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114TH CONGRESS
2^D SESSION

S. 2917

To reauthorize the Commodity Futures Trading Commission, to ensure protections of futures customers, to provide relief for farmers, ranchers, and end-users that manage risk to help keep consumer costs low, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2016

Mr. ROBERTS, from the Committee on Agriculture, Nutrition, and Forestry, reported the following original bill; which was read twice and placed on the calendar

A BILL

To reauthorize the Commodity Futures Trading Commission, to ensure protections of futures customers, to provide relief for farmers, ranchers, and end-users that manage risk 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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Commodity End-User Relief Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER PROTECTION

- 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. Clarification of exemptive authority.
- Sec. 203. Privilege retention.
- Sec. 204. Judicial review of Commission rules.
- Sec. 205. Report on status of any application of metals exchange to register as a foreign board of trade; deadline for action on application.
- Sec. 206. Predominantly engaged.
- Sec. 207. Public interest exemptions.

TITLE III—END-USER RELIEF

- Sec. 301. Transactions with utility special entities.
- Sec. 302. Relief for grain elevator operators, agricultural producers, agricultural counterparties, and commercial market participants.
- Sec. 303. Relief for end-users who use physical contracts with volumetric optionality and treatment of Federal home loan bank products.
- Sec. 304. Study of swap dealer de minimis exemption level.
- Sec. 305. Models for non-bank swap dealers.
- Sec. 306. Bona fide hedge defined to protect end-user risk management needs.
- Sec. 307. Exemption of qualified charitable organizations from designation and regulation as commodity pool operators.

TITLE IV—TECHNICAL CORRECTIONS

- Sec. 401. Correction of cross-references.
- Sec. 402. Elimination of obsolete references to derivative transaction execution facilities.
- Sec. 403. Elimination of obsolete references to electronic trading facilities.
- Sec. 404. Elimination of obsolete references to exempt boards of trade.
- Sec. 405. Elimination of obsolete reference to significant price discovery contract.
- Sec. 406. Clarifications of retail foreign currency.
- Sec. 407. Elimination of obsolete references to dealer options.
- Sec. 408. Correction of references to designated contract markets.
- Sec. 409. Compliance report flexibility.
- Sec. 410. Reservations.
- Sec. 411. Flexibility for registered entities.
- Sec. 412. Elimination of obsolete reference to alternative swap execution facilities.
- Sec. 413. Elimination of redundant references to types of registered entities.

Sec. 414. Clarification of Commission authority over swaps trading.
 Sec. 415. Elimination of duplicative reference to Commission.
 Sec. 416. Miscellaneous corrections.
 Sec. 417. Elimination of report due in 1986.

1 **TITLE I—CONSUMER**
 2 **PROTECTION**

3 **SEC. 101. ENHANCED PROTECTIONS FOR FUTURES CUS-**
 4 **TOMERS.**

5 Section 17 of the Commodity Exchange Act (7 U.S.C.
 6 21) (as amended by section 416(o)(1)) is amended by add-
 7 ing at the end the following:

8 “(t) ENHANCED PROTECTIONS FOR FUTURES CUS-
 9 TOMERS.—Each registered futures association shall sub-
 10 mit to the Commission rules that—

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

15 “(A) the residual interest of the member,
 16 as described in section 1.23 of title 17, Code of
 17 Federal Regulations (or successor regulations),
 18 in any customer segregated funds of the mem-
 19 ber, as identified in section 1.20 of that title (or
 20 successor regulations), and in any foreign fu-
 21 tures and foreign options customer secured
 22 amount funds of the member, as identified in

1 section 30.7 of that title (or successor regula-
2 tions); and

3 “(B) the residual interest of the member,
4 as described in section 22.2(e)(4) of that title
5 (or successor regulations), in any cleared swaps
6 customer collateral of the member, as identified
7 in section 22.2 of that title (or successor regu-
8 lations); and

9 “(2) govern the withdrawal, transfer, or dis-
10 bursement by any member, as described in section
11 1.23 of that title (or successor regulations), of the
12 association, that is a futures commission merchant,
13 of the residual interest of the member in any cus-
14 tomer segregated funds as provided in section 1.20
15 of that title (or successor regulations), in any for-
16 eign futures and foreign options customer secured
17 amount funds, identified as provided in section 30.7
18 of that title (or successor regulations), and in any
19 cleared swaps customer collateral, identified as pro-
20 vided in section 22.2 of that title (or successor regu-
21 lations).”.

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), is amended by adding
5 at the end the following:

6 “(u) **ELECTRONIC CONFIRMATION OF CUSTOMER**
7 **FUNDS.**—Each registered futures association shall submit
8 to the Commission rules that require any member of the
9 association that is a futures commission merchant—

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

21 “(2) to instruct each depository, including any
22 bank, trust company, derivatives clearing organiza-
23 tion, or futures commission merchant, holding cus-
24 tomer segregated funds under section 1.20 of title
25 17, Code of Federal Regulations (or successor regu-
26 lations), foreign futures and foreign options cus-

1 tomer secured amount funds under section 30.7 of
2 that title (or successor regulations), or cleared swaps
3 customer collateral under section 22.2 of that title
4 (or successor regulations), to report balances in sec-
5 tion 1.20 customer segregated funds accounts, sec-
6 tion 30.7 foreign futures and foreign options cus-
7 tomer secured amount funds accounts, and section
8 22.2 cleared swaps customer collateral accounts of
9 the futures commission merchant, to the registered
10 futures association or another party designated by
11 the registered futures association, in the form, man-
12 ner, and interval prescribed by the registered futures
13 association; and

14 “(3) to hold section 1.20 customer segregated
15 funds, section 30.7 foreign futures and foreign op-
16 tions customer secured amount funds and section
17 22.2 cleared swaps customer collateral in a deposi-
18 tory that reports the balances in those accounts of
19 the futures commission merchant held at the deposi-
20 tory to the registered futures association or another
21 party designated by the registered futures associa-
22 tion in the form, manner, and interval prescribed by
23 the registered futures association.”.

1 **SEC. 103. NOTICE AND CERTIFICATIONS PROVIDING ADDI-**
2 **TIONAL CUSTOMER PROTECTIONS.**

3 Section 17 of the Commodity Exchange Act (7 U.S.C.
4 21) (as amended by section 102) is amended by adding
5 at the end the following:

6 “(v) NOTIFICATION REQUIRED.—A futures commis-
7 sion merchant that has adjusted net capital in an amount
8 less than the amount required by regulations established
9 by the Commission or a self-regulatory organization of
10 which the futures commission merchant is a member shall
11 immediately notify the Commission and the self-regulatory
12 organization of that occurrence.

13 “(w) INSUFFICIENT FUNDS IN SEGREGATED AC-
14 COUNTS.—A futures commission merchant that does not
15 hold a sufficient amount of funds in segregated accounts
16 for futures customers under section 1.20 of title 17, Code
17 of Federal Regulations (or successor regulations), in for-
18 eign futures and foreign options secured amount accounts
19 for foreign futures and foreign options secured amount
20 customers under section 30.7 of that title (or successor
21 regulations), or in segregated accounts for cleared swap
22 customers under section 22.2 of that title (or successor
23 regulations), as required by regulations established by the
24 Commission or a self-regulatory organization of which the
25 futures commission merchant is a member, shall imme-

1 diately notify the Commission and the self-regulatory or-
 2 ganization of that occurrence.

