court, within 60 days after publication in the Federal Reg-
20 ister of the entry of the rule, a written petition requesting
21 that the rule be set aside.

22 “(b) A copy of the petition shall be transmitted forth-
23 with by the clerk of the court to an officer designated by
24 the Commission for that purpose. Thereupon the Commis-
25 sion shall file in the court the record on which the rule

1 complained of is entered, as provided in section 2112 of
2 title 28, United States Code, and the Federal Rules of
3 Appellate Procedure.

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

7 “(d) The court shall affirm and enforce the rule un-
8 less the Commission’s action in promulgating the rule is
9 found to be arbitrary, capricious, an abuse of discretion,
10 or otherwise not in accordance with law; contrary to con-
11 stitutional right, power, privilege, or immunity; in excess
12 of statutory jurisdiction, authority, or limitations, or short
13 of statutory right; or without observance of procedure re-
14 quired by law.”.

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

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

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

23 (2) examines the prior expenditures of the Com-
24 mission on hardware, software, and analytical proc-

1 esses designed to protect customers in the areas
2 of—

3 (A) market surveillance and risk detection;
4 and

5 (B) market data collection, aggregation,
6 interpretation, standardization, harmonization,
7 normalization, validation, and streamlining or
8 other data analytic processes.

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

15 **SEC. 214. DISCLOSURE OF REQUIRED DATA OF OTHER REG-**
16 **ISTERED ENTITIES.**

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

19 “(j) DISCLOSURE OF REQUIRED DATA OF OTHER
20 REGISTERED ENTITIES.—

21 “(1) Except as provided in this subsection, the
22 Commission may not be compelled to disclose any
23 proprietary information provided to the Commission,
24 except that nothing in this subsection—

1 “(A) authorizes the Commission to with-
2 hold information from Congress, upon an agree-
3 ment of confidentiality; or

4 “(B) prevents the Commission from—

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

16 “(ii) a disclosure made pursuant to a
17 court order in connection with an adminis-
18 trative or judicial proceeding brought
19 under this Act, in any receivership pro-
20 ceeding involving a receiver appointed in a
21 judicial proceeding brought under this Act,
22 or in any bankruptcy proceeding in which
23 the Commission has intervened or in which
24 the Commission has the right to appear

1 and be heard under title 11 of the United
2 States Code.

3 “(2) Any proprietary information of a com-
4 modity trading advisor or commodity pool operator
5 ascertained by the Commission in connection with
6 Form CPO-PQR, Form CTA-PR, and any successor
7 forms thereto, shall be subject to the same limita-
8 tions on public disclosure, as any facts ascertained
9 during an investigation, as provided by subsection
10 (a); provided, however, that the Commission shall
11 not be precluded from publishing aggregate informa-
12 tion compiled from such forms, to the extent such
13 aggregate information does not identify any indi-
14 vidual person or firm, or such person’s proprietary
15 information.

16 “(3) For purposes of section 552 of title 5,
17 United States Code, this subsection, and the infor-
18 mation contemplated herein, shall be considered a
19 statute described in subsection (b)(3)(B) of such
20 section 552.

21 “(4) For purposes of the definition of propri-
22 etary information in paragraph (5), the records and
23 reports of any client account or commodity pool to
24 which a commodity trading advisor or commodity
25 pool operator registered under this title provides

1 services that are filed with the Commission on Form
2 CPO-PQR, CTA-PR, and any successor forms there-
3 to, shall be deemed to be the records and reports of
4 the commodity trading advisor or commodity pool
5 operator, respectively.

6 “(5) For purposes of this section, proprietary
7 information of a commodity trading advisor or com-
8 modity pool operator includes sensitive, non-public
9 information regarding—

10 “(A) the commodity trading advisor, com-
11 modity pool operator or the trading strategies
12 of the commodity trading advisor or commodity
13 pool operator;

14 “(B) analytical or research methodologies
15 of a commodity trading advisor or commodity
16 pool operator;

17 “(C) trading data of a commodity trading
18 advisor or commodity pool operator; and

19 “(D) computer hardware or software con-
20 taining intellectual property of a commodity
21 trading advisor or commodity pool operator;”.

