

115TH CONGRESS
1ST SESSION

H. R. 238

AN ACT

To reauthorize the Commodity Futures Trading Commission, to better protect futures customers, to provide end-users with market certainty, to make basic reforms to ensure transparency and accountability at the Commission, to help farmers, ranchers, and end-users manage risks, to help keep consumer costs low, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Commodity End-User
3 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

Sec. 101. Enhanced protections for futures customers.
Sec. 102. Electronic confirmation of customer funds.
Sec. 103. Notice and certifications providing additional customer protections.
Sec. 104. Futures commission merchant compliance.
Sec. 105. Certainty for futures customers and market participants.

**TITLE II—COMMODITY FUTURES TRADING COMMISSION
REFORMS**

Sec. 201. Extension of operations.
Sec. 202. Consideration by the Commodity Futures Trading Commission of the
costs and benefits of its regulations and orders.
Sec. 203. Division directors.
Sec. 204. Office of the Chief Economist.
Sec. 205. Procedures governing actions taken by Commission staff.
Sec. 206. Strategic technology plan.
Sec. 207. Internal risk controls.
Sec. 208. Subpoena duration and renewal.
Sec. 209. Applicability of notice and comment requirements of the Administra-
tive Procedure Act to guidance voted on by the Commission.
Sec. 210. Judicial review of Commission rules.
Sec. 211. GAO study on use of Commission resources.
Sec. 212. Disclosure of required data of other registered entities.
Sec. 213. Elimination of certain leasing authority of the Commission.
Sec. 214. Reform of the Customer Protection Fund.

TITLE III—END-USER RELIEF

Sec. 301. Transactions with utility special entities.
Sec. 302. Utility special entity defined.
Sec. 303. Utility operations-related swap.
Sec. 304. End-users not treated as financial entities.
Sec. 305. Reporting of illiquid swaps so as to not disadvantage certain non-fi-
nancial end-users.
Sec. 306. Relief for grain elevator operators, farmers, agricultural counterpar-
ties, and commercial market participants.
Sec. 307. Relief for end-users who use physical contracts with volumetric
optionality.
Sec. 308. Commission vote required before automatic change of swap dealer de
minimis level.
Sec. 309. Capital requirements for non-bank swap dealers.

- Sec. 310. Harmonization with the Jumpstart Our Business Startups Act.
- Sec. 311. Bona fide hedge defined to protect end-user risk management needs.
- Sec. 312. Cross-border regulation of derivatives transactions.
- Sec. 313. Exemption of qualified charitable organizations from designation and regulation as commodity pool operators.
- Sec. 314. Small bank holding company clearing exemption.
- Sec. 315. Core principle certainty.
- Sec. 316. Treatment of Federal Home Loan Bank products.
- Sec. 317. Treatment of certain funds.
- Sec. 318. Procedure for obtaining certain intellectual property.
- Sec. 319. Determination of predominant engagement.
- Sec. 320. Treatment of transactions between affiliates.
- Sec. 321. Requirements related to position limits.

TITLE IV—TECHNICAL CORRECTIONS

- Sec. 401. Correction of references.
- Sec. 402. Elimination of obsolete references to dealer options.
- Sec. 403. Updated trade data publication requirement.
- Sec. 404. Flexibility for registered entities.
- Sec. 405. Elimination of obsolete references to electronic trading facilities.
- Sec. 406. Elimination of obsolete reference to alternative swap execution facilities.
- Sec. 407. Elimination of redundant references to types of registered entities.
- Sec. 408. Clarification of Commission authority over swaps trading.
- Sec. 409. Elimination of obsolete reference to the Commodity Exchange Commission.
- Sec. 410. Elimination of obsolete references to derivative transaction execution facilities.
- Sec. 411. Elimination of obsolete references to exempt boards of trade.
- Sec. 412. Elimination of report due in 1986.
- Sec. 413. Compliance report flexibility.
- Sec. 414. Miscellaneous corrections.
- Sec. 415. Delay in full implementation of the final rule on ownership and control reporting.

1 **TITLE I—CUSTOMER** 2 **PROTECTIONS** 3 **SEC. 101. ENHANCED PROTECTIONS FOR FUTURES CUS-** 4 **TOMERS.**

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

7 “(t) A registered futures association shall—

8 “(1) require each member of the association

9 that is a futures commission merchant to maintain

1 written policies and procedures regarding the main-
2 tenance of—

3 “(A) the residual interest of the member,
4 as described in section 1.23 of title 17, Code of
5 Federal Regulations, in any customer seg-
6 regated funds account of the member, as identi-
7 fied in section 1.20 of such title, and in any for-
8 eign futures and foreign options customer se-
9 cured amount funds account of the member, as
10 identified in section 30.7 of such title; and

11 “(B) the residual interest of the member,
12 as described in section 22.2(e)(4) of such title,
13 in any cleared swaps customer collateral ac-
14 count of the member, as identified in section
15 22.2 of such title; and

16 “(2) establish rules to govern the withdrawal,
17 transfer or disbursement by any member of the asso-
18 ciation, that is a futures commission merchant, of
19 the member’s residual interest in customer seg-
20 regated funds as provided in such section 1.20, in
21 foreign futures and foreign options customer secured
22 amount funds, identified as provided in such section
23 30.7, and from a cleared swaps customer collateral,
24 identified as provided in such section 22.2.”.

1 **SEC. 102. ELECTRONIC CONFIRMATION OF CUSTOMER**
2 **FUNDS.**

3 Section 17 of the Commodity Exchange Act (7 U.S.C.
4 21), as amended by section 101 of this Act, is amended
5 by adding at the end the following:

6 “(u) A registered futures association shall require
7 any member of the association that is a futures commis-
8 sion merchant to—

9 “(1) use an electronic system or systems to re-
10 port financial and operational information to the as-
11 sociation or another party designated by the reg-
12 istered futures association, including information re-
13 lated to customer segregated funds, foreign futures
14 and foreign options customer secured amount funds
15 accounts, and cleared swaps customer collateral, in
16 accordance with such terms, conditions, documenta-
17 tion standards, and regular time intervals as are es-
18 tablished by the registered futures association;

19 “(2) instruct each depository, including any
20 bank, trust company, derivatives clearing organiza-
21 tion, or futures commission merchant, holding cus-
22 tomer segregated funds under section 1.20 of title
23 17, Code of Federal Regulations, foreign futures and
24 foreign options customer secured amount funds
25 under section 30.7 of such title, or cleared swap cus-
26 tomer funds under section 22.2 of such title, to re-

1 port balances in the futures commission merchant's
 2 section 1.20 customer segregated funds, section 30.7
 3 foreign futures and foreign options customer secured
 4 amount funds, and section 22.2 cleared swap cus-
 5 tomer funds, to the registered futures association or
 6 another party designated by the registered futures
 7 association, in the form, manner, and interval pre-
 8 scribed by the registered futures association; and

9 “(3) hold section 1.20 customer segregated
 10 funds, section 30.7 foreign futures and foreign op-
 11 tions customer secured amount funds and section
 12 22.2 cleared swaps customer funds in a depository
 13 that reports the balances in these accounts of the fu-
 14 tures commission merchant held at the depository to
 15 the registered futures association or another party
 16 designated by the registered futures association in
 17 the form, manner, and interval prescribed by the
 18 registered futures association.”.

19 **SEC. 103. NOTICE AND CERTIFICATIONS PROVIDING ADDI-**
 20 **TIONAL CUSTOMER PROTECTIONS.**

21 Section 17 of the Commodity Exchange Act (7 U.S.C.
 22 21), as amended by sections 101 and 102 of this Act, is
 23 amended by adding at the end the following:

24 “(v) A futures commission merchant that has ad-
 25 justed net capital in an amount less than the amount re-

1 quired by regulations established by the Commission or
2 a self-regulatory organization of which the futures com-
3 mission merchant is a member shall immediately notify
4 the Commission and the self-regulatory organization of
5 this occurrence.

6 “(w) A futures commission merchant that does not
7 hold a sufficient amount of funds in segregated accounts
8 for futures customers under section 1.20 of title 17, Code
9 of Federal Regulations, in foreign futures and foreign op-
10 tions secured amount accounts for foreign futures and for-
11 eign options secured amount customers under section 30.7
12 of such title, or in segregated accounts for cleared swap
13 customers under section 22.2 of such title, as required by
14 regulations established by the Commission or a self-regu-
15 latory organization of which the futures commission mer-
16 chant is a member, shall immediately notify the Commis-
17 sion and the self-regulatory organization of this occur-
18 rence.

19 “(x) Within such time period established by the Com-
20 mission after the end of each fiscal year, a futures com-
21 mission merchant shall file with the Commission a report
22 from the chief compliance officer of the futures commis-
23 sion merchant containing an assessment of the internal
24 compliance programs of the futures commission mer-
25 chant.”.

1 **SEC. 104. FUTURES COMMISSION MERCHANT COMPLIANCE.**

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

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

6 (2) by inserting “(1)” before “It shall be unlaw-
7 ful”; and

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

10 “(2) Any rules or regulations requiring a fu-
11 tures commission merchant to maintain a residual
12 interest in accounts held for the benefit of customers
13 in amounts at least sufficient to exceed the sum of
14 all uncollected margin deficits of such customers
15 shall provide that a futures commission merchant
16 shall meet its residual interest requirement as of the
17 end of each business day calculated as of the close
18 of business on the previous business day.”.

19 (b) CONFORMING AMENDMENT.—Section 4d(h) of
20 such Act (7 U.S.C. 6d(h)) is amended by striking “Not-
21 withstanding subsection (a)(2)” and inserting “Notwith-
22 standing subsection (a)(1)(B)”.

23 **SEC. 105. CERTAINTY FOR FUTURES CUSTOMERS AND MAR-**
24 **KET PARTICIPANTS.**

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

1 (1) by striking “and” at the end of paragraph
2 (4);

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

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

6 “(6) that cash, securities, or other property of
7 the estate of a commodity broker, including the
8 trading or operating accounts of the commodity
9 broker and commodities held in inventory by the
10 commodity broker, shall be included in customer
11 property, subject to any otherwise unavoidable secu-
12 rity interest, or otherwise unavoidable contractual
13 offset or netting rights of creditors (including rights
14 set forth in a rule or bylaw of a derivatives clearing
15 organization or a clearing agency) in respect of such
16 property, but only to the extent that the property
17 that is otherwise customer property is insufficient to
18 satisfy the net equity claims of public customers (as
19 such term may be defined by the Commission by
20 rule or regulation) of the commodity broker.”.

1 **TITLE II—COMMODITY FUTURES**
2 **TRADING COMMISSION RE-**
3 **FORMS**

4 **SEC. 201. EXTENSION OF OPERATIONS.**

5 Section 12(d) of the Commodity Exchange Act (7
6 U.S.C. 16(d)) is amended to read as follows:

7 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
8 is authorized to be appropriated \$250,000,000 for each
9 of fiscal years 2017 through 2021 to carry out this Act.”.