3 “(x) INTERNAL COMPLIANCE PROGRAM ASSESSMENT
 4 REPORT.—Not later than the last day of such period as
 5 is established by the Commission after the end of each
 6 fiscal year, each futures commission merchant shall file
 7 with the Commission a report from the chief compliance
 8 officer of the futures commission merchant containing an
 9 assessment of the internal compliance programs of the fu-
 10 tures commission merchant.”.

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

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

14 (1) by redesignating paragraphs (1) and (2) as
 15 subparagraphs (A) and (B), respectively, and indent-
 16 ing appropriately;

17 (2) by striking “SEC. 4D.” and all that follows
 18 through “It shall be unlawful” and inserting the fol-
 19 lowing:

20 **“SEC. 4d. DEALING BY UNREGISTERED FUTURES COMMIS-
 21 SION MERCHANTS OR INTRODUCING BRO-
 22 KERS PROHIBITED.**

23 “(a) REGISTRATION REQUIREMENTS AND DUTIES.—

24 “(1) IN GENERAL.—It shall be unlawful”; and

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

1 “(2) RESIDUAL INTEREST REQUIREMENT.—
2 Any rules or regulations requiring a futures commis-
3 sion merchant to maintain a residual interest in ac-
4 counts held for the benefit of customers in amounts
5 at least sufficient to exceed the sum of all uncol-
6 lected margin deficits of the customers shall provide
7 that a futures commission merchant shall meet the
8 residual interest requirement as of the end of each
9 business day calculated as of the close of business on
10 the previous business day.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 4d(h) of the Commodity Exchange
13 Act (7 U.S.C. 6d(h)) is amended by striking “Not-
14 withstanding subsection (a)(2)” and inserting “Not-
15 withstanding subsection (a)(1)(B)”.

16 (2) Section 15(c)(3)(C) of the Securities Ex-
17 change Act of 1934 (15 U.S.C. 78o(c)(3)(C)) is
18 amended by striking “4d(a)(2)” and inserting
19 “4d(a)(1)(B)”.

20 **SEC. 105. CERTAINTY FOR FUTURES CUSTOMERS AND MAR-**
21 **KET PARTICIPANTS.**

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

24 (1) in paragraph (4), by striking “and” at the
25 end;

1 (2) in paragraph (5), by striking the period at
2 the end and inserting “; and”; and

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

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

19 **TITLE II—COMMODITY FUTURES**
20 **TRADING COMMISSION RE-**
21 **FORMS**

22 **SEC. 201. EXTENSION OF OPERATIONS.**

23 Section 12(d) of the Commodity Exchange Act (7
24 U.S.C. 16(d)) is amended by striking “2013” and insert-
25 ing “2019”.

1 **SEC. 202. CLARIFICATION OF EXEMPTIVE AUTHORITY.**

2 Section 4(c)(1) of the Commodity Exchange Act (7
3 U.S.C. 6(c)(1)) is amended—

4 (1) in the matter preceding subparagraph (A),
5 by inserting “, or any swap,” after “otherwise sub-
6 ject to subsection (a)”;

7 (2) by striking “except that—” and all that fol-
8 lows through “(B) the Commission” and inserting
9 “except that the Commission”.

10 **SEC. 203. PRIVILEGE RETENTION.**

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

13 (1) by redesignating subsections (h) and (i) as
14 subsections (i) and (j), respectively; and

15 (2) by inserting after subsection (g) the fol-
16 lowing:

17 “(h) SHARING PRIVILEGED INFORMATION WITH
18 OTHER AUTHORITIES.—

19 “(1) DEFINITIONS.—In this subsection:

20 “(A) FOREIGN LAW ENFORCEMENT AU-
21 THORITY.—The term ‘foreign law enforcement
22 authority’ means any foreign authority that is
23 empowered under foreign law to detect, inves-
24 tigate, or prosecute potential violations of law.

25 “(B) PRIVILEGE.—The term ‘privilege’ in-
26 cludes any applicable work-product privilege, at-

1 torney-client privilege, governmental privilege,
2 or other privilege recognized under Federal,
3 State, or foreign law.

4 “(2) PRIVILEGED INFORMATION PROVIDED BY
5 THE COMMISSION.—The Commission shall not be
6 considered to have waived any privilege by transfer-
7 ring information to or permitting that information
8 to be used in accordance with subsection (e).

9 “(3) NONDISCLOSURE OF PRIVILEGED INFOR-
10 MATION PROVIDED TO THE COMMISSION.—The Com-
11 mission shall not be compelled to disclose privileged
12 information obtained from any foreign futures au-
13 thority, or foreign law enforcement authority, if the
14 authority has in good faith determined and rep-
15 resented to the Commission that the information is
16 privileged.

17 “(4) NONWAIVER OF PRIVILEGED INFORMATION
18 PROVIDED TO THE COMMISSION.—The entities listed
19 in subsection (e) shall not be considered to have
20 waived any privilege by transferring information to
21 or permitting information to be used by the Commis-
22 sion.”.

23 **SEC. 204. JUDICIAL REVIEW OF COMMISSION RULES.**

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

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

2 “(a) IN GENERAL.—Except as provided in subsection
3 (e), a person adversely affected by a rule of the Commis-
4 sion promulgated under this Act may obtain review of the
5 rule in the United States Court of Appeals for the District
6 of Columbia Circuit or the United States Court of Appeals
7 for the circuit where the party resides or has the principal
8 place of business, by filing in the court, not later than
9 60 days after publication in the Federal Register of the
10 entry of the rule, a written petition requesting that the
11 rule be set aside.

12 “(b) ACTION BY COMMISSION.—After a written peti-
13 tion described in subsection (a) has been filed—

14 “(1) the clerk of the court shall transmit to an
15 officer designated by the Commission for that pur-
16 pose a copy of the petition; and

17 “(2) the Commission shall file in the court the
18 record on which the rule complained of is entered,
19 as provided in section 2112 of title 28, United
20 States Code, and the Federal Rules of Appellate
21 Procedure.

22 “(c) JURISDICTION OF THE COURT.—On the filing
23 of the petition, the court has jurisdiction, which becomes
24 exclusive on the filing of the record, to affirm and enforce
25 or to set aside the rule in whole or in part.

1 “(d) REQUIREMENTS.—The court shall affirm and
2 enforce the rule unless the action of the Commission in
3 promulgating the rule is found to be—

4 “(1) arbitrary, capricious, an abuse of discre-
5 tion, or otherwise not in accordance with law;

6 “(2) contrary to constitutional right, power,
7 privilege, or immunity;

8 “(3) in excess of statutory jurisdiction, author-
9 ity, or limitations, or without statutory authoriza-
10 tion; or

11 “(4) without observance of procedure required
12 by law.

13 “(e) DISTRICT COURT ALTERNATIVE.—Notwith-
14 standing the direct review process authorized by sub-
15 section (a), a person adversely affected by a rule of the
16 Commission promulgated under this Act may, in the alter-
17 native, obtain review by filing an action in the United
18 States District Court for the judicial district where the
19 party resides or has the principal place of business or in
20 the United States District Court for the District of Colum-
21 bia.”.