22 **TITLE III—END-USER RELIEF**

23 **SEC. 301. SHORT TITLE.**

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

1 **Subtitle A—End-User Exemption**
2 **From Margin Requirements**

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

4 (a) COMMODITY EXCHANGE ACT AMENDMENT.—
5 Section 4s(e) of the Commodity Exchange Act (7 U.S.C.
6 6s(e)) is amended by adding at the end the following new
7 paragraph:

8 “(4) APPLICABILITY WITH RESPECT TO
9 COUNTERPARTIES.—The requirements of paragraphs
10 (2)(A)(ii) and (2)(B)(ii), including the initial and
11 variation margin requirements imposed by rules
12 adopted pursuant to paragraphs (2)(A)(ii) and
13 (2)(B)(ii), shall not apply to a swap in which a
14 counterparty qualifies for an exception under section
15 2(h)(7)(A), or an exemption issued under section
16 4(c)(1) from the requirements of section 2(h)(1)(A)
17 for cooperative entities as defined in such exemption,
18 or satisfies the criteria in section 2(h)(7)(D).”.

19 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
20 MENT.—Section 15F(e) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78o–10(e)) is amended by adding at the
22 end the following new paragraph:

23 “(4) APPLICABILITY WITH RESPECT TO
24 COUNTERPARTIES.—The requirements of paragraphs
25 (2)(A)(ii) and (2)(B)(ii) shall not apply to a secu-

1 rity-based swap in which a counterparty qualifies for
2 an exception under section 3C(g)(1) or satisfies the
3 criteria in section 3C(g)(4).”.

4 **SEC. 312. IMPLEMENTATION.**

5 The amendment made to the Commodity Exchange
6 Act by this subtitle shall be implemented—

7 (1) without regard to—

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

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

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

15 (3) such that paragraph (1) shall apply solely
16 to changes to rules and regulations, or proposed
17 rules and regulations, that are limited to and di-
18 rectly a consequence of the amendment.

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

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

21 (a) IN GENERAL.—

22 (1) COMMODITY EXCHANGE ACT AMEND-
23 MENT.—Section 2(h)(7)(D)(i) of the Commodity Ex-
24 change Act (7 U.S.C. 2(h)(7)(D)(i)) is amended to
25 read as follows:

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

17 (2) SECURITIES EXCHANGE ACT OF 1934
18 AMENDMENT.—Section 3C(g)(4)(A) of the Securities
19 Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)(A))
20 is amended to read as follows:

21 “(A) IN GENERAL.—An affiliate of a per-
22 son that qualifies for an exception under para-
23 graph (1) (including affiliate entities predomi-
24 nantly engaged in providing financing for the
25 purchase of the merchandise or manufactured

1 goods of the person) may qualify for the excep-
2 tion only if the affiliate enters into the security-
3 based swap to hedge or mitigate the commercial
4 risk of the person or other affiliate of the per-
5 son that is not a financial entity, provided that
6 if the transfer of commercial risk is addressed
7 by entering into a security-based swap with a
8 security-based swap dealer or major security-
9 based swap participant, an appropriate credit
10 support measure or other mechanism is uti-
11 lized.”.

12 (b) APPLICABILITY OF CREDIT SUPPORT MEASURE
13 REQUIREMENT.—Notwithstanding section 371 of this Act,
14 the requirements in section 2(h)(7)(D)(i) of the Com-
15modity Exchange Act and section 3C(g)(4)(A) of the Se-
16curities Exchange Act of 1934, as amended by subsection
17 (a), requiring that a credit support measure or other
18 mechanism be utilized if the transfer of commercial risk
19 referred to in such sections is addressed by entering into
20 a swap with a swap dealer or major swap participant or
21 a security-based swap with a security-based swap dealer
22 or major security-based swap participant, as appropriate,
23 shall not apply with respect to swaps or security-based
24 swaps, as appropriate, entered into before the date of the
25 enactment of this Act.