10 **SEC. 202. CONSIDERATION BY THE COMMODITY FUTURES**
11 **TRADING COMMISSION OF THE COSTS AND**
12 **BENEFITS OF ITS REGULATIONS AND OR-**
13 **DERS.**

14 Section 15(a) of the Commodity Exchange Act (7
15 U.S.C. 19(a)) is amended—

16 (1) by striking paragraphs (1) and (2) and in-
17 serting the following:

18 “(1) IN GENERAL.—Before promulgating a reg-
19 ulation under this Act or issuing an order (except as
20 provided in paragraph (3)), the Commission,
21 through the Office of the Chief Economist, shall as-
22 sess and publish in the regulation or order the costs
23 and benefits, both qualitative and quantitative, of
24 the proposed regulation or order, and the proposed

1 regulation or order shall state its statutory justifica-
2 tion.

3 “(2) CONSIDERATIONS.—In making a reasoned
4 determination of the costs and the benefits, the
5 Commission shall evaluate—

6 “(A) considerations of protection of market
7 participants and the public;

8 “(B) considerations of the efficiency, com-
9 petitiveness, and financial integrity of futures
10 and swaps markets;

11 “(C) considerations of the impact on mar-
12 ket liquidity in the futures and swaps markets;

13 “(D) considerations of price discovery;

14 “(E) considerations of sound risk manage-
15 ment practices;

16 “(F) available alternatives to direct regula-
17 tion;

18 “(G) the degree and nature of the risks
19 posed by various activities within the scope of
20 its jurisdiction;

21 “(H) the costs of complying with the pro-
22 posed regulation or order by all regulated enti-
23 ties, including a methodology for quantifying
24 the costs (recognizing that some costs are dif-
25 ficult to quantify);

1 “(I) whether the proposed regulation or
2 order is inconsistent, incompatible, or duplica-
3 tive of other Federal regulations or orders;

4 “(J) the cost to the Commission of imple-
5 menting the proposed regulation or order by the
6 Commission staff, including a methodology for
7 quantifying the costs;

8 “(K) whether, in choosing among alter-
9 native regulatory approaches, those approaches
10 maximize net benefits (including potential eco-
11 nomic and other benefits, distributive impacts,
12 and equity); and

13 “(L) other public interest considerations.”;
14 and

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

16 “(4) JUDICIAL REVIEW.—Notwithstanding sec-
17 tion 24(d), a court shall affirm a Commission as-
18 sessment of costs and benefits under this subsection,
19 unless the court finds the assessment to be an abuse
20 of discretion.”.

21 **SEC. 203. DIVISION DIRECTORS.**

22 Section 2(a)(6)(C) of the Commodity Exchange Act
23 (7 U.S.C. 2(a)(6)(C)) is amended by inserting “, and the
24 heads of the units shall serve at the pleasure of the Com-
25 mission” before the period.

1 **SEC. 204. OFFICE OF THE CHIEF ECONOMIST.**

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

5 “(16) OFFICE OF THE CHIEF ECONOMIST.—

6 “(A) ESTABLISHMENT.—There is estab-
7 lished in the Commission the Office of the Chief
8 Economist.

9 “(B) HEAD.—The Office of the Chief
10 Economist shall be headed by the Chief Econo-
11 mist, who shall be appointed by the Commission
12 and serve at the pleasure of the Commission.

13 “(C) FUNCTIONS.—The Chief Economist
14 shall report directly to the Commission and per-
15 form such functions and duties as the Commis-
16 sion may prescribe.

17 “(D) PROFESSIONAL STAFF.—The Com-
18 mission shall appoint such other economists as
19 may be necessary to assist the Chief Economist
20 in performing such economic analysis, regu-
21 latory cost-benefit analysis, or research any
22 member of the Commission may request.”.

23 (b) CONFORMING AMENDMENT.—Section 2(a)(6)(A)
24 of such Act (7 U.S.C. 2(a)(6)(A)) is amended by striking
25 “(4) and (5) of this subsection” and inserting “(4), (5),
26 and (16)”.

1 (c) SENSE OF THE CONGRESS.—It is the sense of the
 2 Congress that the Commodity Futures Trading Commis-
 3 sion should take all appropriate actions to encourage ap-
 4 plications for positions in the Office of the Chief Econo-
 5 mist from members of minority groups, women, disabled
 6 persons, and veterans.

7 **SEC. 205. PROCEDURES GOVERNING ACTIONS TAKEN BY**
 8 **COMMISSION STAFF.**

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

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

13 “(12) RULES AND REGULATIONS.—

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

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

18 “(B) NOTICE TO COMMISSIONERS.—The
 19 Commission shall develop and publish internal
 20 procedures governing the issuance by any divi-
 21 sion or office of the Commission of any re-
 22 sponse to a formal, written request or petition
 23 from any member of the public for an exemp-
 24 tive, a no-action, or an interpretive letter and
 25 such procedures shall provide that the commis-

1 sioners be provided with the final version of the
2 matter to be issued with sufficient notice to re-
3 view the matter prior to its issuance.”.

4 **SEC. 206. STRATEGIC TECHNOLOGY PLAN.**

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

8 “(17) STRATEGIC TECHNOLOGY PLAN.—

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

16 “(B) CONTENTS.—The plan shall—

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

1 sion, including a detailed accounting of
2 how the funds provided for technology will
3 be used and the priorities that will apply in
4 the use of the funds;

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

8 “(iii) include a summary of any plan
9 of action and milestones to address any
10 known information security vulnerability,
11 as identified pursuant to a widely accepted
12 industry or Government standard, includ-
13 ing—

14 “(I) specific information about
15 the industry or Government standard
16 used to identify the known informa-
17 tion security vulnerability;

18 “(II) a detailed time line with
19 specific deadlines for addressing the
20 known information security vulner-
21 ability; and

22 “(III) an update of any such
23 time line and the rationale for any de-
24 viation from the time line.”.

1 **SEC. 207. INTERNAL RISK CONTROLS.**

2 Section 2(a)(12) of the Commodity Exchange Act (7
3 U.S.C. 2(a)(12)), as amended by section 205 of this Act,
4 is amended by adding at the end the following:

5 “(C) INTERNAL RISK CONTROLS.—The
6 Commission, in consultation with the Chief
7 Economist, shall develop comprehensive internal
8 risk control mechanisms to safeguard and gov-
9 ern the storage of all market data by the Com-
10 mission, all market data sharing agreements of
11 the Commission, and all academic research per-
12 formed at the Commission using market data.”.

13 **SEC. 208. SUBPOENA DURATION AND RENEWAL.**

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

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

18 “(5) SUBPOENA.—

19 “(A) IN GENERAL.—For”; and

20 (2) by adding after and below the end the fol-
21 lowing:

22 “(B) OMNIBUS ORDERS OF INVESTIGA-
23 TION.—

24 “(i) DURATION AND RENEWAL.—An
25 omnibus order of investigation shall not be

1 for an indefinite duration and may be re-
 2 newed only by Commission action.

3 “(ii) DEFINITION.—In clause (i), the
 4 term ‘omnibus order of investigation’
 5 means an order of the Commission author-
 6 izing one or more members of the Commis-
 7 sion or its staff to issue subpoenas under
 8 subparagraph (A) to multiple persons in
 9 relation to a particular subject matter
 10 area.”.

11 **SEC. 209. APPLICABILITY OF NOTICE AND COMMENT RE-**
 12 **QUIREMENTS OF THE ADMINISTRATIVE PRO-**
 13 **CEDURE ACT TO GUIDANCE VOTED ON BY**
 14 **THE COMMISSION.**

15 Section 2(a)(12) of the Commodity Exchange Act (7
 16 U.S.C. 2(a)(12)), as amended by sections 205 and 207
 17 of this Act, is amended by adding at the end the following:

18 “(D) APPLICABILITY OF NOTICE AND COM-
 19 MENT RULES TO GUIDANCE VOTED ON BY THE
 20 COMMISSION.—The notice and comment re-
 21 quirements of section 553 of title 5, United
 22 States Code, shall also apply with respect to
 23 any Commission statement or guidance, includ-
 24 ing interpretive rules, general statements of pol-
 25 icy, or rules of Commission organization, proce-

1 dure, or practice, that has the effect of imple-
2 menting, interpreting or prescribing law or pol-
3 icy and that is voted on by the Commission.”.

4 **SEC. 210. JUDICIAL REVIEW OF COMMISSION RULES.**

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

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

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

17 “(b) A copy of the petition shall be transmitted forth-
18 with by the clerk of the court to an officer designated by
19 the Commission for that purpose. Thereupon the Commis-
20 sion shall file in the court the record on which the rule
21 complained of is entered, as provided in section 2112 of
22 title 28, United States Code, and the Federal Rules of
23 Appellate Procedure.

24 “(c) On the filing of the petition, the court has juris-
25 diction, which becomes exclusive on the filing of the

1 record, to affirm and enforce or to set aside the rule in
2 whole or in part.

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

11 **SEC. 211. GAO STUDY ON USE OF COMMISSION RESOURCES.**

12 (a) STUDY.—The Comptroller General of the United
13 States shall conduct a study of the resources of the Com-
14modity Futures Trading Commission that—

15 (1) assesses whether the resources of the Com-
16 mission are sufficient to enable the Commission to
17 effectively carry out the duties of the Commission;

18 (2) examines the expenditures of the Commis-
19 sion on hardware, software, and analytical processes
20 designed to protect customers in the areas of—

21 (A) market surveillance and risk detection;

22 and

23 (B) market data collection, aggregation,
24 interpretation, standardization, harmonization,
25 and streamlining;

1 (3) analyzes the additional workload undertaken
2 by the Commission, and ascertains where self-regu-
3 latory organizations could be more effectively uti-
4 lized; and

5 (4) examines existing and emerging post-trade
6 risk reduction services in the swaps market, the no-
7 tional amount of risk reduction transactions pro-
8 vided by the services, and the effects the services
9 have on financial stability, including—

10 (A) market surveillance and risk detection;

11 (B) market data collection, aggregation,
12 interpretation, standardization, harmonization,
13 and streamlining; and

14 (C) oversight and compliance work by mar-
15 ket participants and regulators.

16 (b) REPORT.—Not later than 180 days after the date
17 of the enactment of this Act, the Comptroller General of
18 the United States shall submit to the Committee on Agri-
19 culture of the House of Representatives and the Com-
20 mittee on Agriculture, Nutrition, and Forestry of the Sen-
21 ate a report that contains the results of the study required
22 by subsection (a).