1 **SEC. 205. REPORT ON STATUS OF ANY APPLICATION OF**
2 **METALS EXCHANGE TO REGISTER AS A FOR-**
3 **EIGN BOARD OF TRADE; DEADLINE FOR AC-**
4 **TION ON APPLICATION.**

5 (a) **REPORT TO CONGRESS.**—Not later than 90 days
6 after the date of enactment of this Act, the Commodity
7 Futures Trading Commission shall submit to the Com-
8 mittee on Agriculture of the House of Representatives and
9 the Committee on Agriculture, Nutrition, and Forestry of
10 the Senate a written report describing—

11 (1) the status of the review by the Commission
12 of any application submitted by a metals exchange
13 to register with the Commission under section
14 4(b)(1) of the Commodity Exchange Act (7 U.S.C.
15 6(b)(1));

16 (2) the status of Commission negotiations with
17 foreign regulators regarding aluminum warehousing;
18 and

19 (3) the status of consultations with all United
20 States market participants concerning metals ex-
21 changes and warehousing, including major producers
22 and consumers.

23 (b) **DEADLINE FOR ACTION.**—Not later than Sep-
24 tember 30, 2017, the Commission shall take action on any
25 application described in subsection (a)(1) that is sub-
26 mitted to the Commission on or before August 14, 2012.

1 **SEC. 206. PREDOMINANTLY ENGAGED.**

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

5 “(iv) REGULATIONS.—

6 “(I) IN GENERAL.—Not later
7 than 90 days after the date of enact-
8 ment of this clause, the Commission
9 shall promulgate regulations to define
10 the term ‘predominantly engaged’ for
11 purposes of clause (i)(VIII).

12 “(II) REVENUE REQUIRE-
13 MENT.—Regulations under this clause
14 shall provide that an entity will not be
15 considered to be predominantly en-
16 gaged in activities that are in the
17 business of banking or financial in na-
18 ture if the consolidated revenues of
19 the entity derived from such activities
20 constitute less than 85 percent of the
21 total consolidated revenues of the en-
22 tity.

23 “(III) DETERMINATION.—For
24 purposes of subclause (II), in deter-
25 mining the percentage of the revenues
26 of an entity that are derived from ac-

1 activities that are in the business of
 2 banking or financial in nature, all rev-
 3 enues that are, or result from, trans-
 4 actions used to hedge or mitigate
 5 commercial risk shall be excluded.”.

6 **SEC. 207. PUBLIC INTEREST EXEMPTIONS.**

7 Section 4(c)(6) of the Commodity Exchange Act (7
 8 U.S.C. 6(e)(6)) is amended in the matter preceding sub-
 9 paragraph (A) by inserting “, on the condition that an
 10 exemption pursuant to this paragraph shall include an ex-
 11 emption from section 22,” after “requirements of this
 12 Act”.

13 **TITLE III—END-USER RELIEF**

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

15 (a) IN GENERAL.—Section 1a(49) of the Commodity
 16 Exchange Act (7 U.S.C. 1a(49)) is amended by adding
 17 at the end the following:

18 “(E) CERTAIN TRANSACTIONS WITH A
 19 UTILITY SPECIAL ENTITY.—In making a deter-
 20 mination to exempt pursuant to subparagraph
 21 (D), the Commission shall treat a utility oper-
 22 ations-related swap entered into with a utility
 23 special entity as if the swap were entered into
 24 with an entity that is not a special entity (as
 25 defined in section 4s(h)(2)(C)).”.

1 (b) REPORTING TRANSACTIONS IN UTILITY OPER-
 2 ATIONS-RELATED SWAPS.—Section 4r(a)(3) of the Com-
 3 modity Exchange Act (7 U.S.C. 6r(a)(3)) is amended by
 4 adding at the end the following:

5 “(D) TRANSACTIONS IN UTILITY OPER-
 6 ATIONS-RELATED SWAPS.—Transactions in util-
 7 ity operations-related swaps shall be reported
 8 pursuant to this section.”.

9 (c) UTILITY OPERATIONS-RELATED SWAP.—Section
 10 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.
 11 1a(47)(A)(iii)) is amended—

12 (1) in subclause (XXI), by striking “and” at
 13 the end;

14 (2) in subclause (XXII), by adding “and” at
 15 the end; and

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

17 “(XXIII) a utility operations-re-
 18 lated swap;”.

19 (d) DEFINITIONS.—Section 1a of the Commodity Ex-
 20 change Act (7 U.S.C. 1a) is amended by adding at the
 21 end the following:

22 “(52) UTILITY OPERATIONS-RELATED SWAP.—
 23 The term ‘utility operations-related swap’ means a
 24 swap that—

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

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

6 “(i) an interest rate, credit, equity, or
7 currency asset class;

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

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

18 “(C) is associated with—

19 “(i) the generation, production, pur-
20 chase, or sale of natural gas or electric en-
21 ergy, the supply of natural gas or electric
22 energy to a utility, or the delivery of nat-
23 ural gas or electric energy service to utility
24 customers;

1 “(ii) fuel supply for the facilities or
2 operations of a utility;

3 “(iii) compliance with an electric sys-
4 tem reliability obligation;

5 “(iv) compliance with an energy, en-
6 ergy efficiency, conservation, or renewable
7 energy or environmental law, regulation, or
8 government order applicable to a utility; or

9 “(v) any other electric energy or nat-
10 ural gas swap to which a utility is a party.

11 “(53) UTILITY SPECIAL ENTITY.—The term
12 ‘utility special entity’ means a special entity, or any
13 instrumentality, department, or corporation of or es-
14 tablished by a State or political subdivision of a
15 State, that—

16 “(A) owns or operates, or anticipates own-
17 ing or operating, an electric or natural gas fa-
18 cility or an electric or natural gas operation;

19 “(B) supplies, or anticipates supplying,
20 natural gas and or electric energy to another
21 utility special entity;

22 “(C) has, or anticipates having, public
23 service obligations under Federal, State, or
24 local law (including regulations) to deliver elec-

1 tric energy or natural gas service to customers;
2 or

3 “(D) is a Federal power marketing agency
4 (as defined in section 3 of the Federal Power
5 Act (16 U.S.C. 796)).”.

6 **SEC. 302. RELIEF FOR GRAIN ELEVATOR OPERATORS, AG-**
7 **RICULTURAL PRODUCERS, AGRICULTURAL**
8 **COUNTERPARTIES, AND COMMERCIAL MAR-**
9 **KET PARTICIPANTS.**

10 The Commodity Exchange Act is amended by insert-
11 ing after section 4t (7 U.S.C. 6t) the following:

12 **“SEC. 4u. RECORDKEEPING REQUIREMENTS APPLICABLE**
13 **TO NONREGISTERED MEMBERS OF CERTAIN**
14 **REGISTERED ENTITIES.**

15 “(a) IN GENERAL.—Except as provided in section
16 4(a)(3), a member of a designated contract market or a
17 swap execution facility that is not registered with the
18 Commission and not required to be registered with the
19 Commission in any capacity shall satisfy the recordkeeping
20 requirements of this Act and any recordkeeping rule,
21 order, or regulation under this Act by maintaining a writ-
22 ten record of each transaction in a contract for future de-
23 livery, option on a future, swap, swaption, trade option,
24 and related cash or forward transactions.

1 “(b) SUFFICIENCY.—A written record described in
 2 subsection (a) shall be sufficient if the written record in-
 3 cludes the final agreement between the parties and the
 4 material economic terms of the transaction.”.