1 **Subtitle C—Indemnification Re-**
2 **quirements Related to Swap**
3 **Data Repositories**

4 **SEC. 331. INDEMNIFICATION REQUIREMENTS.**

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

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

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

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

1 (c) SECURITY-BASED SWAP DATA REPOSITORIES.—
2 Section 13(n)(5)(H) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78m(n)(5)(H)) is amended to read as
4 follows:

5 “(H) CONFIDENTIALITY AGREEMENT.—
6 Before the security-based swap data repository
7 may share information with any entity de-
8 scribed in subparagraph (G), the security-based
9 swap data repository shall receive a written
10 agreement from each entity stating that the en-
11 tity shall abide by the confidentiality require-
12 ments described in section 24 relating to the in-
13 formation on security-based swap transactions
14 that is provided.”.

15 **Subtitle D—Relief for Municipal**
16 **Utilities**

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

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

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

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

1 “(ii) In making a determination to ex-
2 empt pursuant to subparagraph (D), the
3 Commission shall treat a utility operations-
4 related swap entered into with a utility
5 special entity, as defined in section
6 4s(h)(2)(D), as if it were entered into with
7 an entity that is not a special entity, as de-
8 fined in section 4s(h)(2)(C).”.

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

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

13 “(D) UTILITY SPECIAL ENTITY.—For pur-
14 poses of this Act, the term ‘utility special enti-
15 ty’ means a special entity, or any instrumen-
16 tality, department, or corporation of or estab-
17 lished by a State or political subdivision of a
18 State, that—

19 “(i) owns or operates an electric or
20 natural gas facility or an electric or nat-
21 ural gas operation;

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

24 “(iii) has public service obligations
25 under Federal, State, or local law or regu-

1 lation to deliver electric energy or natural
2 gas service to customers; or
3 “(iv) is a Federal power marketing
4 agency, as defined in section 3 of the Fed-
5 eral Power Act.”.

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

7 (a) SWAP FURTHER DEFINED.—Section
8 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.
9 1a(47)(A)(iii)) is amended—

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

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

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

15 “(XXIII) a utility operations-re-
16 lated swap;”.

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

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

21 The term ‘utility operations-related swap’ means a
22 swap that—

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

1 “(B) is not a contract, agreement, or
2 transaction based on, derived on, or ref-
3 erencing—

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

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

10 “(C) is associated with—

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

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

19 “(iii) compliance with an electric sys-
20 tem reliability obligation;

21 “(iv) compliance with an energy, en-
22 ergy efficiency, conservation, or renewable
23 energy or environmental statute, regula-
24 tion, or government order applicable to a
25 utility; or

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

4 **Subtitle E—End-User Regulatory**
5 **Relief**

6 **SEC. 351. END-USERS NOT TREATED AS FINANCIAL ENTI-**
7 **TIES.**

8 (a) IN GENERAL.—Section 2(h)(7)(C)(iii) of the
9 Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(iii)) is
10 amended 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
16 underlying 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
20 the purchase or lease of products, 90
21 percent or more of which are manu-
22 factured by the parent company or
23 another 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 and is considered
7 a financial entity under clause
8 (i)(VIII) because the entity pre-
9 dominantly engages in physical
10 delivery contracts; or

11 “(bb) enters into swaps,
12 contracts for future delivery, and
13 other derivatives on behalf of, or
14 to hedge or mitigate the commer-
15 cial risk of, whether directly or in
16 the aggregate, affiliates that are
17 not so supervised or described.”.

18 (b) COMMERCIAL MARKET PARTICIPANT DE-
19 FINED.—

20 (1) IN GENERAL.—Section 1a of such Act (7
21 U.S.C. 1a), as amended by section 343(b) of this
22 Act, is amended by redesignating paragraphs (8)
23 through (52) as paragraphs (9) through (53), re-
24 spectively, and by inserting after paragraph (6) the
25 following:

1 “(7) COMMERCIAL MARKET PARTICIPANT.—The
2 term ‘commercial market participant’ means any
3 producer, processor, merchant, or commercial user
4 of an exempt or agricultural commodity, or the prod-
5 ucts or byproducts of such a commodity.”.