1 **SEC. 212. DISCLOSURE OF REQUIRED DATA OF OTHER REG-**
2 **ISTERED ENTITIES.**

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

5 “(j) DISCLOSURE OF REQUIRED DATA OF OTHER
6 REGISTERED ENTITIES.—

7 “(1) Except as provided in this subsection, the
8 Commission may not be compelled to disclose any
9 proprietary information provided to the Commission,
10 except that nothing in this subsection—

11 “(A) authorizes the Commission to with-
12 hold information from Congress; or

13 “(B) prevents the Commission from—

14 “(i) complying with a request for in-
15 formation from any other Federal depart-
16 ment or agency, any State or political sub-
17 division thereof, or any foreign government
18 or any department, agency, or political
19 subdivision thereof requesting the report or
20 information for purposes within the scope
21 of its jurisdiction, upon an agreement of
22 confidentiality to protect the information
23 in a manner consistent with this paragraph
24 and subsection (e); or

25 “(ii) making a disclosure made pursu-
26 ant to a court order in connection with an

1 administrative or judicial proceeding
2 brought under this Act, in any receivership
3 proceeding involving a receiver appointed
4 in a judicial proceeding brought under this
5 Act, or in any bankruptcy proceeding in
6 which the Commission has intervened or in
7 which the Commission has the right to ap-
8 pear and be heard under title 11 of the
9 United States Code.

10 “(2) Any proprietary information of a com-
11 modity trading advisor or commodity pool operator
12 ascertained by the Commission in connection with
13 Form CPO-PQR, Form CTA-PR, and any suc-
14 cessor forms thereto, shall be subject to the same
15 limitations on public disclosure, as any facts
16 ascertained during an investigation, as provided by
17 subsection (a); provided, however, that the Commis-
18 sion shall not be precluded from publishing aggre-
19 gate information compiled from such forms, to the
20 extent such aggregate information does not identify
21 any individual person or firm, or such person’s pro-
22 prietary information.

23 “(3) For purposes of section 552 of title 5,
24 United States Code, this subsection, and the infor-
25 mation contemplated herein, shall be considered a

1 statute described in subsection (b)(3)(B) of such
2 section 552.

3 “(4) For purposes of the definition of propri-
4 etary information in paragraph (5), the records and
5 reports of any client account or commodity pool to
6 which a commodity trading advisor or commodity
7 pool operator registered under this title provides
8 services that are filed with the Commission on Form
9 CPO-PQR, CTA-PR, and any successor forms
10 thereto, shall be deemed to be the records and re-
11 ports of the commodity trading advisor or com-
12 modity pool operator, respectively.

13 “(5) For purposes of this section, proprietary
14 information of a commodity trading advisor or com-
15 modity pool operator includes sensitive, non-public
16 information regarding—

17 “(A) the commodity trading advisor, com-
18 modity pool operator or the trading strategies
19 of the commodity trading advisor or commodity
20 pool operator;

21 “(B) analytical or research methodologies
22 of a commodity trading advisor or commodity
23 pool operator;

24 “(C) trading data of a commodity trading
25 advisor or commodity pool operator; and

1 “(D) computer hardware or software con-
2 taining intellectual property of a commodity
3 trading advisor or commodity pool operator;”.

4 **SEC. 213. ELIMINATION OF CERTAIN LEASING AUTHORITY**
5 **OF THE COMMISSION.**

6 Section 12(b)(3) of the Commodity Exchange Act (7
7 U.S.C. 16(b)(3)) is amended—

8 (1) by striking “including, but not limited to,”
9 and inserting “excluding”; and

10 (2) by adding at the end the following new sen-
11 tence: “In the case of an existing lease contract en-
12 tered into under this paragraph, the Commission
13 may not extend the lease term, but may agree to any
14 other contract modification that does not result in
15 any additional cost to the Federal Government.”.

16 **SEC. 214. REFORM OF THE CUSTOMER PROTECTION FUND.**

17 Section 23(g) of the Commodity Exchange Act (7
18 U.S.C. 26(g)) is amended—

19 (1) in paragraph (2)—

20 (A) in the matter preceding subparagraph
21 (A), by striking “or fiscal year limitation”;

22 (B) in subparagraph (A), by striking “;
23 and” and inserting “, without fiscal year limita-
24 tion;”; and

1 (C) in subparagraph (B), by striking
 2 “thereunder.” and inserting “, the total amount
 3 of which shall not exceed \$5,000,000 per fiscal
 4 year.”;

5 (2) in paragraph (3)(A), by striking “unless the
 6 balance of the Fund at the time the monetary judg-
 7 ment is collected exceeds \$100,000,000” and insert-
 8 ing “, but only to the extent that the resulting bal-
 9 ance of the Fund does not exceed \$50,000,000”; and
 10 (3) by redesignating paragraph (5) as para-
 11 graph (6) and inserting after paragraph (4) the fol-
 12 lowing:

13 “(5) REVERSION TO TREASURY.—Notwith-
 14 standing the preceding provisions of this subsection,
 15 to the extent the balance of the Fund exceeds
 16 \$50,000,000, the excess amount shall be deposited
 17 in the Treasury of the United States as miscella-
 18 neous receipts.”.

19 **TITLE III—END-USER RELIEF**

20 **SEC. 301. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.**

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

24 “(E) CERTAIN TRANSACTIONS WITH A
 25 UTILITY SPECIAL ENTITY.—

1 “(i) Transactions in utility operations-
 2 related swaps shall be reported pursuant to
 3 section 4r.

4 “(ii) In making a determination to ex-
 5 empt pursuant to subparagraph (D), the
 6 Commission shall treat a utility operations-
 7 related swap entered into with a utility
 8 special entity, as defined in section
 9 4s(h)(2)(D), as if it were entered into with
 10 an entity that is not a special entity, as de-
 11 fined in section 4s(h)(2)(C).”.

12 **SEC. 302. UTILITY SPECIAL ENTITY DEFINED.**

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

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

22 “(i) owns or operates, or anticipates
 23 owning or operating, an electric or natural
 24 gas facility or an electric or natural gas
 25 operation;

1 “(ii) supplies, or anticipates sup-
 2 plying, natural gas and or electric energy
 3 to another utility special entity;

4 “(iii) has, or anticipates having, pub-
 5 lic service obligations under Federal, State,
 6 or local law or regulation to deliver electric
 7 energy or natural gas service to customers;
 8 or

9 “(iv) is a Federal power marketing
 10 agency, as defined in section 3 of the Fed-
 11 eral Power Act.”.

12 **SEC. 303. UTILITY OPERATIONS-RELATED SWAP.**

13 (a) SWAP FURTHER DEFINED.—Section
 14 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.
 15 1a(47)(A)(iii)) is amended—

16 (1) by striking “and” at the end of subclause
 17 (XXI);

18 (2) by adding “and” at the end of subclause
 19 (XXII); and

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

21 “(XXIII) a utility operations-re-
 22 lated swap;”.

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

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

2 The term ‘utility operations-related swap’ means a
3 swap that—

4 “(A) is entered into by a utility to hedge
5 or mitigate a commercial risk;

6 “(B) is not a contract, agreement, or
7 transaction based on, derived on, or ref-
8 erencing—

9 “(i) an interest rate, credit, equity, or
10 currency asset class;

11 “(ii) except as used for fuel for elec-
12 tric energy generation, a metal, agricul-
13 tural commodity, or crude oil or gasoline
14 commodity of any grade; or

15 “(iii) any other commodity or category
16 of commodities identified for this purpose
17 in a rule or order adopted by the Commis-
18 sion in consultation with the appropriate
19 Federal and State regulatory commissions;
20 and

21 “(C) is associated with—

22 “(i) the generation, production, pur-
23 chase, or sale of natural gas or electric en-
24 ergy, the supply of natural gas or electric
25 energy to a utility, or the delivery of nat-

1 ural gas or electric energy service to utility
2 customers;

3 “(ii) fuel supply for the facilities or
4 operations of a utility;

5 “(iii) compliance with an electric sys-
6 tem reliability obligation;

7 “(iv) compliance with an energy, en-
8 ergy efficiency, conservation, or renewable
9 energy or environmental statute, regula-
10 tion, or government order applicable to a
11 utility; or

12 “(v) any other electric energy or nat-
13 ural gas swap to which a utility is a
14 party.”.

15 **SEC. 304. END-USERS NOT TREATED AS FINANCIAL ENTI-**
16 **TIES.**

17 (a) IN GENERAL.—Section 2(h)(7)(C)(iii) of the
18 Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(iii)) is
19 amended to read as follows:

20 “(iii) LIMITATION.—Such definition
21 shall not include an entity—

22 “(I) whose primary business is
23 providing financing, and who uses de-
24 rivatives for the purpose of hedging
25 underlying commercial risks related to

1 interest rate and foreign currency ex-
2 posures, 90 percent or more of which
3 arise from financing that facilitates
4 the purchase or lease of products, 90
5 percent or more of which are manu-
6 factured by the parent company or
7 another subsidiary of the parent com-
8 pany; or

9 “(II) who is not supervised by a
10 prudential regulator, and is not de-
11 scribed in any of subclauses (I)
12 through (VII) of clause (i), and—

13 “(aa) is a commercial mar-
14 ket participant; or

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

22 (b) COMMERCIAL MARKET PARTICIPANT DE-
23 FINED.—

24 (1) IN GENERAL.—Section 1a of such Act (7
25 U.S.C. 1a), as amended by section 303(b) of this

Act, is amended by redesignating paragraphs (7) through (52) as paragraphs (8) through (53), respectively, and by inserting after paragraph (6) the following:

“(7) 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 byproducts of such a commodity.”.

(2) CONFORMING AMENDMENTS.—

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

(i) in subparagraph (A) of paragraph (18) (as so redesignated by paragraph (1) of this subsection), in the matter preceding clause (i), by striking “(18)(A)” and inserting “(19)(A)”; and

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

(B) Section 4(c)(1)(A)(i)(I) of such Act (7 U.S.C. 6(c)(1)(A)(i)(I)) is amended by striking “(7), paragraph (18)(A)(vii)(III), paragraphs

1 (23), (24), (31), (32), (38), (39), (41), (42),
 2 (46), (47), (48), and (49)” and inserting “(8),
 3 paragraph (19)(A)(vii)(III), paragraphs (24),
 4 (25), (32), (33), (39), (40), (42), (43), (47),
 5 (48), (49), and (50)”.

6 (C) Section 4q(a)(1) of such Act (7 U.S.C.
 7 6o–1(a)(1)) is amended by striking “1a(9)” and
 8 inserting “1a(10)”.

9 (D) Section 4s(f)(1)(D) of such Act (7
 10 U.S.C. 6s(f)(1)(D)) is amended by striking
 11 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

12 (E) Section 4s(h)(5)(A)(i) of such Act (7
 13 U.S.C. 6s(h)(5)(A)(i)) is amended by striking
 14 “1a(18)” and inserting “1a(19)”.

15 (F) Section 4t(b)(1)(C) of such Act (7
 16 U.S.C. 6t(b)(1)(C)) is amended by striking
 17 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

18 (G) Section 5(d)(23) of such Act (7 U.S.C.
 19 7(d)(23)) is amended by striking
 20 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

21 (H) Section 5(e)(1) of such Act (7 U.S.C.
 22 7(e)(1)) is amended by striking “1a(9)” and in-
 23 serting “1a(10)”.

