Service Day'' in recognition of the men and women who have served, or are presently serving, in the Foreign Service of the United States, and to honor those in the Foreign Service who have given their lives in the line of duty.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAMBLISS:

S. 2330. A bill to amend the Community Exchange Act to improve futures and swaps trading, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CHAMBLISS. I rise to speak about a bill that I am introducing today which is an amendment to the Commodity Exchange Act and it is entitled the End-User Protection Act. During the debate on Dodd-Frank a couple years ago, a constant concern for me and others in this Chamber was how best to protect end users, the individuals and businesses that use futures markets both to purchase commodities and use derivatives to hedge their risk. The legislation that ultimately passed was not what I had desired, but it did specify that end users should not be treated the same as banks, and in many instances should not be subject to the same registration and margin requirements as other market participants. But that simply has not been the case as the CFTC has gone through the rulemaking process.

I have seen many instances where the Commission in its zeal to finalize rules has not given due consideration to those farmers, ranchers, and other end users who depend on our futures markets to hedge their risks. Time and again end users brought their concerns to the Commission, and the end-user exemption I helped to author was not honored. In other instances Dodd-Frank created unintended consequences that must be fixed. It is for these reasons that I am introducing the End-User Protection Act.

As commodities end users have struggled through an increasing burden of reforms that were never designed for them, the effect has been an increase in their cost of doing business and, for some, making the already high risks associated with farming even higher.

The bill I am introducing clarifies that unlike banks, true derivative end users are exempt from the margin requirements applied by the Dodd-Frank Wall Street Reform and Consumer Protection Act to many of the derivatives contracts that they enter into.

Let me highlight a few of the other reforms that are included in this bill. One of the most egregious abuses by the Commodities Futures Trading Commission has been with their cost-benefit analysis. While the CEA instructed the Commission to weigh the cost and benefits of regulations, it is only recently we have seen misgivings in this process. Throughout the Dodd-Frank rulemaking process industry participants have relayed concerns about the cost-benefit analyses performed by the CFTC. Commissioners as well have vocalized concerns that the model the CFTC has used is deficient in several areas. For instance, in a letter to the Wall Street Journal in August of 2011, Commissioner Scott O'Malia stated:

> With respect to our proposed rule makings, our own inspector general has called into question the quality of the cost-benefit analysis. Nevertheless, during the course of our final rule makings, I have continued to see indications that the CFTC intends to persist with a one-size-fits-all, qualitative approach. This approach contradicts two recent executive orders from President Obama and justifiably renders our rule makings vulnerable to legal challenge.
>
> . . . We need to be more cognizant of the effects that our rule makings may have on the food and energy costs of average Americans. If the CFTC needs to re-propose a rule making, then so be it. Given the stakes for Main Street and Wall Street, it is more important to get a rule making right than to finish it fast.

As Commissioner O'Malia notes, getting it right is the most important part for the average American—but not, it seems, for the Commission. Even the CFTC's Inspector General detailed insufficient cost-benefit methodology in rulemakings. In some instances the Commission has even released ''interpretive guidance'' in order to subvert the cost-benefit process altogether.

President Obama has made clear that he expects a thorough analysis, and the Commission should be held to the same standard as other agencies. Therefore, my bill amends the Commodities Exchange Act to require a real cost-benefit analysis be performed before rulemaking. I am asking for the Commission as a rulemaking body to play fair, to do the right thing, and ensure when they pass a rule they know how it will affect market participants and the industry as a whole first.

We know some companies pass risk from their affiliates to one central hedging unit in order to consolidate their combined market risk. Then they hedge that risk with the market. Often the affiliate that houses the central desk is deemed a ''financial entity'' and therefore not able to utilize the end-user exception to mandatory clearing. Simply put, when one company with multiple units trades with itself, it shouldn't face the same regulatory burden as when it trades in the market.

We have also seen instances where transparency has had unintended consequences for some market participants. As their trading data was made available, some savvy market participants have been able to track their trades without even knowing the name of the company. It is important these entities not face a disadvantage in the market, resulting in millions of dollars in additional costs simply because their positions can be identified. This bill fixes that issue and ends that disadvantage.

Another reform this bill makes is allowances for utilities' volumetric optionality. Many utilities that are purchasers of natural gas for both electricity and home heating often are unable to detail exactly how much demand they will have during a particular timeframe. Although they previously were able to utilize contracts that allowed this ''optionality'' to determine when and how much electricity they could purchase, these types of contracts are now effectively prohibited. By barring these utilities from being able to employ market strategies to keep costs low and ensure stability, the cost rises not only for the end-user company but for the consumer as well. We should make allowances for this volumetric optionality and the bill before us does just that.