5 **SEC. 303. RELIEF FOR END-USERS WHO USE PHYSICAL**
 6 **CONTRACTS WITH VOLUMETRIC**
 7 **OPTIONALITY AND TREATMENT OF FEDERAL**
 8 **HOME LOAN BANK PRODUCTS.**

9 Section 1a(47)(B) of the Commodity Exchange Act
 10 (7 U.S.C. 1a(47)(B)) is amended—

11 (1) in clause (ix), by striking “and” at the end;

12 (2) in clause (x), by striking the period at the
 13 end and inserting a semicolon; and

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

15 “(xi) any option in a nonfinancial
 16 commodity for which exercise is intended
 17 to result in a physical delivery obligation;
 18 and

19 “(xii) any advance by a Federal Home
 20 Loan Bank.”.

21 **SEC. 304. STUDY OF SWAP DEALER DE MINIMIS EXEMPTION**
 22 **LEVEL.**

23 (a) IN GENERAL.—The Commodity Futures Trading
 24 Commission shall conduct a study of the appropriate de
 25 minimis exemption level of swap dealing under section

1 1a(49)(D) of the Commodity Exchange Act (7 U.S.C.
2 1a(49)(D)).

3 (b) CONSIDERATIONS.—In conducting the study de-
4 scribed in subsection (a), the Commission may consider—

5 (1) the potential impact of modifying the de
6 minimis threshold;

7 (2) whether the de minimis threshold should be
8 increased or decreased;

9 (3) the factors that are useful for identifying
10 swap dealing activity, including the application of
11 the dealer trader distinction for that purpose, and
12 the potential use of objective tests or safe harbors as
13 part of the analysis; and

14 (4) any other factors, or any other analysis of
15 swap data and information relating to swaps, that
16 the Commission considers to be relevant.

17 (c) REGULATION REQUIRED.—

18 (1) IN GENERAL.—Based on the information
19 gathered in the study under this section, the Com-
20 mission, through a rulemaking, shall promulgate a
21 regulation that sets an appropriate swap dealer de
22 minimis exemption level.

23 (2) EXISTING EXEMPTION LEVEL.—

24 (A) IN GENERAL.—The swap dealer de
25 minimis exemption level in effect on the date of

1 enactment of this Act shall remain in effect
2 until changed by the Commission through a
3 rulemaking described in paragraph (1).

4 (B) EFFECTIVENESS.—Any Commission
5 regulation that changes the swap dealer de
6 minimis exemption level shall take effect not
7 less than 1 year after the date on which the
8 final regulation is published in the Federal Reg-
9 ister.

10 **SEC. 305. MODELS FOR NON-BANK SWAP DEALERS.**

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

13 (1) in paragraph (2)(B), in the matter pre-
14 ceding clause (i), by striking “The Commission” and
15 inserting “In consultation with the prudential regu-
16 lators and the Securities and Exchange Commission,
17 the Commission”; and

18 (2) in paragraph (3)(D)—

19 (A) in clause (ii), in the matter preceding
20 subclause (I), by inserting “and in consultation
21 with each other” after “practicable” ; and

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

23 “(iii) FINANCIAL MODELS.—To the
24 extent that swap dealers and major swap
25 participants that are banks are permitted

1 to use financial models approved by the
2 prudential regulators or the Securities and
3 Exchange Commission to calculate min-
4 imum capital requirements and minimum
5 initial and variation margin requirements,
6 including the use of noncash collateral, the
7 Commission shall, in consultation with the
8 prudential regulators and the Securities
9 and Exchange Commission and to the
10 maximum extent practicable, permit the
11 use of comparable financial models by
12 swap dealers and major swap participants
13 that are not banks.”.

14 (b) CONFORMING AMENDMENT.—Section 15F(e) of
15 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
16 10(e)) is amended—

17 (1) in paragraph (2)(B), in the matter pre-
18 ceding clause (i), by striking “The Commission” and
19 inserting “In consultation with the prudential regu-
20 lators and the Commodity Futures Trading Commis-
21 sion, the Commission”; and

22 (2) in paragraph (3)(D)—

23 (A) in clause (ii), in the matter preceding
24 subclause (I), by inserting “and in consultation
25 with each” after “practicable”; and

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

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

19 **SEC. 306. BONA FIDE HEDGE DEFINED TO PROTECT END-**
20 **USER RISK MANAGEMENT NEEDS.**

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

23 (1) in paragraph (1), in the second sentence—

24 (A) by striking “may” and inserting
25 “shall”; and

1 (B) by striking “future for which” and in-
2 serting “future, to be determined by the Com-
3 mission, for which either an appropriate swap is
4 available or”;

5 (2) in paragraph (2)—

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

13 (B) in subparagraph (A)(ii), by striking
14 “of risks” and inserting “or management of
15 current or anticipated risks”; and

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

17 “(3) BONA FIDE HEDGING TRANSACTION.—The
18 Commission may further define, by rule or regula-
19 tion, what constitutes a bona fide hedging trans-
20 action, if the rule or regulation is consistent with the
21 requirements of subparagraphs (A) and (B) of para-
22 graph (2).”.

1 **SEC. 307. EXEMPTION OF QUALIFIED CHARITABLE ORGANI-**
 2 **ZATIONS FROM DESIGNATION AND REGULA-**
 3 **TION AS COMMODITY POOL OPERATORS.**

4 (a) EXCLUSION FROM DEFINITION OF COMMODITY
 5 POOL.—Section 1a(10) of the Commodity Exchange Act
 6 (7 U.S.C. 1a(10)) is amended by adding at the end the
 7 following:

8 “(C) EXCLUSION.—The term ‘commodity
 9 pool’ does not include any investment trust,
 10 syndicate, or similar form of enterprise ex-
 11 cluded from the definition of ‘investment com-
 12 pany’ pursuant to paragraph (10) or (14) of
 13 section 3(c) of the Investment Company Act of
 14 1940 (15 U.S.C. 80a-3(c)).”.

15 (b) INAPPLICABILITY OF PROHIBITION ON USE OF
 16 INSTRUMENTALITIES OF INTERSTATE COMMERCE BY UN-
 17 REGISTERED COMMODITY TRADING ADVISOR.—Section
 18 4m of the Commodity Exchange Act (7 U.S.C. 6m) is
 19 amended—

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

22 **“SEC. 4m. USE OF MAILS OR OTHER MEANS OR INSTRU-**
 23 **MENTALITIES OF INTERSTATE COMMERCE**
 24 **BY COMMODITY TRADING ADVISORS AND**
 25 **COMMODITY POOL OPERATORS.**

26 “(a) PROHIBITION.—

1 “(1) IN GENERAL.—It”;

2 (2) in the second sentence—

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

5 “(2) EXCEPTIONS.—

6 “(A) COMMODITY TRADING ADVISORS.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii) and except as provided in subpara-
9 graphs (B) and (C), this section”;

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

13 “(I) dealer”;

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

16 “(II) nonprofit”;

17 (D) by striking “Commodity Futures
18 Trading Commission Act of 1974; if the advice
19 by the person described in clause (1) or (2) of
20 this sentence” and inserting the following:
21 “Commodity Futures Trading Commission Act
22 of 1974.

