

113TH CONGRESS
2D SESSION

S. 2330

To amend the Commodity Exchange Act to improve futures and swaps trading, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2014

Mr. CHAMBLISS introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to improve futures and swaps trading, 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 “End-User Protection
5 Act of 2014”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—Section 1a of the Commodity Ex-
8 change Act (7 U.S.C. 1a) is amended—

9 (1) by redesignating paragraphs (8) through
10 (51) as paragraphs (9) through (52), respectively;

1 (2) by inserting after paragraph (7) the fol-
 2 lowing:

3 “(8) COMMERCIAL MARKET PARTICIPANT.—The
 4 term ‘commercial market participant’ means any
 5 producer, processor, merchant, or commercial user
 6 of an exempt or agricultural commodity, or the prod-
 7 ucts or by-products of an exempt or agricultural
 8 commodity.”;

9 (3) in subparagraph (B) of paragraph (48) (as
 10 so redesignated), by striking clause (ii) and inserting
 11 the following:

12 “(ii) any purchase or sale of a non-
 13 financial commodity or security for de-
 14 ferred shipment or delivery, so long as the
 15 transaction is intended to be physically set-
 16 tled, including any stand-alone or embed-
 17 ded option for which exercise would result
 18 in a physical delivery obligation;” and

19 (4) in paragraph (50) (as redesignated by para-
 20 graph (1)), by striking subparagraph (D) and insert-
 21 ing the following:

22 “(D) DE MINIMIS EXCEPTION.—

23 “(i) IN GENERAL.—The Commission
 24 shall exempt from designation as a swap
 25 dealer an entity that engages in a de mini-

mis quantity of swap dealing (which shall not be less than \$8,000,000,000) in connection with transactions with or on behalf of its customers.

“(ii) REGULATIONS.—The Commission shall promulgate regulations to establish the factors to be used in a determination under clause (i) to exempt, including any monetary or other levels established by the Commission, and those levels shall only be amended or changed through an affirmative action of the Commission undertaken by rule or regulation.”.

(b) FINANCIAL ENTITY.—Section 2(h)(7)(C) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)) is amended—

(1) in clause (iii)—

(A) by striking “an entity whose” and inserting the following: “an entity—

“(I) whose”;

(B) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(II) that is—

1 “(aa) a commercial market
2 participant;

3 “(bb) included in clause
4 (i)(VIII); and

5 “(cc) not supervised by a
6 prudential regulator; or

7 “(III) that is included in clause
8 (i)(VIII) because—

9 “(aa) the entity regularly
10 enters into foreign exchange or
11 derivatives transactions on behalf
12 of, or to hedge or mitigate,
13 whether directly or indirectly, the
14 commercial risk of 1 or more en-
15 tities within the same commercial
16 enterprise as the entity; or

17 “(bb) of the making of loans
18 to 1 or more entities within the
19 same commercial enterprise as
20 the entity.”; and

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

22 “(iv) SAME COMMERCIAL ENTER-
23 PRISE.—For purposes of clause (iii)(III),
24 an entity shall be considered to be within

1 the same commercial enterprise as another
2 entity if—

3 “(I) 1 of the entities owns, di-
4 rectly or indirectly, at least a majority
5 ownership interest in the other entity
6 and reports its financial statements
7 on a consolidated basis and the con-
8 solidated financial statements include
9 the financial results of both entities;
10 or

11 “(II) a third party owns at least
12 a majority ownership interest in both
13 entities and reports its financial state-
14 ments on a consolidated basis and the
15 financial statements of the third party
16 include the financial results of both
17 entities.

18 “(v) PREDOMINANTLY ENGAGED.—

19 “(I) IN GENERAL.—Not later
20 than 90 days after the date of enact-
21 ment of this clause, the Commission
22 shall promulgate regulations defining
23 the term ‘predominantly engaged’ for
24 purposes of clause (i)(VIII).

1 “(II) MINIMUM REVENUES.—The
2 regulations shall provide that an enti-
3 ty shall not be considered to be pre-
4 dominantly engaged in activities that
5 are in the business of banking or fi-
6 nancial in nature if the consolidated
7 revenues of the entity derived from
8 the activities constitute less than a
9 percentage (as specified by the Com-
10 mission in the regulations) of the total
11 consolidated revenues of the entity.