In summary, this bill clarifies the existing end-user exemption that the Congress provided during the Dodd-Frank debate. Further, it ensures that market participants who do not pose systemic risks and use our futures markets to decrease their cost of business and increase their efficiencies are able to continue those practices, ultimately to the benefit of the consumer.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2330

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''End-User Protection Act of 2014''.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

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

(2) by inserting after paragraph (7) the following:

''(8) COMMERCIAL MARKET PARTICIPANT.—The term 'commercial market participant' means any producer, processor, merchant, or commercial user of an exempt or agricultural commodity, or the products or by-products of an exempt or agricultural commodity.'';

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

''(ii) any purchase or sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled, including any stand-alone or embedded option for which exercise would result in a physical delivery obligation;''; and

(4) in paragraph (50) (as redesignated by paragraph (1)), by striking subparagraph (D) and inserting the following:

''(D) DE MINIMIS EXCEPTION.—

''(i) IN GENERAL.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis 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—

''(aa) a commercial market participant;

''(bb) included in clause (i)(VIII); and

''(cc) not supervised by a prudential regulator; or

''(III) that is included in clause (i)(VIII) because—

''(aa) the entity regularly enters into foreign exchange or derivatives transactions on behalf of, or to hedge or mitigate, whether directly or indirectly, the commercial risk of 1 or more entities within the same commercial enterprise as the entity; or

''(bb) of the making of loans to 1 or more entities within the same commercial enterprise as the entity.''; and

(2) by adding at the end the following:

''(iv) SAME COMMERCIAL ENTERPRISE.—For purposes of clause (iii)(III), an entity shall be considered to be within the same commercial enterprise as another entity if—

''(I) 1 of the entities owns, directly or indirectly, at least a majority ownership interest in the other entity and reports its financial statements on a consolidated basis and the consolidated financial statements include the financial results of both entities; or

''(II) a third party owns at least a majority ownership interest in both entities and reports its financial statements on a consolidated basis and the financial statements of the third party include the financial results of both entities.

''(v) PREDOMINANTLY ENGAGED.—

''(I) IN GENERAL.—Not later than 90 days after the date of enactment of this clause, the Commission shall promulgate regulations defining the term 'predominantly engaged' for purposes of clause (i)(VIII).

''(II) MINIMUM REVENUES.—The regulations shall provide that an entity shall not be considered to be predominantly engaged in activities that are in the business of banking or financial in nature if the consolidated revenues of the entity derived from the activities constitute less than a percentage (as specified by the Commission in the regulations) of the total consolidated revenues of the entity.

''(III) REVENUES FROM BANKING OR FINANCIAL ACTIVITIES.—In determining the percentage of the revenues of an entity that are derived from activities that are in the business of banking or financial in nature, the regulations shall exclude all revenues that are or result from foreign exchange or derivatives transactions used to hedge or mitigate commercial risk (as defined by the Commission in the regulations).''.

SEC. 3. REPORTING OF ILLIQUID SWAPS SO AS TO NOT DISADVANTAGE CERTAIN NONFINANCIAL END USERS.

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

(1) in subparagraph (C), by striking ''The Commission'' and inserting ''Except as provided in subparagraph (D), the Commission'';

(2) by redesignating subparagraphs (D) through (G) as subparagraphs (E) through (H), respectively; and

(3) by inserting after subparagraph (C) the following:

''(D) REQUIREMENTS FOR SWAP TRANSACTIONS IN ILLIQUID MARKETS.—

''(i) DEFINITION OF ILLIQUID MARKETS.—In this subparagraph, the term 'illiquid markets' means any market in which the volume and frequency of trading in swaps is at such a level as to allow identification of individual market participants.

''(ii) REQUIREMENTS.—Notwithstanding subparagraph (C), the Commission shall—

''(I) provide by rule for the public reporting of swap transactions, including 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 purchase of the merchandise or manufactured goods of the person)''; and

(3) by striking ''and as an agent''.

SEC. 5. APPLICABILITY TO BONA FIDE HEDGE TRANSACTIONS OR POSITIONS.

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

(1) in the second sentence of paragraph (1), by striking ''into the future for which'' and inserting ''in the future, to be determined by the Commission, for which either an appropriate swap is available or''; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking ''subsection (a)(2)'' and all that follows through ''position that—'' and inserting ''paragraphs (2) and (5) of subsection (a) for swaps, contracts of sale for future delivery, or options on the contracts or commodities, a bona fide hedging transaction or position is a transaction or position that—''; and

(B) in subparagraph (A)(ii), by striking ''of risks'' and inserting ''or management of current or anticipated risks''; and

(3) by adding at the end the following:

''(3) COMMISSION DEFINITION.—The Commission may further define, by rule or regulation, what constitutes a bona fide hedging transaction or position so long as the rule or regulation is consistent with the requirements of subparagraphs (A) and (B) of paragraph (2).''.

SEC. 6. REPORTING AND RECORDKEEPING.