6 (2) CONFORMING AMENDMENTS.—

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

9 (i) in subparagraph (A) of paragraph
10 (18) (as so redesignated by paragraph (1)
11 of this subsection), in the matter preceding
12 clause (i), by striking “(18)(A)” and in-
13 serting “(19)(A)”; and

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

19 (B) Section 4(c)(1)(A)(i)(I) of such Act (7
20 U.S.C. 6(c)(1)(A)(i)(I)) is amended by striking
21 “(7), paragraph (18)(A)(vii)(III), paragraphs
22 (23), (24), (31), (32), (38), (39), (41), (42),
23 (46), (47), (48), and (49)” and inserting “(8),
24 paragraph (19)(A)(vii)(III), paragraphs (24),

1 (25), (32), (33), (39), (40), (42), (43), (47),
2 (48), (49), and (50)’’.

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

6 (D) Section 4s(f)(1)(D) of such Act (7
7 U.S.C. 6s(f)(1)(D)) is amended by striking
8 ‘‘1a(47)(A)(v)’’ and inserting ‘‘1a(48)(A)(v)’’.

9 (E) Section 4s(h)(5)(A)(i) of such Act (7
10 U.S.C. 6s(h)(5)(A)(i)) is amended by striking
11 ‘‘1a(18)’’ and inserting ‘‘1a(19)’’.

12 (F) Section 4t(b)(1)(C) of such Act (7
13 U.S.C. 6t(b)(1)(C)) is amended by striking
14 ‘‘1a(47)(A)(v)’’ and inserting ‘‘1a(48)(A)(v)’’.

15 (G) Section 5(d)(23) of such Act (7 U.S.C.
16 7(d)(23)) is amended by striking
17 ‘‘1a(47)(A)(v)’’ and inserting ‘‘1a(48)(A)(v)’’.

18 (H) Section 5(e)(1) of such Act (7 U.S.C.
19 7(e)(1)) is amended by striking ‘‘1a(9)’’ and in-
20 serting ‘‘1a(10)’’.

21 (I) Section 5b(k)(3)(A) of such Act (7
22 U.S.C. 7a–1(k)(3)(A)) is amended by striking
23 ‘‘1a(47)(A)(v)’’ and inserting ‘‘1a(48)(A)(v)’’.

1 (J) Section 5c(c)(4)(B) of such Act (7
2 U.S.C. 7a-2(c)(4)(B)) is amended by striking
3 “1a(10)” and inserting “1a(11)”.

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

8 (L) Section 21(f)(4)(C) of such Act (7
9 U.S.C. 24a(f)(4)(C)) is amended by striking
10 “1a(48)” and inserting “1a(49)”.

11 **SEC. 352. REPORTING OF ILLIQUID SWAPS SO AS TO NOT**
12 **DISADVANTAGE CERTAIN NON-FINANCIAL**
13 **END-USERS.**

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

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

19 (2) by redesignating subparagraphs (D)
20 through (G) as subparagraphs (E) through (H), re-
21 spectively, and inserting after subparagraph (C) the
22 following:

23 “(D) REQUIREMENTS FOR SWAP TRANS-
24 ACTIONS IN ILLIQUID MARKETS.—Notwith-
25 standing subparagraph (C):

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

8 “(ii) The Commission shall ensure
9 that the swap transaction information re-
10 ferred to in clause (i) of this subparagraph
11 is available to the public no sooner than 30
12 days after the swap transaction has been
13 executed or at such later date as the Com-
14 mission determines appropriate to protect
15 the identity of participants and positions in
16 illiquid markets and to prevent the elimi-
17 nation or reduction of market liquidity.

18 “(iii) In this subparagraph, the term
19 ‘illiquid markets’ means any market in
20 which the volume and frequency of trading
21 in swaps is at such a level as to allow iden-
22 tification of individual market partici-
23 pants.”.