23 “(ii) APPLICABILITY.—Clause (i) only
24 applies if the advice by the person de-

1 scribed in subclause (I) or (II) of clause
2 (i)”;

3 (E) by striking “business:” and inserting
4 “business.”; and

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

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

13 “(C) CHARITABLE ORGANIZATIONS.—This
14 section shall not apply to any commodity trad-
15 ing advisor that is—

16 “(i) a charitable organization, as de-
17 fined in section 3(e)(10)(D)(iii) of the In-
18 vestment Company Act of 1940 (15 U.S.C.
19 80a-3(c)(10)(D)(iii)), or a trustee, direc-
20 tor, officer, employee, or volunteer of such
21 a charitable organization acting within the
22 scope of the employment or duties of the
23 person with the organization, whose trad-
24 ing advice is provided only to, or with re-
25 spect to, 1 or more of—

1 “(I) any such charitable organi-
2 zation; or

3 “(II) an investment trust, syn-
4 dicate, or similar form of enterprise
5 excluded from the definition of ‘invest-
6 ment company’ pursuant to section
7 3(c)(10) of the Investment Company
8 Act of 1940 (15 U.S.C. 80a-
9 3(c)(10)); or

10 “(ii) any plan, company, or account
11 described in section 3(c)(14) of the Invest-
12 ment Company Act of 1940 (15 U.S.C.
13 80a-3(c)(14)), any person or entity who
14 establishes or maintains such a plan, com-
15 pany, or account, or any trustee, director,
16 officer, employee, or volunteer for any of
17 the foregoing plans, persons, or entities
18 acting within the scope of the employment
19 or duties of the person with the organiza-
20 tion, whose trading advice is provided only
21 to, or with respect to, any investment
22 trust, syndicate, or similar form of enter-
23 prise excluded from the definition of ‘in-
24 vestment company’ pursuant to section

1 3(c)(14) of the Investment Company Act
2 of 1940 (15 U.S.C. 80a-3(c)(14)).”;

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

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

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

10 “(c) EXCEPTION.—

11 “(1) IN GENERAL.—Subsection (a) shall not
12 apply”;

13 (5) by striking “(B) ENGAGED PRIMARILY.—
14 For purposes of subparagraph (A)” and inserting
15 the following:

16 “(2) ENGAGED PRIMARILY.—For purposes of
17 paragraph (1)”;

18 (6) by striking “(C) COMMODITY INTERESTS.—
19 For purposes of this paragraph” and inserting the
20 following:

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

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

24 “(d) DISCLOSURE CONCERNING EXCLUDED CHARI-
25 TABLE ORGANIZATIONS.—The operator of or advisor to

1 any investment trust, syndicate, or similar form of enter-
 2 prise excluded from the definition of ‘commodity pool’ by
 3 reason of section 1a(10)(C) of this Act pursuant to section
 4 3(c)(10) of the Investment Company Act of 1940 (15
 5 U.S.C. 80a-3(c)(10)) shall provide disclosure in accord-
 6 ance with section 7(e) of that Act (15 U.S.C. 80a-7(e)).”.

7 **TITLE IV—TECHNICAL** 8 **CORRECTIONS**

9 **SEC. 401. CORRECTION OF CROSS-REFERENCES.**

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

13 (b) Section 5c(c)(5)(C)(i) of the Commodity Ex-
 14 change Act (7 U.S.C. 7a-2(c)(5)(C)(i)) is amended in the
 15 matter preceding subelause (I) by striking “section
 16 1a(2)(i))” and inserting “section 1a(19)(A))”.

17 (c) Section 23(f) of the Commodity Exchange Act (7
 18 U.S.C. 26(f)) is amended by striking “section 7064” and
 19 inserting “section 706”.

20 **SEC. 402. ELIMINATION OF OBSOLETE REFERENCES TO DE-**

21 **RIVATIVE TRANSACTION EXECUTION FACILI-**

22 **TIES.**

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

1 (1) in paragraph (12)(B)(vi), by striking “or
2 derivatives transaction execution facility”;

3 (2) in paragraph (34)—

4 (A) by striking the paragraph designation
5 and heading and inserting the following:

6 “(34) MEMBER.—”; and

7 (B) by striking “or derivatives transaction
8 execution facility” each place it appears; and

9 (3) in paragraph (35)(B)(iii)(I), by striking “or
10 registered derivatives transaction execution facility”.

11 (b) Section 2 of the Commodity Exchange Act (7
12 U.S.C. 2) is amended—

13 (1) in subsection (a)—

14 (A) in paragraph (1)—

15 (i) in subparagraph (C)—

16 (I) in clause (ii), in the matter
17 preceding subclause (I)—

18 (aa) by striking “, or reg-
19 ister a derivatives transaction
20 execution facility that trades or
21 executes,”;

22 (bb) by striking “, and no
23 derivatives transaction execution
24 facility shall trade or execute
25 such contracts of sale (or options

- 1 on such contracts) for future de-
2 livery”; and
- 3 (cc) by striking “or the de-
4 rivatives transaction execution fa-
5 cility,”; and
- 6 (II) in clause (v)—
- 7 (aa) in subclause (I), by
8 striking “, or any derivatives
9 transaction execution facility on
10 which such contract or option is
11 traded,”;
- 12 (bb) in subclause (II), by
13 striking “or derivatives trans-
14 action execution facility” each
15 place it appears; and
- 16 (cc) in subclause (V), by
17 striking “or registered derivatives
18 transaction execution facility”;
19 and
- 20 (ii) in subparagraph (D)—
- 21 (I) in clause (i)—
- 22 (aa) in the matter preceding
23 subclause (I)—
- 24 (AA) by striking “, or
25 register a derivatives trans-

1 action execution facility”;

2 and

3 (BB) by striking “, or

4 registered as a derivatives

5 transaction execution facility

6 for,”; and

7 (bb) in subclause (IV), by

8 striking “registered derivatives

9 transaction execution facility,”

10 each place it appears;

11 (II) in clause (ii)—

12 (aa) by striking subclause

13 (I) and inserting the following:

14 “(I) the transaction is conducted on, or subject

15 to, the rules of a board of trade that has been des-

16 ignated by the Commission as a contract market in

17 the security futures product; or”;

18 (bb) in subclause (II)—

19 (AA) by striking “(II)

20 the contract” and inserting

21 the following:

22 “(II)(aa) the contract”; and

23 (BB) by striking “or

24 registered derivatives trans-

1 action execution facility”;

2 and

3 (cc) in subclause (III)—

4 (AA) by striking “or

5 registered derivatives trans-

6 action execution facility

7 member”; and

8 (BB) by striking “(III)

9 the security” and inserting

10 the following:

11 “(bb) the security”; and

12 (III) in clause (vi)(III)(aa), by

13 striking “and registered derivatives

14 transaction execution facilities”; and

15 (B) in paragraph (9)(B)(ii)—

16 (i) by striking “or registration” each

17 place it appears;

18 (ii) by striking “or derivatives trans-

19 action execution facility” each place it ap-

20 pears;

21 (iii) in the second sentence, by strik-

22 ing “or register”; and

23 (iv) in the fourth sentence—

24 (I) by striking “, registering,”;

25 and

1 (II) by striking “, registration”;

2 and

3 (2) in subsection (c)(2), by striking “or a de-
4 rivatives transaction execution facility” each place it
5 appears.

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

8 (1) in subsection (a)—

9 (A) in paragraph (1), by striking “or de-
10 rivatives transaction execution facility”; and

11 (B) in paragraph (3), by striking “or de-
12 rivatives transaction execution facility”; and

13 (2) in subsection (c)—

14 (A) in paragraph (1), in the matter pre-
15 ceding subparagraph (A), by striking “or reg-
16 istered as a contract market or derivatives
17 transaction execution facility” and inserting “as
18 a contract market”; and

19 (B) in paragraph (2)(B)(ii), by striking
20 “or derivatives transaction execution facility”.