1 (I) Section 5b(k)(3)(A) of such Act (7
 2 U.S.C. 7a–1(k)(3)(A)) is amended by striking
 3 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

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

8 (K) 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 (L) Section 3a(68)(A)(i) of the Securities
 12 Exchange Act of 1934 (15 U.S.C.
 13 78c(a)(68)(A)(i)) is amended by striking
 14 “(47)(B)(x)” and inserting “(48)(B)(x)”.

15 (M) Section 3C(g)(3)(A)(v) of the Securi-
 16 ties Exchange Act of 1934 (15 U.S.C. 78c-
 17 3(g)(3)(A)(v)) is amended by striking “1a(10)”
 18 and inserting “1a(11)”.

19 (N) Section 6(g)(5)(B)(i) of the Securities
 20 Exchange Act of 1934 (15 U.S.C.
 21 78f(g)(5)(B)(i)) is amended—

22 (i) in subclause (I), by striking
 23 “1a(18)(B)(ii)” and inserting
 24 “1a(19)(B)(ii)”; and

1 (ii) in subclause (II), by striking
2 “1a(18)” and inserting “1a(19)”.

3 (O) Section 15F(h)(5)(A)(i) of the Securi-
4 ties Exchange Act of 1934 (15 U.S.C. 78o-
5 10(h)(5)(A)(i)) is amended by striking
6 “1a(18)” and inserting “1a(19)”.

7 **SEC. 305. REPORTING OF ILLIQUID SWAPS SO AS TO NOT**
8 **DISADVANTAGE CERTAIN NON-FINANCIAL**
9 **END-USERS.**

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

12 (1) in subparagraph (C), by striking “The
13 Commission” and inserting “Except as provided in
14 subparagraph (D), the Commission”; and

15 (2) by redesignating subparagraphs (D)
16 through (G) as subparagraphs (E) through (H), re-
17 spectively, and inserting after subparagraph (C) the
18 following:

19 “(D) REQUIREMENTS FOR SWAP TRANS-
20 ACTIONS IN ILLIQUID MARKETS.—Notwith-
21 standing subparagraph (C):

22 “(i) The Commission shall provide by
23 rule for the public reporting of swap trans-
24 actions, including price and volume data,
25 in illiquid markets that are not cleared and

1 entered into by a non-financial entity that
 2 is hedging or mitigating commercial risk in
 3 accordance with subsection (h)(7)(A).

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

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

20 **SEC. 306. RELIEF FOR GRAIN ELEVATOR OPERATORS,**
 21 **FARMERS, AGRICULTURAL COUNTERPAR-**
 22 **TIES, AND COMMERCIAL MARKET PARTICI-**
 23 **PANTS.**

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

1 **“SEC. 4u. RECORDKEEPING REQUIREMENTS APPLICABLE**
 2 **TO NON-REGISTERED MEMBERS OF CERTAIN**
 3 **REGISTERED ENTITIES.**

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

16 **SEC. 307. RELIEF FOR END-USERS WHO USE PHYSICAL**
 17 **CONTRACTS WITH VOLUMETRIC**
 18 **OPTIONALITY.**

19 Section 1a(48)(B)(ii) of the Commodity Exchange
 20 Act (7 U.S.C. 1a(47)(B)(ii)), as so redesignated by section
 21 304(b)(1) of this Act, is amended to read as follows:

22 “(ii) any purchase or sale of a non-
 23 financial commodity or security for de-
 24 ferred shipment or delivery, so long as the
 25 transaction is intended to be physically set-
 26 tled, including any stand-alone or embed-

1 ded option for which exercise results in a
 2 physical delivery obligation;”.

3 **SEC. 308. COMMISSION VOTE REQUIRED BEFORE AUTO-**
 4 **MATIC CHANGE OF SWAP DEALER DE MINI-**
 5 **MIS LEVEL.**

6 Section 1a(50)(D) of the Commodity Exchange Act
 7 (7 U.S.C. 1a(49)(D)), as so redesignated by section
 8 304(b)(1) of this Act, is amended—

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

11 “(D) EXCEPTION.—

12 “(i) IN GENERAL.—The Commission”;

13 and

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

16 “(ii) DE MINIMIS QUANTITY.—The de
 17 minimis quantity of swap dealing described
 18 in clause (i) shall be set at a quantity of
 19 \$8,000,000,000, and may be amended or
 20 changed only through a new affirmative
 21 action of the Commission undertaken by
 22 rule or regulation.”.

1 **SEC. 309. CAPITAL REQUIREMENTS FOR NON-BANK SWAP**
 2 **DEALERS.**

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

6 (1) in paragraph (2)(B), by striking “shall”
 7 and inserting the following: “and the Securities and
 8 Exchange Commission, in consultation with the pru-
 9 dential regulators, shall jointly”; and

10 (2) in paragraph (3)(D)—

11 (A) in clause (ii), by striking “shall, to the
 12 maximum extent practicable,” and inserting
 13 “shall”; and

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

15 “(iii) FINANCIAL MODELS.—To the
 16 extent that swap dealers and major swap
 17 participants that are banks are permitted
 18 to use financial models approved by the
 19 prudential regulators or the Securities and
 20 Exchange Commission to calculate min-
 21 imum capital requirements and minimum
 22 initial and variation margin requirements,
 23 including the use of non-cash collateral,
 24 the Commission shall, in consultation with
 25 the prudential regulators and the Securi-
 26 ties and Exchange Commission, permit the

1 use of comparable financial models by
2 swap dealers and major swap participants
3 that are not banks.”.

4 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
5 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C.
6 78o–10(e)) is amended—

7 (1) in paragraph (2)(B), by striking “shall”
8 and inserting the following: “and the Commodity
9 Futures Trading Commission, in consultation with
10 the prudential regulators, shall jointly”; and

11 (2) in paragraph (3)(D)—

12 (A) in clause (ii), by striking “shall, to the
13 maximum extent practicable,” and inserting
14 “shall”; and

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

16 “(iii) FINANCIAL MODELS.—To the
17 extent that security-based swap dealers
18 and major security-based swap participants
19 that are banks are permitted to use finan-
20 cial models approved by the prudential reg-
21 ulators or the Commodity Futures Trading
22 Commission to calculate minimum capital
23 requirements and minimum initial and var-
24 iation margin requirements, including the
25 use of non-cash collateral, the Commission

1 shall, in consultation with the Commodity
2 Futures Trading Commission, permit the
3 use of comparable financial models by se-
4 curity-based swap dealers and major secu-
5 rity-based swap participants that are not
6 banks.”.

7 **SEC. 310. HARMONIZATION WITH THE JUMPSTART OUR**
8 **BUSINESS STARTUPS ACT.**

9 Within 90 days after the date of the enactment of
10 this Act, the Commodity Futures Trading Commission
11 shall—

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

15 “(b) Relief available to commodity pool operators.
16 Upon filing the notice required by paragraph (d) of this
17 section, and subject to compliance with the conditions
18 specified in paragraph (d) of this section, any registered
19 commodity pool operator who sells participations in a pool
20 solely to qualified eligible persons in an offering which
21 qualifies for exemption from the registration requirements
22 of the Securities Act pursuant to section 4(2) of that Act
23 or pursuant to Regulation S, 17 CFR 230.901 et seq.,
24 and any bank registered as a commodity pool operator in
25 connection with a pool that is a collective trust fund whose

1 securities are exempt from registration under the Securi-
 2 ties Act pursuant to section 3(a)(2) of that Act and are
 3 sold solely to qualified eligible persons, may claim any or
 4 all of the following relief with respect to such pool.”; and

5 (2) revise section 4.13(a)(3)(i) of such title to
 6 read as follows:

7 “(i) Interests in the pool are exempt
 8 from registration under the Securities Act
 9 of 1933, and such interests are offered and
 10 sold pursuant to section 4 of the Securities
 11 Act of 1933 and the regulations there-
 12 under;”.

13 **SEC. 311. BONA FIDE HEDGE DEFINED TO PROTECT END-**
 14 **USER RISK MANAGEMENT NEEDS.**

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

17 (1) in paragraph (1)—

18 (A) by striking “may” and inserting
 19 “shall”; and

20 (B) by striking “future for which” and in-
 21 serting “future, to be determined by the Com-
 22 mission, for which either an appropriate swap is
 23 available or”;

24 (2) in paragraph (2)—

1 (A) in the matter preceding subparagraph
 2 (A), by striking “subsection (a)(2)” and all that
 3 follows through “position as” and inserting
 4 “paragraph (1) for swaps, contracts of sale for
 5 future delivery, or options on the contracts or
 6 commodities, a bona fide hedging transaction or
 7 position is”; and

8 (B) in subparagraph (A)(ii), by striking
 9 “of risks” and inserting “or management of
 10 current or anticipated risks”; and

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

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

17 **SEC. 312. CROSS-BORDER REGULATION OF DERIVATIVES**
 18 **TRANSACTIONS.**

19 (a) RULEMAKING REQUIRED.—Within 1 year after
 20 the date of the enactment of this Act, the Commodity Fu-
 21 tures Trading Commission shall issue a rule that address-
 22 es—

23 (1) the nature of the connections to the United
 24 States that require a non-United States person to
 25 register as a swap dealer or a major swap partici-

1 pant under the Commodity Exchange Act and the
2 regulations issued under such Act;

3 (2) which of the United States swaps require-
4 ments apply to the swap activities of non-United
5 States persons and United States persons and their
6 branches, agencies, subsidiaries, and affiliates out-
7 side of the United States, and the extent to which
8 the requirements apply; and

9 (3) the circumstances under which a United
10 States person or non-United States person in com-
11 pliance with the swaps regulatory requirements of a
12 foreign jurisdiction shall be exempt from United
13 States swaps requirements.

14 (b) CONTENT OF THE RULE.—

15 (1) CRITERIA.—In the rule, the Commission
16 shall establish criteria for determining that one or
17 more categories of the swaps regulatory require-
18 ments of a foreign jurisdiction are comparable to
19 and as comprehensive as United States swaps re-
20 quirements. The criteria shall include—

21 (A) the scope and objectives of the swaps
22 regulatory requirements of the foreign jurisdic-
23 tion;

24 (B) the effectiveness of the supervisory
25 compliance program administered;

1 (C) the enforcement authority exercised by
2 the foreign jurisdiction; and

3 (D) such other factors as the Commission,
4 by rule, determines to be necessary or appro-
5 priate in the public interest.

6 (2) COMPARABILITY.—In the rule, the Commis-
7 sion shall—

8 (A) provide that any non-United States
9 person or any transaction between two non-
10 United States persons shall be exempt from
11 United States swaps requirements if the person
12 or transaction is in compliance with the swaps
13 regulatory requirements of a foreign jurisdiction
14 which the Commission has determined to be
15 comparable to and as comprehensive as United
16 States swaps requirements; and

17 (B) set forth the circumstances in which a
18 United States person or a transaction between
19 a United States person and a non-United
20 States person shall be exempt from United
21 States swaps requirements if the person or
22 transaction is in compliance with the swaps reg-
23 ulatory requirements of a foreign jurisdiction
24 which the Commission has determined to be

1 comparable to and as comprehensive as United
2 States swaps requirements.