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

(1) by striking ''(f) Nothing contained in this section'' and inserting the following:

''(f) AUTHORITY OF COMMISSION TO MAKE SEPARATE DETERMINATIONS UNIMPAIRED.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this section''; and

(2) by adding at the end the following:

''(2) EXCEPTION.—If the Commission imposes any requirement under this section on any person that is not registered, or required to be registered, with the Commission in any capacity, that person shall satisfy the requirements of any rule, order, or regulation under this section by maintaining a written record of each cash or forward transaction related to a reportable or hedging commodity interest transaction, futures contract, option on a futures contract, or swap.

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

''(A) memorializes the final agreement between the parties, including the material economic terms of the transaction; and

''(B) is identifiable and searchable by transaction.''.

SEC. 7. MARGIN REQUIREMENTS.

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

''(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii), including the initial and variation margin requirements imposed by rules adopted pursuant to paragraphs (2)(A)(ii) and (2)(B)(ii), shall not apply to a swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) or 2(h)(7)(D), or an exemption issued under section 4(c)(1) from the requirements of section 2(h)(1)(A) for cooperative entities as defined in that exemption.''.

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

''(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a security-based swap in which a counterparty qualifies for an exception under section 3C(g)(1) or satisfies the criteria in section 3C(g)(4).''.

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

(1) without regard to—

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

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

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

(3) such that paragraph (1) shall apply solely to changes to rules and regulations, or proposed rules and regulations, that are limited to and directly a consequence of the amendments.

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

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

''(1) IN GENERAL.—Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission, acting through the Office of the Chief Economist, shall—

''(A) state a justification for the regulation or order;

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

''(C) assess the costs and benefits, both qualitative and quantitative, of the intended regulation or order;

''(D) measure, and seek to improve, the actual results of regulatory requirements; and

''(E) propose or adopt a regulation or order only on a reasoned determination that the benefits of the intended regulation or order justify the costs of the intended regulation or order (recognizing that some benefits and costs are difficult to quantify).

''(2) CONSIDERATIONS.—In making a reasoned determination of costs and benefits

under paragraph (1), the Commission shall consider—

''(A) the protection of market participants and the public;

''(B) the efficiency, competitiveness, and financial integrity of futures and swaps markets;

''(C) the impact on market liquidity in the futures and swaps markets;

''(D) price discovery;

''(E) sound risk management practices;

''(F) the cost of available alternatives to direct regulation;

''(G) the degree and nature of the risks posed by various activities within the scope of the jurisdiction of the Commission;

''(H) whether, consistent with obtaining regulatory objectives, the regulation or order is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), taking into account, to the extent practicable, the cumulative costs of regulations and orders;

''(I) whether the regulation or order is inconsistent, incompatible, or duplicative of other Federal regulations and orders; and

''(J) whether, in choosing among alternative regulatory approaches, those approaches maximize net benefits (including potential economic, environmental, and other benefits, distributive impacts, and equity).''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 442—RECOGNIZING NATIONAL FOSTER CARE MONTH AS AN OPPORTUNITY TO RAISE AWARENESS ABOUT THE CHALLENGES OF CHILDREN IN THE FOSTER CARE SYSTEM, AND ENCOURAGING CONGRESS TO IMPLEMENT POLICY TO IMPROVE THE LIVES OF CHILDREN IN THE FOSTER CARE SYSTEM

Ms. LANDRIEU (for herself, Mr. GRASSLEY, Mr. KAINE, Mr. CRAPO, Ms. HEITKAMP, Mr. INHOFE, Mr. LEVIN, Mr. JOHANNS, Ms. KLOBUCHAR, Mr. COCHRAN, Mr. CASEY, Mr. HOEVEN, Mrs. FEINSTEIN, Mr. BLUNT, Mr. WYDEN, and Mrs. HAGAN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 442

Whereas National Foster Care Month was established more than 20 years ago to—

(1) bring foster care issues to the forefront;

(2) highlight the importance of permanency for every child; and

(3) recognize the essential role that foster parents, social workers, and advocates have in the lives of children in foster care throughout the United States;

Whereas all children deserve a safe, loving, and permanent home;

Whereas the primary goal of the foster care system is to ensure the safety and well-being of children while working to provide a safe, loving, and permanent home for each child;

Whereas there are approximately 400,000 children living in foster care;

Whereas there were approximately 252,000 youth that entered the foster care system in 2012, while nearly 102,000 youth were eligible and awaiting adoption at the end of 2012;

Whereas foster care is intended to be a temporary placement, but children remain in the foster care system for an average of 2 years;

Whereas ethnic minority children are more likely to stay in the foster care system for longer periods of time and are less likely to be reunited with their biological families;