1 **SEC. 353. RELIEF FOR GRAIN ELEVATOR OPERATORS,**
2 **FARMERS, AGRICULTURAL COUNTERPAR-**
3 **TIES, AND COMMERCIAL MARKET PARTICI-**
4 **PANTS.**

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

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

10 “Except as provided in section 4(a)(3), a member of
11 a designated contract market or a swap execution facility
12 that is not registered with the Commission and not re-
13 quired to be registered with the Commission in any capac-
14 ity shall satisfy the recordkeeping requirements of this Act
15 and any recordkeeping rule, order, or regulation under
16 this Act by maintaining a written record of each trans-
17 action in a contract for future delivery, option on a future,
18 swap, swaption, trade option, or related cash or forward
19 transaction. The written record shall be sufficient if it in-
20 cludes the final agreement between the parties and the
21 material economic terms of the transaction and is identifi-
22 able and searchable by transaction.”.

1 **SEC. 354. RELIEF FOR END-USERS WHO USE PHYSICAL**
2 **CONTRACTS WITH VOLUMETRIC**
3 **OPTIONALITY.**

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

7 “(ii) any purchase or sale of a non-
8 financial commodity or security for de-
9 ferred shipment or delivery, so long as the
10 transaction is intended to be physically set-
11 tled, including any stand-alone or embed-
12 ded option—

13 “(I) for which exercise results in
14 a physical delivery obligation;

15 “(II) that cannot be severed or
16 marketed separately from the overall
17 transaction for the purpose of finan-
18 cial settlement; and

19 “(III) for which both parties are
20 commercial market participants;”.

21 **SEC. 355. COMMISSION VOTE REQUIRED BEFORE AUTO-**
22 **MATIC CHANGE OF SWAP DEALER DE MINI-**
23 **MIS LEVEL.**

24 Section 1a(49)(D) of the Commodity Exchange Act
25 (7 U.S.C. 1a(49)(D)) is amended—

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

3 “(D) DE MINIMIS 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) SPECIAL RULE.—The de minimis
9 quantity of swap dealing as described in
10 clause (i) that is currently set at a quan-
11 tity of \$8,000,000,000 shall only be
12 amended or reduced through a new affirm-
13 ative action of the Commission undertaken
14 by rule or regulation.”.

15 **SEC. 356. CAPITAL REQUIREMENTS FOR NON-BANK SWAP**
16 **DEALERS.**

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

20 (1) in paragraph (2)(B), by striking “shall”
21 and inserting the following: “and the Securities and
22 Exchange Commission, in consultation with the pru-
23 dential regulators, shall jointly”; and

24 (2) in paragraph (3)(D)—

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

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

5 “(iii) FINANCIAL MODELS.—To the
6 extent that swap dealers and major swap
7 participants that are banks are permitted
8 to use financial models approved by the
9 prudential regulators or the Securities and
10 Exchange Commission to calculate min-
11 imum capital requirements and minimum
12 initial and variation margin requirements,
13 including the use of non-cash collateral,
14 the Commission shall, in consultation with
15 the prudential regulators and the Securi-
16 ties and Exchange Commission, permit the
17 use of comparable financial models by
18 swap dealers and major swap participants
19 that are not banks.”.

20 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
21 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C.
22 78o–10(e)) is amended—

23 (1) in paragraph (2)(B), by striking “shall”
24 and inserting the following: “and the Commodity

1 Futures Trading Commission, in consultation with
2 the prudential regulators, shall jointly”; and

3 (2) in paragraph (3)(D)—

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

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

8 “(iii) FINANCIAL MODELS.—To the
9 extent that security-based swap dealers
10 and major security-based swap participants
11 that are banks are permitted to use finan-
12 cial models approved by the prudential reg-
13 ulators or the Commodity Futures Trading
14 Commission to calculate minimum capital
15 requirements and minimum initial and var-
16 iation margin requirements, including the
17 use of non-cash collateral, the Commission
18 shall, in consultation with the Commodity
19 Futures Trading Commission, permit the
20 use of comparable financial models by se-
21 curity-based swap dealers and major secu-
22 rity-based swap participants that are not
23 banks.”.