12 “(III) REVENUES FROM BANKING
13 OR FINANCIAL ACTIVITIES.—In deter-
14 mining the percentage of the revenues
15 of an entity that are derived from ac-
16 tivities that are in the business of
17 banking or financial in nature, the
18 regulations shall exclude all revenues
19 that are or result from foreign ex-
20 change or derivatives transactions
21 used to hedge or mitigate commercial
22 risk (as defined by the Commission in
23 the regulations).”.

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

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

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

9 (2) by redesignating subparagraphs (D)
 10 through (G) as subparagraphs (E) through (H), re-
 11 spectively; and

12 (3) by inserting after subparagraph (C) the fol-
 13 lowing:

14 “(D) REQUIREMENTS FOR SWAP TRANS-
 15 ACTIONS IN ILLIQUID MARKETS.—

16 “(i) DEFINITION OF ILLIQUID MAR-
 17 KETS.—In this subparagraph, the term ‘il-
 18 liquid markets’ means any market in which
 19 the volume and frequency of trading in
 20 swaps is at such a level as to allow identi-
 21 fication of individual market participants.

22 “(ii) REQUIREMENTS.—Notwith-
 23 standing subparagraph (C), the Commis-
 24 sion shall—

25 “(I) provide by rule for the pub-
 26 lic reporting of swap transactions, in-

cluding price and volume data, in illiquid markets that are not cleared and entered into by a nonfinancial entity that is hedging or mitigating commercial risk in accordance with subsection (h)(7)(A); and

“(II) ensure that the swap transaction information described in subclause (I) is available to the public not sooner than 30 days after the swap transaction has been executed or at such later date as the Commission determines appropriate to protect the identity of participants and positions in illiquid markets and to prevent the elimination or reduction of market liquidity.”.

SEC. 4. TREATMENT OF AFFILIATES.

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

- (1) by striking “An affiliate” and inserting “A person that is a financial entity and is an affiliate”;
- (2) by striking “(including affiliate entities predominantly engaged in providing financing for the

1 purchase of the merchandise or manufactured goods
 2 of the person)”; and

3 (3) by striking “and as an agent”.

4 **SEC. 5. APPLICABILITY TO BONA FIDE HEDGE TRANS-**
 5 **ACTIONS OR POSITIONS.**

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

8 (1) in the second sentence of paragraph (1), by
 9 striking “into the future for which” and inserting
 10 “in the future, to be determined by the Commission,
 11 for which either an appropriate swap is available
 12 or”; and

13 (2) in paragraph (2)—

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

22 (B) in subparagraph (A)(ii), by striking
 23 “of risks” and inserting “or management of
 24 current or anticipated risks”; and

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

1 “(3) COMMISSION DEFINITION.—The Commis-
 2 sion may further define, by rule or regulation, what
 3 constitutes a bona fide hedging transaction or posi-
 4 tion so long as the rule or regulation is consistent
 5 with the requirements of subparagraphs (A) and (B)
 6 of paragraph (2).”.

7 **SEC. 6. REPORTING AND RECORDKEEPING.**

8 Section 4g(f) of the Commodity Exchange Act (7
 9 U.S.C. 6g(f)) is amended—

10 (1) by striking “(f) Nothing contained in this
 11 section” and inserting the following:

12 “(f) AUTHORITY OF COMMISSION TO MAKE SEPA-
 13 RATE DETERMINATIONS UNIMPAIRED.—

14 “(1) IN GENERAL.—Except as provided in para-
 15 graph (2), nothing in this section”; and

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

17 “(2) EXCEPTION.—If the Commission imposes
 18 any requirement under this section on any person
 19 that is not registered, or required to be registered,
 20 with the Commission in any capacity, that person
 21 shall satisfy the requirements of any rule, order, or
 22 regulation under this section by maintaining a writ-
 23 ten record of each cash or forward transaction re-
 24 lated to a reportable or hedging commodity interest

1 transaction, futures contract, option on a futures
2 contract, or swap.

3 “(3) SUFFICIENCY.—A written record described
4 in paragraph (2) shall be sufficient if the written
5 record—

6 “(A) memorializes the final agreement be-
7 tween the parties, including the material eco-
8 nomic terms of the transaction; and

9 “(B) is identifiable and searchable by
10 transaction.”.