3 (3) OUTCOMES-BASED COMPARISON.—In devel-
4 oping and applying the criteria, the Commission
5 shall emphasize the results and outcomes of, rather
6 than the design and construction of, foreign swaps
7 regulatory requirements.

8 (4) RISK-BASED RULEMAKING.—In the rule, the
9 Commission shall not take into account, for the pur-
10 poses of determining the applicability of United
11 States swaps requirements, the location of personnel
12 that arrange, negotiate, or execute swaps.

13 (5) No part of any rulemaking under this sec-
14 tion shall limit the Commission's antifraud or
15 antimanipulation authority.

16 (c) APPLICATION OF THE RULE.—

17 (1) ASSESSMENTS OF FOREIGN JURISDIC-
18 TIONS.—Beginning on the date on which a final rule
19 is issued under this section, the Commission shall
20 begin to assess the swaps regulatory requirements of
21 foreign jurisdictions, in the order the Commission
22 determines appropriate, in accordance with the cri-
23 teria established pursuant to subsection (b)(1). Fol-
24 lowing each assessment, the Commission shall deter-
25 mine, by rule or by order, whether the swaps regu-

latory requirements of the foreign jurisdiction are comparable to and as comprehensive as United States swaps requirements.

(2) SUBSTITUTED COMPLIANCE FOR UNASSESSED MAJOR MARKETS.—Beginning 18 months after the date of enactment of this Act—

(A) the swaps regulatory requirements of each of the 8 foreign jurisdictions with the largest swaps markets, as calculated by notional value during the 12-month period ending with such date of enactment, except those with respect to which a determination has been made under paragraph (1), shall be considered to be comparable to and as comprehensive as United States swaps requirements; and

(B) a non-United States person or a transaction between two non-United States persons shall be exempt from United States swaps requirements if the person or transaction is in compliance with the swaps regulatory requirements of any of such unexcepted foreign jurisdictions.

(3) SUSPENSION OF SUBSTITUTED COMPLIANCE.—If the Commission determines, by rule or by order, that—

1 (A) the swaps regulatory requirements of a
2 foreign jurisdiction are not comparable to and
3 as comprehensive as United States swaps re-
4 quirements, using the categories and criteria es-
5 tablished under subsection (b)(1);

6 (B) the foreign jurisdiction does not ex-
7 empt from its swaps regulatory requirements
8 United States persons who are in compliance
9 with United States swaps requirements; or

10 (C) the foreign jurisdiction is not providing
11 equivalent recognition of, or substituted compli-
12 ance for, registered entities (as defined in sec-
13 tion 1a(41) of the Commodity Exchange Act)
14 domiciled in the United States,

15 the Commission may suspend, in whole or in part,
16 a determination made under paragraph (1) or a con-
17 sideration granted under paragraph (2).

18 (d) PETITION FOR REVIEW OF FOREIGN JURISDIC-
19 TION PRACTICES.—A registered entity, commercial mar-
20 ket participant (as defined in section 1a(7) of the Com-
21 modity Exchange Act), or Commission registrant (within
22 the meaning of such Act) who petitions the Commission
23 to make or change a determination under subsection
24 (c)(1) or (c)(3) of this section shall be entitled to expedited
25 consideration of the petition. A petition shall include any

1 evidence or other supporting materials to justify why the
2 petitioner believes the Commission should make or change
3 the determination. Petitions under this section shall be
4 considered by the Commission any time following the en-
5 actment of this Act. Within 180 days after receipt of a
6 petition for a rulemaking under this section, the Commis-
7 sion shall take final action on the petition. Within 90 days
8 after receipt of a petition to issue an order or change an
9 order issued under this section, the Commission shall take
10 final action on the petition.

11 (e) REPORT TO CONGRESS.—If the Commission
12 makes a determination described in this section through
13 an order, the Commission shall articulate the basis for the
14 determination in a written report published in the Federal
15 Register and transmitted to the Committee on Agriculture
16 of the House of Representatives and Committee on Agri-
17 culture, Nutrition, and Forestry of the Senate within 15
18 days of the determination. The determination shall not be
19 effective until 15 days after the committees receive the re-
20 port.

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

24 (1) UNITED STATES PERSON.—The term
25 “United States person”—

1 (A) means—

2 (i) any natural person resident in the
3 United States;

4 (ii) any partnership, corporation,
5 trust, or other legal person organized or
6 incorporated under the laws of the United
7 States or having its principal place of busi-
8 ness in the United States;

9 (iii) any account (whether discre-
10 tionary or non-discretionary) of a United
11 States person; and

12 (iv) any other person as the Commis-
13 sion may further define to more effectively
14 carry out the purposes of this section; and

15 (B) does not include the International
16 Monetary Fund, the International Bank for Re-
17 construction and Development, the Inter-Amer-
18 ican Development Bank, the Asian Development
19 Bank, the African Development Bank, the
20 United Nations, their agencies or pension plans,
21 or any other similar international organizations
22 or their agencies or pension plans.

23 (2) UNITED STATES SWAPS REQUIREMENTS.—

24 The term “United States swaps requirements”
25 means the provisions relating to swaps contained in

1 the Commodity Exchange Act (7 U.S.C. 1a et seq.)
 2 that were added by title VII of the Dodd-Frank Wall
 3 Street Reform and Consumer Protection Act (15
 4 U.S.C. 8301 et seq.) and any rules or regulations
 5 prescribed by the Commodity Futures Trading Com-
 6 mission pursuant to such provisions.

7 (3) FOREIGN JURISDICTION.—The term “for-
 8 eign jurisdiction” means any national or supra-
 9 national political entity with common rules gov-
 10 erning swaps transactions.

11 (4) SWAPS REGULATORY REQUIREMENTS.—The
 12 term “swaps regulatory requirements” means any
 13 provisions of law, and any rules or regulations pur-
 14 suant to the provisions, governing swaps trans-
 15 actions or the counterparties to swaps transactions.

16 (g) CONFORMING AMENDMENT.—Section 4(c)(1)(A)
 17 of the Commodity Exchange Act (7 U.S.C. 6(c)(1)(A)) is
 18 amended by inserting “or except as necessary to effectuate
 19 the purposes of the Commodity End-User Relief Act,”
 20 after “to grant exemptions,”.

21 **SEC. 313. EXEMPTION OF QUALIFIED CHARITABLE ORGANI-**
 22 **ZATIONS FROM DESIGNATION AND REGULA-**
 23 **TION AS COMMODITY POOL OPERATORS.**

24 (a) EXCLUSION FROM DEFINITION OF COMMODITY
 25 POOL.—Section 1a(11) of the Commodity Exchange Act

1 (7 U.S.C. 1a(10)), as so redesignated by section 304(b)(1)
 2 of this Act, is amended by adding at the end the following:

3 “(C) EXCLUSION.—The term ‘commodity
 4 pool’ shall not include any investment trust,
 5 syndicate, or similar form of enterprise ex-
 6 cluded from the definition of ‘investment com-
 7 pany’ pursuant to section 3(c)(10) or 3(c)(14)
 8 of the Investment Company Act of 1940.”.

9 (b) INAPPLICABILITY OF PROHIBITION ON USE OF
 10 INSTRUMENTALITIES OF INTERSTATE COMMERCE BY UN-
 11 REGISTERED COMMODITY TRADING ADVISOR.—Section
 12 4m of such Act (7 U.S.C. 6m) is amended—

13 (1) in paragraph (1), in the second sentence, by
 14 inserting “: *Provided further*, That the provisions of
 15 this section shall not apply to any commodity trad-
 16 ing advisor that is: (A) a charitable organization, as
 17 defined in section 3(c)(10)(D) of the Investment
 18 Company Act of 1940, or a trustee, director, officer,
 19 employee, or volunteer of such a charitable organiza-
 20 tion acting within the scope of the employment or
 21 duties of the person with the organization, whose
 22 trading advice is provided only to, or with respect to,
 23 one or more of the following: (i) any such charitable
 24 organization; or (ii) an investment trust, syndicate
 25 or similar form of enterprise excluded from the defi-

1 nition of ‘investment company’ pursuant to section
2 3(c)(10) of the Investment Company Act of 1940; or
3 (B) any plan, company, or account described in sec-
4 tion 3(c)(14) of the Investment Company Act of
5 1940, any person or entity who establishes or main-
6 tains such a plan, company, or account, or any
7 trustee, director, officer, employee, or volunteer for
8 any of the foregoing plans, persons, or entities act-
9 ing within the scope of the employment or duties of
10 the person with the organization, whose trading ad-
11 vice is provided only to, or with respect to, any in-
12 vestment trust, syndicate, or similar form of enter-
13 prise excluded from the definition of ‘investment
14 company’ pursuant to section 3(c)(14) of the Invest-
15 ment Company Act of 1940” before the period; and

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

17 “(4) DISCLOSURE CONCERNING EXCLUDED CHARI-
18 TABLE ORGANIZATIONS.—The operator of or advisor to
19 any investment trust, syndicate, or similar form of enter-
20 prise excluded from the definition of ‘commodity pool’ by
21 reason of section 1a(11)(C) of this Act pursuant to section
22 3(c)(10) of the Investment Company Act of 1940 shall
23 provide disclosure in accordance with section 7(e) of the
24 Investment Company Act of 1940.”.

1 **SEC. 314. SMALL BANK HOLDING COMPANY CLEARING EX-**
2 **EMPTION.**

3 Section 2(h)(7)(C) of the Commodity Exchange Act
4 (7 U.S.C. 2(h)(7)(C)) is amended by adding at the end
5 the following:

6 “(iv) HOLDING COMPANIES.—A deter-
7 mination made by the Commission under
8 clause (ii) shall, with respect to small
9 banks and savings associations, also apply
10 to their respective bank holding company
11 (as defined in section 2 of the Bank Hold-
12 ing Company Act of 1956), or savings and
13 loan holding company (as defined in sec-
14 tion 10 of the Home Owners’ Loan Act of
15 1933)), if the total consolidated assets of
16 the holding company are no greater than
17 the asset threshold set by the Commission
18 in determining small bank and savings as-
19 sociation eligibility under clause (ii).”.

