

116TH CONGRESS
1ST SESSION

S. 552

To amend the Commodity Exchange Act to exempt certain charitable organizations from regulation as commodity pool operators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2019

Ms. KLOBUCHAR (for herself and Mr. PERDUE) 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 exempt certain charitable organizations from regulation as commodity pool operators, 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. EXEMPTION OF QUALIFIED CHARITABLE ORGA-**
4 **NIZATIONS FROM REGULATION AS COM-**
5 **MODITY POOL OPERATORS.**

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

8 (1) by striking “SEC. 4M. (1) It” and inserting
9 the following:

1 **“SEC. 4m. USE OF MAILS OR OTHER MEANS OR INSTRU-**
 2 **MENTALITIES OF INTERSTATE COMMERCE**
 3 **BY COMMODITY TRADING ADVISORS AND**
 4 **COMMODITY POOL OPERATORS.**

5 “(a) PROHIBITION.—

6 “(1) IN GENERAL.—It”;

7 (2) in the second sentence—

8 (A) by striking “The provisions of this sec-
 9 tion” and inserting the following:

10 “(2) EXCEPTIONS.—

11 “(A) COMMODITY TRADING ADVISORS.—

12 “(i) IN GENERAL.—Subject to clause

13 (ii) and except as provided in subpara-
 14 graphs (B) and (C), this section”;

15 (B) by striking “commodity trading advi-
 16 sor who is a (1) dealer” and inserting the fol-
 17 lowing: “commodity trading advisor who is a—

18 “(I) dealer”;

19 (C) by striking “or (2) nonprofit” and in-
 20 serting the following: “; or

21 “(II) nonprofit”;

22 (D) by striking “Commodity Futures
 23 Trading Commission Act of 1974; if the advice
 24 by the person described in clause (1) or (2) of
 25 this sentence” and inserting the following:

1 “Commodity Futures Trading Commission Act
2 of 1974.

3 “(ii) APPLICABILITY.—Clause (i) only
4 applies if the advice by the person de-
5 scribed in subclause (I) or (II) of clause
6 (i)”;
7

8 (E) by striking “business:” and inserting
9 “business.”; and

10 (F) by striking “*Provided*, That such per-
11 son shall be subject to proceedings under sec-
12 tion 14 of this Act.” and inserting the fol-
13 lowing:

14 “(B) COMPLAINTS AGAINST EXCEPTED
15 PERSONS.—A person described in subclause (I)
16 or (II) of clause (i) shall be subject to pro-
17 ceedings under section 14.

18 “(C) CHARITABLE ORGANIZATIONS.—This
19 section shall not apply to any commodity trad-
20 ing advisor or commodity pool operator that
21 is—

22 “(i) a charitable organization, as de-
23 fined in section 3(c)(10)(D)(iii) of the In-
24 vestment Company Act of 1940 (15 U.S.C.
25 80a–3(c)(10)(D)(iii)), or a trustee, direc-
tor, officer, employee, or volunteer of such

1 a charitable organization acting within the
2 scope of the employment or duties of the
3 person with the organization, whose trad-
4 ing advice is provided only to, or with re-
5 spect to, 1 or more of—

6 “(I) any such charitable organi-
7 zations; or

8 “(II) an investment trust, syn-
9 dicate, or similar form of enterprise
10 excluded from the definition of ‘invest-
11 ment company’ pursuant to section
12 3(c)(10) of the Investment Company
13 Act of 1940 (15 U.S.C. 80a–
14 3(c)(10)); or

15 “(ii) any plan, company, or account
16 described in section 3(c)(14) of the Invest-
17 ment Company Act of 1940 (15 U.S.C.
18 80a–3(c)(14)), any person or entity who
19 establishes or maintains such a plan, com-
20 pany, or account, or any trustee, director,
21 officer, employee, or volunteer for any of
22 the foregoing plans, persons, or entities
23 acting within the scope of the employment
24 or duties of the person with the organiza-
25 tion, whose trading advice is provided only

1 to, or with respect to, any investment
 2 trust, syndicate, or similar form of enter-
 3 prise excluded from the definition of ‘in-
 4 vestment company’ pursuant to section
 5 3(c)(14) of the Investment Company Act
 6 of 1940 (15 U.S.C. 80a-3(c)(14)).”;

7 (3) by striking “(2) Nothing in this Act” and
 8 inserting the following:

9 “(b) RELATIONSHIP TO OTHER LAW.—Nothing in
 10 this Act”;

11 (4) by striking “(3) EXCEPTION.—” and all
 12 that follows through “Paragraph (1) shall not
 13 apply” and inserting the following:

14 “(c) EXCEPTION.—

15 “(1) IN GENERAL.—Subsection (a) shall not
 16 apply”;

17 (5) by striking “(B) ENGAGED PRIMARILY.—
 18 For purposes of subparagraph (A)” and inserting
 19 the following:

20 “(2) ENGAGED PRIMARILY.—For purposes of
 21 paragraph (1)”;

22 (6) by striking “(C) COMMODITY INTERESTS.—
 23 For purposes of this paragraph” and inserting the
 24 following:

1 “(3) COMMODITY INTERESTS.—For purposes of
2 this subsection”; and

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

4 “(d) DISCLOSURE CONCERNING EXEMPTED CHARITABLE ORGANIZATIONS.—A commodity trading advisor or
5 commodity pool operator that is an organization or person
6 described in subsection (a)(2)(C)(i) to or of any investment trust, syndicate, or similar form of enterprise excluded from the definition of ‘investment company’ pursuant to section 3(c)(10)(B) of the Investment Company Act
7 of 1940 (15 U.S.C. 80a–3(c)(10)(B)) shall provide disclosure in accordance with section 7(e) of that Act (15 U.S.C.
8 80a–7(e)).”.

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