11 **SEC. 7. MARGIN REQUIREMENTS.**

12 (a) COMMODITY EXCHANGE ACT AMENDMENT.—
13 Section 4s(e) of the Commodity Exchange Act (7 U.S.C.
14 6s(e)) is amended by adding at the end the following:

15 “(4) APPLICABILITY WITH RESPECT TO
16 COUNTERPARTIES.—The requirements of paragraphs
17 (2)(A)(ii) and (2)(B)(ii), including the initial and
18 variation margin requirements imposed by rules
19 adopted pursuant to paragraphs (2)(A)(ii) and
20 (2)(B)(ii), shall not apply to a swap in which a
21 counterparty qualifies for an exception under section
22 2(h)(7)(A) or 2(h)(7)(D), or an exemption issued
23 under section 4(c)(1) from the requirements of sec-
24 tion 2(h)(1)(A) for cooperative entities as defined in
25 that exemption.”.

1 (b) SECURITIES EXCHANGE ACT AMENDMENT.—
 2 Section 15F(e) of the Securities Exchange Act of 1934
 3 (15 U.S.C. 78o–10(e)) is amended by adding at the end
 4 the following:

5 “(4) APPLICABILITY WITH RESPECT TO
 6 COUNTERPARTIES.—The requirements of paragraphs
 7 (2)(A)(ii) and (2)(B)(ii) shall not apply to a secu-
 8 rity-based swap in which a counterparty qualifies for
 9 an exception under section 3C(g)(1) or satisfies the
 10 criteria in section 3C(g)(4).”.

11 (c) IMPLEMENTATION.—The amendments made by
 12 this section to the Commodity Exchange Act (7 U.S.C.
 13 1 et seq.) shall be implemented—

14 (1) without regard to—

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

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

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

22 (3) such that paragraph (1) shall apply solely
 23 to changes to rules and regulations, or proposed
 24 rules and regulations, that are limited to and di-
 25 rectly a consequence of the amendments.

1 **SEC. 8. ANALYSIS BY THE COMMODITY FUTURES TRADING**
 2 **COMMISSION OF THE COSTS AND BENEFITS**
 3 **OF REGULATIONS AND ORDERS.**

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

7 “(1) IN GENERAL.—Before promulgating a reg-
 8 ulation under this Act or issuing an order (except as
 9 provided in paragraph (3)), the Commission, acting
 10 through the Office of the Chief Economist, shall—

11 “(A) state a justification for the regulation
 12 or order;

13 “(B) state the baseline for the cost-benefit
 14 analysis and explain how the regulation or
 15 order measures costs against the baseline;

16 “(C) assess the costs and benefits, both
 17 qualitative and quantitative, of the intended
 18 regulation or order;

19 “(D) measure, and seek to improve, the ac-
 20 tual results of regulatory requirements; and

21 “(E) propose or adopt a regulation or
 22 order only on a reasoned determination that the
 23 benefits of the intended regulation or order jus-
 24 tify the costs of the intended regulation or
 25 order (recognizing that some benefits and costs
 26 are difficult to quantify).

1 “(2) CONSIDERATIONS.—In making a reasoned
2 determination of costs and benefits under paragraph
3 (1), the Commission shall consider—

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

6 “(B) the efficiency, competitiveness, and fi-
7 nancial integrity of futures and swaps markets;

8 “(C) the impact on market liquidity in the
9 futures and swaps markets;

10 “(D) price discovery;

11 “(E) sound risk management practices;

12 “(F) the cost of available alternatives to
13 direct regulation;

14 “(G) the degree and nature of the risks
15 posed by various activities within the scope of
16 the jurisdiction of the Commission;

17 “(H) whether, consistent with obtaining
18 regulatory objectives, the regulation or order is
19 tailored to impose the least burden on society,
20 including market participants, individuals, busi-
21 nesses of differing sizes, and other entities (in-
22 cluding small communities and governmental
23 entities), taking into account, to the extent
24 practicable, the cumulative costs of regulations
25 and orders;

1 “(I) whether the regulation or order is in-
2 consistent, incompatible, or duplicative of other
3 Federal regulations and orders; and

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

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