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

23 (1) in subsection (a)(1)—

24 (A) by striking “or derivatives transaction
25 execution facilities”; and

1 (B) by striking “or derivatives transaction
2 execution facility”; and

3 (2) in subsection (e)—

4 (A) by striking “, derivatives transaction
5 execution facility,” each place it appears; and

6 (B) by striking “or derivatives transaction
7 execution facility”.

8 (e) Section 4c(g) of the Commodity Exchange Act (7
9 U.S.C. 6c(g)) is amended by striking “or derivatives
10 transaction execution facility” each place it appears.

11 (f) Section 4d of the Commodity Exchange Act (7
12 U.S.C. 6d) is amended by striking “or derivatives trans-
13 action execution facility” each place it appears.

14 (g) Section 4e of the Commodity Exchange Act (7
15 U.S.C. 6e) is amended by striking “or derivatives trans-
16 action execution facility”.

17 (h) Section 4f of the Commodity Exchange Act (7
18 U.S.C. 6f) is amended by striking “or derivatives trans-
19 action execution facility” each place it appears.

20 (i) Section 4i of the Commodity Exchange Act (7
21 U.S.C. 6i) is amended in the matter preceding paragraph
22 (1) by striking “or derivatives transaction execution facil-
23 ity”.

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

1 (1) in the section heading, by striking “**AND**
2 **REGISTERED DERIVATIVES TRANSACTION EXE-**
3 **CUTION FACILITIES**”;

4 (2) in subsection (a), in the first sentence, by
5 striking “and registered derivatives transaction exe-
6 cution facility”;

7 (3) in subsection (b), in the matter preceding
8 paragraph (1), by striking “or registered derivatives
9 transaction execution facility”; and

10 (4) in subsection (c), in the matter preceding
11 paragraph (1), by striking “or registered derivatives
12 transaction execution facility members”.

13 (k) Section 4k(5) of the Commodity Exchange Act
14 (7 U.S.C. 6k(5)) is amended, in the matter preceding sub-
15 paragraph (A), by striking “or registered derivatives
16 transaction execution facility”.

17 (l) Section 4l of the Commodity Exchange Act (7
18 U.S.C. 6l) is amended by striking “or registered deriva-
19 tives transaction execution facilities” each place it ap-
20 pears.

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

23 (1) in subsection (a), in the third sentence, by
24 striking “contract markets, or derivatives trans-

1 action execution facilities” and inserting “or con-
2 tract markets”; and

3 (2) in subsection (b), by striking “derivatives
4 transaction execution facility,”.

5 (n) Section 5(e) of the Commodity Exchange Act (7
6 U.S.C. 7(e)) is amended—

7 (1) by striking the subsection designation and
8 heading and all that follows through “a contract
9 for” in paragraph (1) and inserting the following:

10 “(e) CURRENT AGRICULTURAL COMMODITIES.—A
11 contract for”; and

12 (2) by striking paragraph (2).

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

15 (1) in subsection (b), by striking “, derivatives
16 transaction execution facility,” each place it appears;
17 and

18 (2) in subsection (f)—

19 (A) in the matter preceding paragraph (1),
20 by striking “and registered derivatives trans-
21 action execution facility”; and

22 (B) in paragraph (1), by striking “or reg-
23 istered derivatives transaction execution facil-
24 ity”.

1 (p) Section 6 of the Commodity Exchange Act is
2 amended—

3 (1) by striking the section designation (42 Stat.
4 1001, chapter 39) and all that follows through “Any
5 person” in subsection (a) (7 U.S.C. 8) and inserting
6 the following:

7 **“SEC. 6. APPLICATION FOR DESIGNATION AS CONTRACT**
8 **MARKET.**

9 “(a) APPLICATION.—Any person”;

10 (2) in subsection (a) (7 U.S.C. 8)—

11 (A) in the first sentence, by striking “or
12 registered as a contract market or derivatives
13 transaction execution facility” and inserting “as
14 a contract market”; and

15 (B) in the last sentence, by striking “or
16 register”; and

17 (3) in subsections (a) and (b) (7 U.S.C. 8)—

18 (A) by striking “or derivatives transaction
19 execution facility” each place it appears; and

20 (B) by striking “or registration” each
21 place it appears.

22 (q) Section 6a of the Commodity Exchange Act (7
23 U.S.C. 10a) is amended—

24 (1) in subsection (a), by striking “or registered
25 as a contract market or a derivatives transaction

1 execution facility exclude” and inserting “as a con-
2 tract market shall exclude”; and

3 (2) in subsection (b)—

4 (A) by striking “or registered”; and

5 (B) by striking “or a derivatives trans-
6 action execution facility”.

7 (r) Section 6d(1) of the Commodity Exchange Act (7
8 U.S.C. 13a–2(1)) is amended by striking “derivatives
9 transaction execution facility,”.

10 **SEC. 403. ELIMINATION OF OBSOLETE REFERENCES TO**
11 **ELECTRONIC TRADING FACILITIES.**

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

14 (1) in paragraph (18)(A)(x), by striking “(other
15 than an electronic trading facility with respect to a
16 significant price discovery contract)”; and

17 (2) in paragraph (40)—

18 (A) in subparagraph (D), by adding “and”
19 at the end;

20 (B) in subparagraph (E), by striking “;
21 and” at the end and inserting a period; and

22 (C) by striking subparagraph (F).

23 (b) Section 2(a)(1)(A) of the Commodity Exchange
24 Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence

1 by striking “(including significant price discovery con-
2 tracts)”.

3 (c) Section 4a of the Commodity Exchange Act (7
4 U.S.C. 6a) (as amended by section 402(d)) is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (1), by striking “with re-
7 spect to a significant price discovery contract”;
8 and

9 (B) in paragraph (2), by striking “any
10 contract” and all that follows through “price
11 discovery contract” and inserting “any contract
12 market or swap execution facility”; and

13 (2) in subsection (e)—

14 (A) in the first sentence—

15 (i) by striking “or by any electronic
16 trading facility”;

17 (ii) by striking “or on an electronic
18 trading facility”; and

19 (iii) by striking “or electronic trading
20 facility” each place it appears; and

21 (B) in the second sentence, by striking “or
22 electronic trading facility with respect to a sig-
23 nificant price discovery contract”.

24 (d) Section 4g(a) of the Commodity Exchange Act
25 (7 U.S.C. 6g(a)) is amended by striking “and in any sig-

1 nificant price discovery contract traded or executed on an
2 electronic trading facility or any agreement, contract, or
3 transaction that is treated by a derivatives clearing organi-
4 zation, whether registered or not registered, as fungible
5 with a significant price discovery contract;”.

6 (e) Section 4i of the Commodity Exchange Act (7
7 U.S.C. 6i) is amended in the matter preceding paragraph
8 (1) by striking “, or any significant price discovery con-
9 tract traded or executed on an electronic trading facility
10 or any agreement, contract, or transaction that is treated
11 by a derivatives clearing organization, whether registered
12 or not registered, as fungible with a significant price dis-
13 covery contract”.

14 (f) Section 5c(b) of the Commodity Exchange Act (7
15 U.S.C. 7a–2(b)) (as amended by section 402(o)) is amend-
16 ed—

17 (1) in paragraph (1)—

18 (A) by striking “or electronic trading facil-
19 ity with respect to a significant price discovery
20 contract”; and

21 (B) by striking “that is not an electronic
22 trading facility”;

23 (2) in paragraph (2), by striking “or electronic
24 trading facility”; and

1 (3) in paragraph (3), by striking “or electronic
2 trading facility”.