20 **SEC. 315. CORE PRINCIPLE CERTAINTY.**

21 Section 5h(f) of the Commodity Exchange Act (7
22 U.S.C. 7b–3(f)) is amended—

23 (1) in paragraph (1)(B), by inserting “except as
24 described in this subsection” after “Commission by
25 rule or regulation”;

1 (2) in paragraph (2), by amending subpara-
2 graph (D) to read as follows:

3 “(D) have reasonable discretion in estab-
4 lishing and enforcing its rules related to trade
5 practice surveillance, market surveillance, real-
6 time marketing monitoring, and audit trail
7 given that a swap execution facility may offer
8 a trading system or platform to execute or
9 trade swaps through any means of interstate
10 commerce. A swap execution facility shall be re-
11 sponsible for monitoring trading in swaps only
12 on its own facility.”;

13 (3) in paragraph (4)(B), by adding at the end
14 the following: “A swap execution facility shall be re-
15 sponsible for monitoring trading in swaps only on its
16 own facility.”;

17 (4) in paragraph (6)(B)—

18 (A) by striking “shall—” and all that fol-
19 lows through “compliance with the” and insert
20 “shall monitor the trading activity on its facility
21 for compliance with any”; and

22 (B) by adding at the end the following: “A
23 swap execution facility shall be responsible for
24 monitoring positions only on its own facility.”;

1 (5) in paragraph (8), by striking “to liquidate”
2 and all that follows and inserting “to suspend or
3 curtail trading in a swap on its own facility.”;

4 (6) in paragraph (13)(B), by striking “1-year
5 period, as calculated on a rolling basis” and insert-
6 ing “90-day period, as calculated on a rolling basis,
7 or conduct an orderly wind-down of its operations,
8 whichever is greater”; and

9 (7) in paragraph (15)—

10 (A) in subparagraph (A), by adding at the
11 end the following: “The individual may also
12 perform other responsibilities for the swap exe-
13 cution facility.”;

14 (B) in subparagraph (B)—

15 (i) in clause (i), by inserting “, a com-
16 mittee of the board,” after “directly to the
17 board”;

18 (ii) by striking clauses (iii) through
19 (v) and inserting the following:

20 “(iii) establish and administer policies
21 and procedures that are reasonably de-
22 signed to resolve any conflicts of interest
23 that may arise;

24 “(iv) establish and administer policies
25 and procedures that reasonably ensure

1 compliance with this Act and the rules and
2 regulations issued under this Act, includ-
3 ing rules prescribed by the Commission
4 pursuant to this section; and”;

5 (iii) by redesignating clause (vi) as
6 clause (v);

7 (C) in subparagraph (C), by striking
8 “(B)(vi)” and inserting “(B)(v)”; and

9 (D) in subparagraph (D)—

10 (i) in clause (i)—

11 (I) by striking “In accordance
12 with rules prescribed by the Commis-
13 sion, the” and inserting “The”; and

14 (II) by striking “and sign”; and

15 (ii) in clause (ii)—

16 (I) in the matter preceding sub-
17 clause (I), by inserting “or senior offi-
18 cer” after “officer”;

19 (II) by amending subclause (I) to
20 read as follows:

21 “(I) submit each report described
22 in clause (i) to the Commission; and”;
23 and

24 (III) in subclause (II), by insert-
25 ing “materially” before “accurate”.

1 **SEC. 316. TREATMENT OF FEDERAL HOME LOAN BANK**
 2 **PRODUCTS.**

3 (a) Section 1a(2) of the Commodity Exchange Act
 4 (7 U.S.C. 1a(2)) is amended—

5 (1) in subparagraph (B), by striking “and”;

6 (2) in subparagraph (C), by striking the period
 7 and inserting “; and”; and

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

9 “(D) is the Federal Housing Finance
 10 Agency for any Federal Home Loan Bank (as
 11 defined in section 2 of the Federal Home Loan
 12 Bank Act).”.

13 (b) Section 402(a) of the Legal Certainty for Bank
 14 Products Act of 2000 (7 U.S.C. 27(a)) is amended—

15 (1) by striking “or” at the end of paragraph
 16 (6);

17 (2) by striking the period at the end of para-
 18 graph (7) and inserting “; or”; and

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

20 “(8) any Federal Home Loan Bank (as defined
 21 in section 2 of the Federal Home Loan Bank Act).”.

22 **SEC. 317. TREATMENT OF CERTAIN FUNDS.**

23 (a) AMENDMENT TO THE DEFINITION OF COM-
 24 MODITY POOL OPERATOR.—Section 1a(12) of the Com-
 25 modity Exchange Act (7 U.S.C. 1a(11)), as so redesign-

1 nated by section 304(b)(1) of this Act, is amended by add-
2 ing at the end the following:

3 “(C)(i) The term ‘commodity pool oper-
4 ator’ does not include a person who serves as
5 an investment adviser to an investment com-
6 pany registered pursuant to section 8 of the In-
7 vestment Company Act of 1940 or a subsidiary
8 of such a company, if the investment company
9 or subsidiary invests, reinvests, owns, holds, or
10 trades in commodity interests limited to only fi-
11 nancial commodity interests.

12 “(ii) For purposes of this subparagraph
13 only, the term ‘financial commodity interest’
14 means a futures contract, an option on a fu-
15 tures contract, or a swap, involving a com-
16 modity that is not an exempt commodity or an
17 agricultural commodity, including any index of
18 financial commodity interests, whether cash set-
19 tled or involving physical delivery.

20 “(iii) For purposes of this subparagraph
21 only, the term ‘commodity’ does not include a
22 security issued by a real estate investment
23 trust, business development company, or issuer
24 of asset-backed securities, including any index
25 of such securities.”.

1 (b) AMENDMENT TO THE DEFINITION OF COM-
2 MODITY TRADING ADVISOR.—Section 1a(13) of such Act
3 (7 U.S.C. 1a(12)), as so redesignated by section 304(b)(1)
4 of this Act, is amended by adding at the end the following:

5 “(E) The term ‘commodity trading advisor’
6 does not include a person who serves as an in-
7 vestment adviser to an investment company reg-
8 istered pursuant to section 8 of the Investment
9 Company Act of 1940 or a subsidiary of such
10 a company, if the commodity trading advice re-
11 lates only to a financial commodity interest, as
12 defined in paragraph (12)(C)(ii) of this section.
13 For purposes of this subparagraph only, the
14 term ‘commodity’ does not include a security
15 issued by a real estate investment trust, busi-
16 ness development company, or issuer of asset-
17 backed securities, including any index of such
18 securities.”.

19 **SEC. 318. PROCEDURE FOR OBTAINING CERTAIN INTEL-**
20 **LECTUAL PROPERTY.**

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

1 **“SEC. 4u. PROCEDURE FOR OBTAINING CERTAIN INTEL-**
2 **LECTUAL PROPERTY.**

3 “The Commission is not authorized to compel persons
4 to produce or furnish algorithmic trading source code or
5 similar intellectual property to the Commission, unless the
6 Commission first issues a subpoena.”.

7 **SEC. 319. DETERMINATION OF PREDOMINANT ENGAGE-**
8 **MENT.**

9 Section 2(h)(7)(C) of the Commodity Exchange Act
10 (7 U.S.C. 2(h)(7)(C)), as amended by section 314 of this
11 Act, is amended by adding at the end the following:

12 “(v) In determining whether a person
13 is predominantly engaged in a business or
14 activity for purposes of clause (i)(VIII),
15 there shall be excluded revenues and assets
16 that are, or result from, any transaction
17 that is entered into solely for purposes of
18 hedging or mitigating commercial risk (as
19 defined by the Commission for purposes of
20 subparagraph (A)(ii)).”.

21 **SEC. 320. TREATMENT OF TRANSACTIONS BETWEEN AF-**
22 **FILIATES.**

23 Section 1a(48) of the Commodity Exchange Act (7
24 U.S.C. 1a(47)), as so redesignated by section 304(b)(1)
25 of this Act, is amended by adding at the end the following:

1 “(G) TREATMENT OF TRANSACTIONS BE-
2 TWEEN AFFILIATES.—

3 “(i) EXEMPTION FROM SWAP
4 RULES.—An agreement, contract, or trans-
5 action described in subparagraphs (A)
6 through (F) shall not be regulated as a
7 swap under this Act if all of the following
8 apply with respect to the agreement, con-
9 tract, or transaction:

10 “(I) AFFILIATION.—One
11 counterparty, directly or indirectly,
12 holds a majority ownership interest in
13 the other counterparty, or a third
14 party, directly or indirectly, holds a
15 majority ownership interest in both
16 counterparties.

17 “(II) FINANCIAL STATEMENTS.—
18 The affiliated counterparty that holds
19 the majority interest in the other
20 counterparty or the third party that,
21 directly or indirectly, holds the major-
22 ity interests in both affiliated counter-
23 parties, reports its financial state-
24 ments on a consolidated basis under
25 generally accepted accounting prin-

1 ciples or International Financial Re-
2 porting Standards, or other similar
3 standards, and the financial state-
4 ments include the financial results of
5 the majority-owned affiliated
6 counterparty or counterparties.

7 “(ii) REPORTING REQUIREMENT.—If
8 at least one counterparty to an agreement,
9 contract, or transaction that meets the re-
10 quirements of clause (i) is a swap dealer or
11 major swap participant, that counterparty
12 shall report the agreement, contract, or
13 transaction pursuant to section 4r, within
14 such time period as the Commission may
15 by rule or regulation prescribe—

16 “(I) to a swap data repository; or

17 “(II) if there is no swap data re-
18 pository that would accept the agree-
19 ment, contract or transaction, to the
20 Commission .

21 “(iii) RISK MANAGEMENT REQUIRE-
22 MENT.—If at least one counterparty to an
23 agreement, contract, or transaction that
24 meets the requirements of clause (i) is a
25 swap dealer or major swap participant, the

1 agreement, contract, or transaction shall
 2 be subject to a centralized risk manage-
 3 ment program pursuant to section 4s(j)
 4 that is reasonably designed to monitor and
 5 to manage the risks associated with the
 6 agreement, contract, or transaction.

7 “(iv) VARIATION MARGIN REQUIRE-
 8 MENT.—Affiliated counterparties to an
 9 agreement, contract, or transaction that
 10 meets the requirements of clause (i) shall
 11 exchange variation margin to the extent
 12 prescribed under any rule promulgated by
 13 the Commission or any prudential regu-
 14 lator pursuant to section 4s(e).

15 “(v) ANTI-EVASION REQUIREMENT.—
 16 An agreement, contract, or transaction
 17 that meets the requirements of clause (i)
 18 shall not be structured to evade the Dodd-
 19 Frank Wall Street Reform and Consumer
 20 Protection Act in violation of any rule pro-
 21 mulgated by the Commission pursuant to
 22 section 721(c) of such Act.”.

23 **SEC. 321. REQUIREMENTS RELATED TO POSITION LIMITS.**

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

1 (1) by striking paragraphs (2), (3), (5), and
2 (6); and

3 (2) by redesignating paragraphs (4) and (7) as
4 paragraphs (2) and (3), respectively.

5 (b) BONA FIDE HEDGING TRANSACTION DEFINI-
6 TION.—Section 4a(c)(2)(A)(i) of such Act (7 U.S.C.
7 6a(c)(2)(A)(i)) is amended by inserting “normally” before
8 “represents”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date of the enactment
11 of this section.

12 **TITLE IV—TECHNICAL** 13 **CORRECTIONS**

14 **SEC. 401. CORRECTION OF REFERENCES.**

15 (a) Section 2(h)(8)(A)(ii) of the Commodity Ex-
16 change Act (7 U.S.C. 2(h)(8)(A)(ii)) is amended by strik-
17 ing “5h(f) of this Act” and inserting “5h(g)”.