1 **SEC. 357. HARMONIZATION WITH THE JUMPSTART OUR**
2 **BUSINESS STARTUPS ACT.**

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

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

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

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

5 **SEC. 358. BONA FIDE HEDGE DEFINED TO PROTECT END-**
6 **USER RISK MANAGEMENT NEEDS.**

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

9 (1) in paragraph (1)—

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

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

16 (2) in paragraph (2)—

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

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

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

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

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

12 (a) JOINT RULEMAKING REQUIRED.—

13 (1) IN GENERAL.—Not later than 270 days
14 after the date of enactment of this Act, the Securi-
15 ties and Exchange Commission and the Commodity
16 Futures Trading Commission shall jointly issue rules
17 setting forth the application of United States swaps
18 requirements of the Securities Exchange Act of
19 1934 and the Commodity Exchange Act relating to
20 cross-border swaps and security-based swaps trans-
21 actions involving U.S. persons or non-U.S. persons.

22 (2) CONSTRUCTION.—The rules required under
23 paragraph (1) shall be identical, notwithstanding
24 any difference in the authorities granted the Com-
25 missions in section 30(c) of the Securities Exchange

1 Act of 1934 (15 U.S.C. 78dd(e)) and section 2(i) of
2 the Commodity Exchange Act (7 U.S.C. 2(i)), re-
3 spectively, except to the extent necessary to accom-
4 modate differences in other underlying statutory re-
5 quirements under such Acts, and the rules there-
6 under.

7 (b) CONSIDERATIONS.—The Commissions shall joint-
8 ly issue rules that address—

9 (1) the nature of the connections to the United
10 States that require a non-U.S. person to register as
11 a swap dealer, major swap participant, security-
12 based swap dealer, or major security-based swap
13 participant under each Commission’s respective Acts
14 and the regulations issued under such Acts;

15 (2) which of the United States swaps require-
16 ments shall apply to the swap and security-based
17 swap activities of non-U.S. persons, U.S. persons,
18 and their branches, agencies, subsidiaries, and affili-
19 ates outside of the United States and the extent to
20 which such requirements shall apply; and

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

1 (c) RULE IN ACCORDANCE WITH APA REQUIRED.—
2 No guidance, memorandum of understanding, or any such
3 other agreement may satisfy the requirement to issue a
4 joint rule from the Commissions in accordance with sec-
5 tion 553 of title 5, United States Code.

6 (d) GENERAL APPLICATION TO COUNTRIES OR AD-
7 MINISTRATIVE REGIONS HAVING NINE LARGEST MAR-
8 KETS.—

9 (1) GENERAL APPLICATION.—In issuing rules
10 under this section, the Commissions shall provide
11 that a non-U.S. person in compliance with the swaps
12 regulatory requirements of a country or administra-
13 tive region that has one of the nine largest combined
14 swap and security-based swap markets by notional
15 amount in the calendar year preceding issuance of
16 such rules, or other foreign jurisdiction as jointly de-
17 termined by the Commissions, shall be exempt from
18 United States swaps requirements in accordance
19 with the schedule set forth in paragraph (2), unless
20 the Commissions jointly determine that the regu-
21 latory requirements of such country or administra-
22 tive region or other foreign jurisdiction are not
23 broadly equivalent to United States swaps require-
24 ments.

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

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

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

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

1 or transactions relating to or involving such country
2 or administrative region or other foreign jurisdiction.
3 Such criteria shall include the scope and objectives
4 of the regulatory requirements of a country or ad-
5 ministrative region described in paragraph (1) or
6 other foreign jurisdiction as well as the effectiveness
7 of the supervisory compliance program administered,
8 and the enforcement authority exercised, by such
9 country or administrative region or other foreign ju-
10 risdiction, and such other factors as the Commis-
11 sions, by rule, jointly determine to be necessary or
12 appropriate in the public interest.