3 (g) Section 6(b) of the Commodity Exchange Act (7
4 U.S.C. 8(b)) is amended by striking “or electronic trading
5 facility” each place it appears.

6 (h) Section 12(e)(2) of the Commodity Exchange Act
7 (7 U.S.C. 16(e)(2)) is amended by striking “in the case
8 of—” and all that follows through the period at the end
9 and inserting the following: “in the case of an agreement,
10 contract, or transaction that is excluded from this Act
11 under subsection (c) or (f) of section 2 of this Act or title
12 IV of the Commodity Futures Modernization Act of 2000
13 (as enacted by section 1(a)(5) of the Consolidated Appro-
14 priations Act, 2001 (Public Law 106–554; 114 Stat.
15 2763, 2763A–457)), or exempted under section 4(c) (re-
16 gardless of whether any such agreement, contract, or
17 transaction is otherwise subject to this Act).”.

18 **SEC. 404. ELIMINATION OF OBSOLETE REFERENCES TO EX-**

19 **EMPT BOARDS OF TRADE.**

20 (a) Section 1a(18)(A)(x) of the Commodity Exchange
21 Act (7 U.S.C. 1a(18)(A)(x)) (as amended by section
22 403(a)(1)) is amended by striking “or an exempt board
23 of trade”.

1 (b) Section 12(e)(1)(B)(i) of the Commodity Ex-
2 change Act (7 U.S.C. 16(e)(1)(B)(i)) is amended by strik-
3 ing “or exempt board of trade”.

4 **SEC. 405. ELIMINATION OF OBSOLETE REFERENCE TO SIG-**
5 **NIFICANT PRICE DISCOVERY CONTRACT.**

6 Section 1a of the Commodity Exchange Act (7 U.S.C.
7 1a) is amended by striking paragraph (46) and inserting
8 the following:

9 “(46) RESERVED.—”.

10 **SEC. 406. CLARIFICATIONS OF RETAIL FOREIGN CUR-**
11 **RENCY.**

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

14 (1) in subparagraph (B)—

15 (A) by striking “(gg)” each place it ap-
16 pears and inserting “(ee)”;

17 (B) in clause (i)(II), by redesignating item
18 (ff) as item (ee);

19 (C) in clause (iii), by striking “item (aa),
20 (bb), (ee), or (ff) of clause (i)(II) of this sub-
21 paragraph” and inserting “item (aa), (bb), or
22 (dd) of clause (i)(II)”;

23 (D) in clause (iv)—

1 (i) in subclauses (I) and (II), by strik-
2 ing “(ee), or (ff)” each place it appears
3 and inserting “or (dd)”;

4 (ii) in subclause (I)(bb), by inserting
5 “, or otherwise act as a commodity trading
6 advisor with respect to any agreement,
7 contract, or transaction described in clause
8 (i)” before the semicolon; and

9 (iii) in subclause (IV)(aa), by striking
10 “(ff)” and inserting “(dd)”;

11 (2) in subparagraph (C)—

12 (A) by striking “(ee), or (ff)” each place it
13 appears and inserting “or (dd)”;

14 (B) by striking “item (aa) through (ff)”
15 each place it appears and inserting “items (aa)
16 through (dd)”;

17 (C) in clause (iii)(I)(bb), by inserting “, or
18 otherwise act as a commodity trading advisor
19 with respect to any agreement, contract, or
20 transaction described in clause (i)” before the
21 semicolon.

22 **SEC. 407. ELIMINATION OF OBSOLETE REFERENCES TO**
23 **DEALER OPTIONS.**

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

1 (1) by striking subsections (d) and (e); and

2 (2) by redesignating subsections (f) and (g) as
3 subsections (d) and (e), respectively.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 2(d) of the Commodity Exchange
6 Act (7 U.S.C. 2(d)) is amended by striking “(g) of”
7 and inserting “(e) of”.

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

12 (3) Section 4k(5)(A) of the Commodity Ex-
13 change Act (7 U.S.C. 6k(5)(A)) is amended by strik-
14 ing “, (d), (e), and (g)” and inserting “and (e)”.

15 (4) Section 5f(b)(1)(A) of the Commodity Ex-
16 change Act (7 U.S.C. 7b–1(b)(1)(A)) is amended by
17 striking “, (e), and (g)” and inserting “and (e)”.

18 (5) Section 9(a)(2) of the Commodity Exchange
19 Act (7 U.S.C. 13(a)(2)) is amended by striking
20 “through (e) of subsection 4c” and inserting “and
21 (c) of section 4c”.

22 **SEC. 408. CORRECTION OF REFERENCES TO DESIGNATED**
23 **CONTRACT MARKETS.**

24 (a) Section 4a(c)(1) of the Commodity Exchange Act
25 (7 U.S.C. 6a(c)(1)) is amended in the second sentence by

1 striking “an exchange” and inserting “a designated con-
2 tract market”.

3 (b) Section 4b(c) of the Commodity Exchange Act (7
4 U.S.C. 6b(c)) is amended in the first proviso—

5 (1) by striking “the exchange” and inserting
6 “the designated contract market”; and

7 (2) by striking “such exchange” and inserting
8 “that designated contract market”.

9 (c) Section 4g(e) of the Commodity Exchange Act (7
10 U.S.C. 6g(e)) is amended by striking “the exchange” and
11 inserting “each designated contract market and swap exe-
12 cution facility”.

13 (d) Section 4s(h)(7)(A) of the Commodity Exchange
14 Act (7 U.S.C. 6s(h)(7)(A)) is amended by striking “an
15 exchange” and inserting “a designated contract market”.

16 (e) Section 8c of the Commodity Exchange Act (7
17 U.S.C. 12c) is amended—

18 (1) in subsection (a)—

19 (A) in paragraph (1), by striking “ex-
20 change” each place it appears and inserting
21 “registered entity”; and

22 (B) in paragraph (2)—

23 (i) in the first sentence—

1 (I) by striking “an exchange”
2 and inserting “a registered entity”;
3 and

4 (II) by striking “the exchange”
5 and inserting “the registered entity”;
6 and

7 (ii) in the second sentence—

8 (I) by striking “An exchange”
9 and inserting “A registered entity”;
10 and

11 (II) by striking “the exchange”
12 and inserting “the registered entity”;

13 (2) in subsection (b)—

14 (A) in the first sentence—

15 (i) by striking “an exchange” and in-
16 serting “a registered entity”; and

17 (ii) by striking “the exchange” and in-
18 serting “the registered entity”; and

19 (B) in the second sentence, by striking
20 “exchange” and inserting “registered entity”;
21 and

22 (3) in subsection (c), by striking “exchange”
23 each place it appears and inserting “registered enti-
24 ty”.

1 **SEC. 409. COMPLIANCE REPORT FLEXIBILITY.**

2 Section 4s(k)(3) of the Commodity Exchange Act (7
3 U.S.C. 6s(k)(3)) is amended by striking subparagraph (B)
4 and inserting the following:

5 “(B) REQUIREMENTS.—A compliance re-
6 port under subparagraph (A) shall—

7 “(i) include a certification that, under
8 penalty of law, the compliance report is
9 materially accurate and complete; and

10 “(ii) be furnished at such time as the
11 Commission determines, by rule, regula-
12 tion, or order, to be appropriate.”.

13 **SEC. 410. RESERVATIONS.**

14 (a) Section 5 of the Commodity Exchange Act (7
15 U.S.C. 7) is amended by inserting after subsection (a) the
16 following:

17 “(b) RESERVED.—”.