18 (b) Section 5c(c)(5)(C)(i) of such Act (7 U.S.C. 7a-
19 2(c)(5)(C)(i)) is amended by striking “1a(2)(i))” and in-
20 serting “1a(19)(i))”.

21 (c) Section 23(f) of such Act (7 U.S.C. 26(f)) is
22 amended by striking “section 7064” and inserting “sec-
23 tion 706”.

1 **SEC. 402. ELIMINATION OF OBSOLETE REFERENCES TO**
2 **DEALER OPTIONS.**

3 (a) IN GENERAL.—Section 4c of the Commodity Ex-
4 change Act (7 U.S.C. 6c) is amended by striking sub-
5 sections (d) and (e) and redesignating subsections (f) and
6 (g) as subsections (d) and (e), respectively.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 2(d) of such Act (7 U.S.C. 2(d)) is
9 amended by striking “(g) of” and inserting “(e) of”.

10 (2) Section 4f(a)(4)(A)(i) of such Act (7 U.S.C.
11 6f(a)(4)(A)(i)) is amended by striking “, (d), (e),
12 and (g)” and inserting “and (e)”.

13 (3) Section 4k(5)(A) of such Act (7 U.S.C.
14 6k(5)(A)) is amended by striking “, (d), (e), and
15 (g)” and inserting “and (e)”.

16 (4) Section 5f(b)(1)(A) of such Act (7 U.S.C.
17 7b–1(b)(1)(A)) is amended by striking “, (e), and
18 (g)” and inserting “and (e)”.

19 (5) Section 9(a)(2) of such Act (7 U.S.C.
20 13(a)(2)) is amended by striking “through (e)” and
21 inserting “and (c)”.

22 **SEC. 403. UPDATED TRADE DATA PUBLICATION REQUIRE-**
23 **MENT.**

24 Section 4g(e) of the Commodity Exchange Act (7
25 U.S.C. 6g(e)) is amended by striking “exchange” and in-

1 setting “each designated contract market and swap execu-
 2 tion facility”.

3 **SEC. 404. FLEXIBILITY FOR REGISTERED ENTITIES.**

4 Section 5c(b) of the Commodity Exchange Act (7
 5 U.S.C. 7a-2(b)) is amended by striking “contract market,
 6 derivatives transaction execution facility, or electronic
 7 trading facility” each place it appears and inserting “reg-
 8 istered entity”.

9 **SEC. 405. ELIMINATION OF OBSOLETE REFERENCES TO**
 10 **ELECTRONIC TRADING FACILITIES.**

11 (a) Section 1a(19)(A)(x) of the Commodity Exchange
 12 Act (7 U.S.C. 1a(18)(A)(x)), as so redesignated by section
 13 304(b)(1) of this Act, is amended by striking “(other than
 14 an electronic trading facility with respect to a significant
 15 price discovery contract)”.

16 (b) Section 1a(40) of such Act (7 U.S.C. 1a(41)), as
 17 so redesignated by section 304(b)(1) of this Act, is amend-
 18 ed—

19 (1) by adding “and” at the end of subpara-
 20 graph (D); and

21 (2) by striking all that follows “section 21” and
 22 inserting a period.

23 (c) Section 4a(e) of such Act (7 U.S.C. 6a(e)) is
 24 amended—

25 (1) in the first sentence—

1 (A) by striking “or by any electronic trad-
2 ing facility”;

3 (B) by striking “or on an electronic trad-
4 ing facility”; and

5 (C) by striking “or electronic trading facil-
6 ity” each place it appears; and

7 (2) in the second sentence, by striking “or elec-
8 tronic trading facility with respect to a significant
9 price discovery contract”.

10 (d) Section 4g(a) of such Act (7 U.S.C. 6g(a)) is
11 amended by striking “any significant price discovery con-
12 tract traded or executed on an electronic trading facility
13 or”.

14 (e) Section 4i of such Act (7 U.S.C. 6i) is amended—

15 (1) by striking “, or any significant price dis-
16 covery contract traded or executed on an electronic
17 trading facility or any agreement, contract, or trans-
18 action that is treated by a derivatives clearing orga-
19 nization, whether registered or not registered, as
20 fungible with a significant price discovery contract”;
21 and

22 (2) by striking “or electronic trading facility”.

23 (f) Section 6(b) of such Act (7 U.S.C. 8(b)) is amend-
24 ed by striking “or electronic trading facility” each place
25 it appears.

1 (g) Section 12(e)(2) of such Act (7 U.S.C. 16(e)(2))
2 is amended by striking “in the case of—” and all that
3 follows and inserting “in the case of an agreement, con-
4 tract, or transaction that is excluded from this Act under
5 section 2(c) or 2(f) of this Act or title IV of the Com-
6 modity Futures Modernization Act of 2000, or exempted
7 under section 4(c) of this Act (regardless of whether any
8 such agreement, contract, or transaction is otherwise sub-
9 ject to this Act).”.

10 **SEC. 406. ELIMINATION OF OBSOLETE REFERENCE TO AL-**
11 **TERNATIVE SWAP EXECUTION FACILITIES.**

12 Section 5h(h) of the Commodity Exchange Act (7
13 U.S.C. 7b–3(h)) is amended by striking “alternative” be-
14 fore “swap”.

15 **SEC. 407. ELIMINATION OF REDUNDANT REFERENCES TO**
16 **TYPES OF REGISTERED ENTITIES.**

17 Section 6b of the Commodity Exchange Act (7 U.S.C.
18 13a) is amended in the first sentence by striking “as set
19 forth in sections 5 through 5c”.

20 **SEC. 408. CLARIFICATION OF COMMISSION AUTHORITY**
21 **OVER SWAPS TRADING.**

22 Section 8a of the Commodity Exchange Act (7 U.S.C.
23 12a) is amended—

24 (1) in paragraph (7)—

1 (A) by inserting “the protection of swaps
2 traders and to assure fair dealing in swaps,
3 for” after “appropriate for”;

4 (B) in subparagraph (A), by inserting
5 “swaps or” after “conditions in”; and

6 (C) in subparagraph (B), by inserting “or
7 swaps” after “future delivery”; and

8 (2) in paragraph (9)—

9 (A) by inserting “swap or” after “or liq-
10 uidation of any”; and

11 (B) by inserting “swap or” after “margin
12 levels on any”.

13 **SEC. 409. ELIMINATION OF OBSOLETE REFERENCE TO THE**
14 **COMMODITY EXCHANGE COMMISSION.**

15 Section 13(c) of the Commodity Exchange Act (7
16 U.S.C. 13c(c)) is amended by striking “or the Commis-
17 sion”.

18 **SEC. 410. ELIMINATION OF OBSOLETE REFERENCES TO DE-**
19 **RIVATIVE TRANSACTION EXECUTION FACILI-**
20 **TIES.**

21 (a) Section 1a(13)(B)(vi) of the Commodity Ex-
22 change Act (7 U.S.C. 1a(12)(B)(vi)), as so redesignated
23 by section 304(b)(1) of this Act, is amended by striking
24 “derivatives transaction execution facility” and inserting
25 “swap execution facility”.

1 (b) Section 1a(35) of such Act (7 U.S.C. 1a(34)), as
2 so redesignated by section 304(b)(1) of this Act, is amend-
3 ed by striking “or derivatives transaction execution facil-
4 ity” each place it appears.

5 (c) Section 1a(36)(B)(iii)(I) of such Act (7 U.S.C.
6 1a(35)(B)(iii)(I)), as so redesignated by section 304(b)(1)
7 of this Act, is amended by striking “or registered deriva-
8 tives transaction execution facility”.

9 (d) Section 2(a)(1)(C)(ii) of such Act (7 U.S.C.
10 2(a)(1)(C)(ii)) is amended—

11 (1) by striking “, or register a derivatives
12 transaction execution facility that trades or exe-
13 cutes,”;

14 (2) by striking “, and no derivatives transaction
15 execution facility shall trade or execute such con-
16 tracts of sale (or options on such contracts) for fu-
17 ture delivery”; and

18 (3) by striking “or the derivatives transaction
19 execution facility,”.

20 (e) Section 2(a)(1)(C)(v)(I) of such Act (7 U.S.C.
21 2(a)(1)(C)(v)(I)) is amended by striking “, or any deriva-
22 tives transaction execution facility on which such contract
23 or option is traded,”.

1 (f) Section 2(a)(1)(C)(v)(II) of such Act (7 U.S.C.
2 2(a)(1)(C)(v)(II)) is amended by striking “or derivatives
3 transaction execution facility” each place it appears.

4 (g) Section 2(a)(1)(C)(v)(V) of such Act (7 U.S.C.
5 2(a)(1)(C)(v)(V)) is amended by striking “or registered
6 derivatives transaction execution facility”.

7 (h) Section 2(a)(1)(D)(i) of such Act (7 U.S.C.
8 2(a)(1)(D)(i)) is amended in the matter preceding sub-
9 clause (I)—

10 (1) by striking “in, or register a derivatives
11 transaction execution facility”; and

12 (2) by striking “, or registered as a derivatives
13 transaction execution facility for,”.

14 (i) Section 2(a)(1)(D)(i)(IV) of such Act (7 U.S.C.
15 2(a)(1)(D)(i)(IV)) is amended by striking “registered de-
16 rivatives transaction execution facility,” each place it ap-
17 pears.

18 (j) Section 2(a)(1)(D)(ii)(I) of such Act (7 U.S.C.
19 2(a)(1)(D)(ii)(I)) is amended to read as follows:

20 “(I) the transaction is conducted on or subject
21 to the rules of a board of trade that has been des-
22 ignated by the Commission as a contract market in
23 such security futures product; or”.

1 (k) Section 2(a)(1)(D)(ii)(II) of such Act (7 U.S.C.
2 2(a)(1)(D)(ii)(II)) is amended by striking “or registered
3 derivatives transaction execution facility”.

4 (l) Section 2(a)(1)(D)(ii)(III) of such Act (7 U.S.C.
5 2(a)(1)(D)(ii)(III)) is amended by striking “or registered
6 derivatives transaction execution facility member”.

7 (m) Section 2(a)(9)(B)(ii) of such Act (7 U.S.C.
8 2(a)(9)(B)(ii)) is amended—

9 (1) by striking “or registration” each place it
10 appears;

11 (2) by striking “or derivatives transaction exe-
12 cution facility” each place it appears;

13 (3) by striking “or register”;

14 (4) by striking “, registering,”; and

15 (5) by striking “registration,”.

16 (n) Section 2(c)(2) of such Act (7 U.S.C. 2(c)(2)) is
17 amended by striking “or a derivatives transaction execu-
18 tion facility”.

19 (o) Section 4(a)(1) of such Act (7 U.S.C. 6(a)(1))
20 is amended by striking “or derivatives transaction execu-
21 tion facility” each place it appears.

22 (p) Section 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is
23 amended—

24 (1) by striking “or registered” after “des-
25 ignated”; and

1 (2) by striking “or derivatives transaction exe-
2 cution facility”.