Whereas foster parents are the front-line caregivers for children who cannot safely remain with their biological parents and provide physical care, emotional support, education advocacy, and are the largest single source of families providing permanent homes for children leaving foster care to adoption;

Whereas children in foster care who are placed with relatives, compared to children placed with nonrelatives, have more stability, including fewer changes in placements, have more positive perceptions of their placements, are more likely to be placed with their siblings, and demonstrate fewer behavioral problems;

Whereas some relative caregivers receive less financial assistance and support services than do foster caregivers;

Whereas recent studies show children in foster care are prescribed psychotropic medication at rates up to 11 times higher than other children on Medicaid and in amounts that exceed the Food and Drug Administration's guidelines;

Whereas youth in foster care are much more likely to face educational instability with 34 percent of foster youth ages 17 to 18 experiencing at least 7 changes while in care;

Whereas youth in foster care are often cut off from other youth and face hurdles in participating in activities common to their peers, such as sports or extracurricular activities;

Whereas youth in foster care are more susceptible to being trafficked, and more needs to be done to prevent, identify, and intervene when a child becomes a victim of the crime;

Whereas an increased emphasis on prevention and reunification services is necessary to reduce the number of children that are forced to remain in the foster care system;

Whereas more than 23,400 youth ''age out'' of foster care annually without a legal permanent connection to an adult or family;

Whereas children who age out of foster care lack the security or support of a biological or adoptive family and frequently struggle to secure affordable housing, obtain health insurance, pursue higher education, and acquire adequate employment;

Whereas nearly half of children in foster care for five or more years experience 7 or more different foster care placements, which often leads to disruption of routines and the need to change schools and move away from siblings, extended families, and familiar surroundings;

Whereas children entering foster care often confront the widespread misperception that children in foster care are disruptive, unruly, and dangerous, even though placement in foster care is based on the actions of a parent or guardian, not the child;

Whereas States, localities, and communities should be encouraged to invest resources in preventative and reunification services and post-permanency programs to ensure that more children in foster care are provided with safe, loving, and permanent placements;

Whereas Federal legislation over the past three decades, including the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96–272), the Adoption and Safe Families Act of 1997 (Public Law 105–89), the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110–351), the Child and Family Services Improvement and Innovation Act (Public Law 112–34), and the Uninterrupted Scholars Act (Public Law 112–278) provided new investments and services to improve the outcomes of children in the foster care system;

Whereas the Children's Bureau of the Department of Health and Human Services has designated May as National Foster Care Month under the theme ''to help build blocks toward permanent families for foster youth'';

Whereas May would be an appropriate month to designate as National Foster Care Month to provide an opportunity to acknowledge the accomplishments of the child-welfare workforce, foster parents, advocacy community, and mentors for their dedication, accomplishments, and positive impact they have on the lives of children; and

Whereas much remains to be done to ensure that all children have a safe, loving, nurturing, and permanent family, regardless of age or special needs: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes National Foster Care Month as an opportunity to raise awareness about the challenges that children face in the foster-care system;

(2) encourages Congress to implement policy to improve the lives of children in the foster care system and maximize the number children exiting foster care to the protection of safe, loving, and permanent families;

(3) supports the designation of National Foster Care Month;

(4) acknowledges the unique needs of children in the foster-care system;

(5) recognizes foster youth throughout the United States for their ongoing tenacity, courage, and resilience while facing life challenges;

(6) acknowledges the exceptional alumni of the foster-care system who serve as advocates and role models for youth who remain in care;

(7) honors the commitment and dedication of the individuals who work tirelessly to provide assistance and services to children in the foster-care system; and

(8) reaffirms the need to continue working to improve the outcomes of all children in the foster-care system through parts B and E of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and other programs designed to—

(A) support vulnerable families;

(B) invest in prevention and reunification services;

(C) promote guardianship, adoption, and other permanent placement opportunities in cases where reunification is not in the best interests of the child;

(D) adequately serve those children brought into the foster-care system; and

(E) facilitate the successful transition into adulthood for children that ''age out'' of the foster-care system.

SENATE RESOLUTION 443—RECOGNIZING THE GOALS OF NATIONAL TRAVEL AND TOURISM WEEK AND HONORING THE VALUABLE CONTRIBUTIONS OF TRAVEL AND TOURISM TO THE UNITED STATES

Mr. BEGICH (for himself, Mr. KIRK, Mr. SCHATZ, Mr. SCOTT, Mr. WARNER, Ms. HIRONO, Mr. REID, Ms. KLOBUCHAR, Mrs. SHAHEEN, and Mr. HELLER) submitted the following resolution; which was considered and agreed to:

S. RES. 443

Whereas National Travel and Tourism Week was established in 1983 through the enactment of the Joint Resolution entitled ''Joint Resolution to designate the week beginning May 27, 1984, as 'National Tourism Week' '', approved November 29, 1983 (Public