13 (4) REQUIRED ASSESSMENT.—Beginning on the
14 date on which final rules are issued under this sec-
15 tion, the Commissions shall begin to jointly assess
16 the regulatory requirements of countries or adminis-
17 trative regions described in paragraph (1), as the
18 Commissions jointly determine appropriate, in ac-
19 cordance with the criteria established pursuant to
20 this subsection, to determine if one or more cat-
21 egories of regulatory requirements of such a country
22 or administrative region or other foreign jurisdiction
23 is not broadly equivalent to United States swaps re-
24 quirements.

1 (e) REPORT TO CONGRESS.—If the Commissions
2 make the joint determination described in subsection
3 (d)(1) that the regulatory requirements of a country or
4 administrative region described in such subsection or other
5 foreign jurisdiction are not broadly equivalent to United
6 States swaps requirements, the Commissions shall articu-
7 late the basis for such a determination in a written report
8 transmitted to the Committee on Financial Services and
9 the Committee on Agriculture of the House of Representa-
10 tives and the Committee on Banking, Housing, and Urban
11 Affairs and the Committee on Agriculture, Nutrition, and
12 Forestry of the Senate within 30 days of the determina-
13 tion. The determination shall not be effective until the
14 transmission of such report.

15 (f) DEFINITIONS.—As used in this Act and for pur-
16 poses of the rules issued pursuant to this Act, the fol-
17 lowing definitions apply:

18 (1) The term “U.S. person”—

19 (A) means—

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

22 (ii) any partnership, corporation,
23 trust, or other legal person organized or
24 incorporated under the laws of the United

1 States or having its principal place of busi-
2 ness in the United States;

3 (iii) any account (whether discre-
4 tionary or non-discretionary) of a U.S. per-
5 son; and

6 (iv) any other person as the Commis-
7 sions may further jointly define to more ef-
8 fectively carry out the purposes of this Act;
9 and

10 (B) does not include the International
11 Monetary Fund, the International Bank for Re-
12 construction and Development, the Inter-Amer-
13 ican Development Bank, the Asian Development
14 Bank, the African Development Bank, the
15 United Nations, their agencies and pension
16 plans, and any other similar international orga-
17 nizations and their agencies and pension plans.

18 (2) The term “United States swaps require-
19 ments” means the provisions relating to swaps and
20 security-based swaps contained in the Commodity
21 Exchange Act (7 U.S.C. 1a et seq.) and the Securi-
22 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.)
23 that were added by title VII of the Dodd-Frank Wall
24 Street Reform and Consumer Protection Act (15
25 U.S.C. 8301 et seq.) and any rules or regulations

1 prescribed by the Securities and Exchange Commis-
2 sion and the Commodity Futures Trading Commis-
3 sion pursuant to such provisions.

4 (g) CONFORMING AMENDMENTS.—

5 (1) SECURITIES EXCHANGE ACT OF 1934.—

6 Section 36(c) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78mm(c)) is amended by inserting
8 “or except as necessary to effectuate the purposes of
9 the Customer Protection and End-User Relief Act,”
10 after “to grant exemptions,”.

11 (2) COMMODITY EXCHANGE ACT.—Section
12 4(c)(1)(A) of the Commodity Exchange Act (7
13 U.S.C. 6(c)(1)(A)) is amended by inserting “or ex-
14 cept as necessary to effectuate the purposes of the
15 Customer Protection and End-User Relief Act,”
16 after “to grant exemptions,”.

17 **SEC. 360. REPORT ON FOREIGN BOARDS OF TRADE.**

18 Within 1 year after the date of the enactment of this
19 Act, the Commodity Futures Trading Commission shall
20 prepare and submit to the Committee on Agriculture of
21 the House of Representatives and the Committee on Agri-
22 culture, Nutrition, and Forestry of the Senate a written
23 report reviewing the standards and rules of foreign boards
24 of trade related to the physical delivery of base metals,
25 including warehousing facilities, as compared to the stand-

1 ards and rules for domestic designated contract markets
2 and related warehouses for base metals.

3 **Subtitle F—Effective Date**

4 **SEC. 371. EFFECTIVE DATE.**

5 Except as otherwise provided in this title, the amend-
6 ments made by this title shall take effect as if enacted
7 on July 21, 2010.