3 (q) Section 4a(a)(1) of such Act (7 U.S.C. 6a(a)(1))
4 is amended—

5 (1) by striking “or derivatives transaction exe-
6 cution facilities”; and

7 (2) by striking “or derivatives transaction exe-
8 cution facility”.

9 (r) Section 4a(e) of such Act (7 U.S.C. 6a(e)) is
10 amended—

11 (1) by striking “, derivatives transaction execu-
12 tion facility,” each place it appears; and

13 (2) by striking “or derivatives transaction exe-
14 cution facility”.

15 (s) Section 4c(e) of such Act (7 U.S.C. 6c(g)), as so
16 redesignated by section 402(a) of this Act, is amended by
17 striking “or derivatives transaction execution facility”
18 each place it appears.

19 (t) Section 4d of such Act (7 U.S.C. 6d) is amended
20 by striking “or derivatives transaction execution facility”
21 each place it appears.

22 (u) Section 4e of such Act (7 U.S.C. 6e) is amended
23 by striking “or derivatives transaction execution facility”.

1 (v) Section 4f(b) of such Act (7 U.S.C. 6f(b)) is
2 amended by striking “or derivatives transaction execution
3 facility” each place it appears.

4 (w) Section 4i of such Act (7 U.S.C. 6i) is amended
5 by striking “or derivatives transaction execution facility”.

6 (x) Section 4j(a) of such Act (7 U.S.C. 6j(a)) is
7 amended by striking “and registered derivatives trans-
8 action execution facility”.

9 (y) Section 4p(a) of such Act (7 U.S.C. 6p(a)) is
10 amended by striking “, or derivatives transaction execu-
11 tion facilities”.

12 (z) Section 4p(b) of such Act (7 U.S.C. 6p(b)) is
13 amended by striking “derivatives transaction execution fa-
14 cility,”.

15 (aa) Section 5c(f) of such Act (7 U.S.C. 7a–2(f)) is
16 amended by striking “and registered derivatives trans-
17 action execution facility”.

18 (bb) Section 5c(f)(1) of such Act (7 U.S.C. 7a–
19 2(f)(1)) is amended by striking “or registered derivatives
20 transaction execution facility”.

21 (cc) Section 6 of such Act (7 U.S.C. 8) is amended—

22 (1) by striking “or registered”;

23 (2) by striking “or derivatives transaction exe-
24 cution facility” each place it appears; and

1 (3) by striking “or registration” each place it
2 appears.

3 (dd) Section 6a(a) of such Act (7 U.S.C. 10a(a)) is
4 amended—

5 (1) by striking “or registered”;

6 (2) by striking “or a derivatives transaction
7 execution facility”; and

8 (3) by inserting “shall” before “exclude” the
9 first place it appears.

10 (ee) Section 6a(b) of such Act (7 U.S.C. 10a(b)) is
11 amended—

12 (1) by striking “or registered”; and

13 (2) by striking “or a derivatives transaction
14 execution facility”.

15 (ff) Section 6d(1) of such Act (7 U.S.C. 13a–2(1))
16 is amended by striking “derivatives transaction execution
17 facility,”.

18 **SEC. 411. ELIMINATION OF OBSOLETE REFERENCES TO EX-**

19 **EMPTY BOARDS OF TRADE.**

20 (a) Section 1a(19)(A)(x) of the Commodity Exchange
21 Act (7 U.S.C. 1a(18)(A)(x)), as so redesignated by section
22 304(b)(1) of this Act, is amended by striking “or an ex-
23 empt board of trade”.

1 (b) Section 12(e)(1)(B)(i) of such Act (7 U.S.C.
 2 16(e)(1)(B)(i)) is amended by striking “or exempt board
 3 of trade”.

4 **SEC. 412. ELIMINATION OF REPORT DUE IN 1986.**

5 Section 26 of the Futures Trading Act of 1978 (7
 6 U.S.C. 16a) is amended by striking subsection (b) and re-
 7 designating subsection (c) as subsection (b).

8 **SEC. 413. COMPLIANCE REPORT FLEXIBILITY.**

9 Section 4s(k)(3)(B) of the Commodity Exchange Act
 10 (7 U.S.C. 6s(k)(3)(B)) is amended to read as follows:

11 “(B) REQUIREMENTS.—A compliance re-
 12 port under subparagraph (A) shall—

13 “(i) include a certification that, under
 14 penalty of law, the compliance report is
 15 materially accurate and complete; and

16 “(ii) be furnished at such time as the
 17 Commission determines by rule, regulation,
 18 or order, to be appropriate.”.

19 **SEC. 414. MISCELLANEOUS CORRECTIONS.**

20 (a) Section 1a(13)(A)(i)(II) of the Commodity Ex-
 21 change Act (7 U.S.C. 1a(12)(A)(i)(II)), as so redesignated
 22 by section 304(b)(1) of this Act, is amended by adding
 23 at the end a semicolon.

1 (b) Section 2(a)(1)(C)(ii)(III) of such Act (7 U.S.C.
2 2(a)(1)(C)(ii)(III)) is amended by moving the provision 2
3 ems to the right.

4 (c) Section 2(a)(1)(C)(iii) of such Act (7 U.S.C.
5 2(a)(1)(C)(iii)) is amended by moving the provision 2 ems
6 to the right.

7 (d) Section 2(a)(1)(C)(iv) of such Act (7 U.S.C.
8 2(a)(1)(C)(iv)) is amended by striking “under or” and in-
9 serting “under”.

10 (e) Section 2(a)(1)(C)(v) of such Act (7 U.S.C.
11 2(a)(1)(C)(v)) is amended by moving the provision 2 ems
12 to the right.

13 (f) Section 2(a)(1)(C)(v)(VI) of such Act (7 U.S.C.
14 2(a)(1)(C)(v)(VI)) is amended by striking “III” and in-
15 serting “(III)”.

16 (g) Section 2(c)(1) of such Act (7 U.S.C. 2(c)(1)) is
17 amended by striking the second comma.

18 (h) Section 4(c)(3)(H) of such Act (7 U.S.C.
19 6(c)(3)(H)) is amended by striking “state” and inserting
20 “State”.

21 (i) Section 4c(e) of such Act (7 U.S.C. 6c(e)) is
22 amended to read as follows:

23 “(c) The Commission shall issue regulations to con-
24 tinue to permit the trading of options on contract markets

1 under such terms and conditions that the Commission
2 from time to time may prescribe.”.

3 (j) Section 4d(b) of such Act (7 U.S.C. 6d(b)) is
4 amended by striking “paragraph (2) of this section” and
5 inserting “subsection (a)(2)”.

6 (k) Section 4f(c)(3)(A) of such Act (7 U.S.C.
7 6f(c)(3)(A)) is amended by striking the first comma.

8 (l) Section 4f(c)(4)(A) of such Act (7 U.S.C.
9 6f(c)(4)(A)) is amended by striking “in developing” and
10 inserting “In developing”.

11 (m) Section 4f(c)(4)(B) of such Act (7 U.S.C.
12 6f(c)(4)(B)) is amended by striking “1817(a)” and insert-
13 ing “1817(a))”.

14 (n) Section 5 of such Act (7 U.S.C. 7) is amended
15 by redesignating subsections (c) through (e) as sub-
16 sections (b) through (d), respectively.

17 (o) Section 5b of such Act (7 U.S.C. 7a–1) is amend-
18 ed by redesignating subsection (k) as subsection (j).

19 (p) Section 5f(b)(1) of such Act (7 U.S.C. 7b–
20 1(b)(1)) is amended by striking “section 5f” and inserting
21 “this section”.

22 (q) Section 6(a) of such Act (7 U.S.C. 8(a)) is
23 amended by striking “the the” and inserting “the”.

1 (r) Section 8a of such Act (7 U.S.C. 12a) is amended
2 in each of paragraphs (2)(E) and (3)(B) by striking “In-
3 vestors” and inserting “Investor”.

4 (s) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2))
5 is amended by striking “subsection 4c” and inserting “sec-
6 tion 4c”.

7 (t) Section 12(b)(4) of such Act (7 U.S.C. 16(b)(4))
8 is amended by moving the provision 2 ems to the left.

9 (u) Section 14(a)(2) of such Act (7 U.S.C. 18(a)(2))
10 is amended by moving the provision 2 ems to the left.

11 (v) Section 17(b)(9)(D) of such Act (7 U.S.C.
12 21(b)(9)(D)) is amended by striking the semicolon and in-
13 serting a period.

14 (w) Section 17(b)(10)(C)(ii) of such Act (7 U.S.C.
15 21(b)(10)(C)(ii)) is amended by striking “and” at the end.

16 (x) Section 17(b)(11) of such Act (7 U.S.C.
17 21(b)(11)) is amended by striking the period and inserting
18 a semicolon.

19 (y) Section 17(b)(12) of such Act (7 U.S.C.
20 21(b)(12)) is amended—

21 (1) by striking “(A)”; and

22 (2) by striking the period and inserting “;
23 and”.

24 (z) Section 17(b)(13) of such Act (7 U.S.C.
25 21(b)(13)) is amended by striking “A” and inserting “a”.

1 (aa) Section 17 of such Act (7 U.S.C. 21), as amend-
 2 ed by sections 101 through 103 of this Act, is amended
 3 by redesignating subsection (q), as added by section
 4 233(5) of Public Law 97–444, and subsections (s) through
 5 (w) as subsections (r) through (x), respectively.

6 (bb) Section 22(b)(3) of such Act (7 U.S.C. 25(b)(3))
 7 is amended by striking “of registered” and inserting “of
 8 a registered”.

9 (cc) Section 22(b)(4) of such Act (7 U.S.C. 25(b)(4))
 10 is amended by inserting a comma after “entity”.

11 **SEC. 415. DELAY IN FULL IMPLEMENTATION OF THE FINAL**
 12 **RULE ON OWNERSHIP AND CONTROL RE-**
 13 **PORTING.**

14 The Commodity Futures Trading Commission may
 15 not enforce non-compliance with the final rule titled
 16 “Ownership and Control Reports, Forms 102/2S, 40/40S,
 17 and 71” (78 FR 69178; November 18, 2013) until the
 18 Commission votes to approve a final rule that has been
 19 amended to—

20 (1) provide that the reportable trading volume
 21 level shall be at least 300 contracts;

22 (2) provide that the reporting entity shall not
 23 be required to provide natural person controller
 24 data; and

1 (3) provide that the reporting entity is not obli-
2 gated to supply data that violates foreign privacy
3 laws.

Passed the House of Representatives January 12,
2017.

Attest:

Clerk.

115TH CONGRESS
1ST Session

H. R. 238

AN ACT

To reauthorize the Commodity Futures Trading Commission, to better protect futures customers, to provide end-users with market certainty, to make basic reforms to ensure transparency and accountability at the Commission, to help farmers, ranchers, and end-users manage risks, to help keep consumer costs low, and for other purposes.