18 (b) The Commodity Exchange Act is amended by in-
19 serting after section 5 (7 U.S.C. 7) the following:

20 **“SEC. 5a. RESERVED.”.**

21 (c) Section 5b of the Commodity Exchange Act (7
22 U.S.C. 7a–1) is amended after subsection (i) the following:

23 “(j) RESERVED.—”.

24 (d) The Commodity Exchange Act is amended by in-
25 serting after section 5c (7 U.S.C. 7a–2) the following:

1 **“SEC. 5d. RESERVED.”.**

2 **SEC. 411. FLEXIBILITY FOR REGISTERED ENTITIES.**

3 Section 5c(b) of the Commodity Exchange Act (7
4 U.S.C. 7a–2(b)) (as amended by sections 402(o) and
5 403(f)) is amended by striking “contract market” each
6 place it appears and inserting “registered entity”.

7 **SEC. 412. ELIMINATION OF OBSOLETE REFERENCE TO AL-**
8 **TERNATIVE SWAP EXECUTION FACILITIES.**

9 Section 5h(h) of the Commodity Exchange Act (7
10 U.S.C. 7b–3(h)) is amended by striking “alternative”.

11 **SEC. 413. ELIMINATION OF REDUNDANT REFERENCES TO**
12 **TYPES OF REGISTERED ENTITIES.**

13 Section 6b of the Commodity Exchange Act (7 U.S.C.
14 13a) is amended in the first sentence by striking “as set
15 forth in sections 5 through 5c”.

16 **SEC. 414. CLARIFICATION OF COMMISSION AUTHORITY**
17 **OVER SWAPS TRADING.**

18 Section 8a of the Commodity Exchange Act (7 U.S.C.
19 12a) is amended—

20 (1) in paragraph (7)—

21 (A) in the matter preceding subparagraph
22 (A), by inserting “the protection of swaps trad-
23 ers and to assure fair dealing in swaps,” after
24 “appropriate for”;

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

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

3 (2) in paragraph (9), in the first sentence—

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

6 (B) by inserting “swap or” after “margin
7 levels on any”.

8 **SEC. 415. ELIMINATION OF DUPLICATIVE REFERENCE TO**
9 **COMMISSION.**

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

13 **SEC. 416. MISCELLANEOUS CORRECTIONS.**

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

16 (1) in paragraph (12)(A)(i)(II), by adding a
17 semicolon at the end; and

18 (2) in paragraph (19)—

19 (A) by redesignating clauses (i) through
20 (iv) as subparagraphs (A) through (D), respec-
21 tively, and indenting the subparagraphs appro-
22 priately; and

23 (B) in each of subparagraphs (B) and (D)
24 (as so redesignated)—

1 (i) by redesignating subclauses (I) and
2 (II) as clauses (i) and (ii), respectively,
3 and indenting the clauses appropriately;
4 and

5 (ii) by striking “clause (i)” each place
6 it appears and inserting “subparagraph
7 (A)”.

8 (b) Section 2(a)(1)(C) of the Commodity Exchange
9 Act (7 U.S.C. 2(a)(1)(C)) is amended—

10 (1) in clause (ii), by indenting subclause (III)
11 appropriately;

12 (2) by indenting clause (iii) appropriately;

13 (3) in clause (iv), by striking “under or” and
14 inserting “under”;

15 (4) by indenting clause (v) appropriately; and

16 (5) in clause (v)(VI), by striking “III” and in-
17 serting “(III)”.

18 (c) Section 2(c)(1) of the Commodity Exchange Act
19 (7 U.S.C. 2(c)(1)) is amended in the matter preceding
20 subparagraph (A) by striking “section, 5b, or” and insert-
21 ing “section 5b or”.

22 (d) Section 4(c)(3)(H) of the Commodity Exchange
23 Act (7 U.S.C. 6(c)(3)(H)) is amended by striking “state”
24 and inserting “State”.

1 (e) Section 4c of the Commodity Exchange Act (7
2 U.S.C. 6c) is amended by striking subsection (c) and in-
3 serting the following:

4 “(c) REGULATIONS.—The Commission shall issue
5 regulations to continue to permit the trading of options
6 on contract markets under such terms and conditions that
7 the Commission from time to time may prescribe.”.

8 (f) Section 4d(b) of the Commodity Exchange Act (7
9 U.S.C. 6d(b)) is amended by striking “paragraph (2) of
10 this section” and inserting “subsection (a)(1)(B)”.

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

13 (1) in paragraph (3)(A), by striking the first
14 comma; and

15 (2) in paragraph (4)—

16 (A) in subparagraph (A), in the first sen-
17 tence, by striking “in developing” and inserting
18 “In developing”; and

19 (B) in subparagraph (B), by striking
20 “1817(a)” and inserting “1817(a)”.

21 (h) Section 4p(b) of the Commodity Exchange Act
22 (7 U.S.C. 6p(b)) is amended by striking “state law” and
23 inserting “State law”.

24 (i) Section 5f(b)(1) of the Commodity Exchange Act
25 (7 U.S.C. 7b–1(b)(1)) is amended in the matter preceding

1 subparagraph (A) by striking “section 5f” and inserting
2 “this section”.

3 (j) Section 6(a) of the Commodity Exchange Act (7
4 U.S.C. 8(a)) is amended in the first sentence by striking
5 “the the” and inserting “the”.

6 (k) Section 8a of the Commodity Exchange Act (7
7 U.S.C. 12a) is amended in paragraphs (2)(E)(i) and
8 (3)(B)(i) by striking “Investors” each place it appears and
9 inserting “Investor”.

10 (l) Section 12(b) of the Commodity Exchange Act (7
11 U.S.C. 16(b)) is amended by indenting paragraph (4) ap-
12 propriately.

13 (m) Section 14(a) of the Commodity Exchange Act
14 (7 U.S.C. 18(a)) is amended—

15 (1) by indenting paragraph (2) appropriately;

16 and

17 (2) in paragraph (2), by indenting subpara-
18 graph (B) appropriately.

19 (n) Section 17(b) of the Commodity Exchange Act
20 (7 U.S.C. 21(b)) is amended—

21 (1) in paragraph (9)(D), by striking the semi-
22 colon at the end and inserting a period;

23 (2) in paragraph (10)(C)(ii), by striking “and”
24 at the end;

1 (3) in paragraph (11), by striking the period at
2 the end and inserting a semicolon;

3 (4) in paragraph (12)—

4 (A) by striking “(A)”; and

5 (B) by striking the period at the end and
6 inserting “; and”; and

7 (5) in paragraph (13), in the matter preceding
8 subparagraph (A), by striking “A major” and insert-
9 ing “a major”.

10 (o) Section 17 of the Commodity Exchange Act (7
11 U.S.C. 21) is amended—

12 (1) by redesignating subsection (r) as sub-
13 section (s); and

14 (2) by redesignating the second subsection (q)
15 (relating to comprehensive rule implementation pro-
16 grams) as subsection (r).

17 (p) Section 22 of the Commodity Exchange Act (7
18 U.S.C. 25) is amended—

19 (1) in subsection (a)(1)(C), by indenting clause
20 (iv) appropriately; and

21 (2) in subsection (b)—

22 (A) in paragraph (3), by striking “of reg-
23 istered” and inserting “of a registered”; and

24 (B) in paragraph (4), by inserting a
25 comma after “entity”.

1 **SEC. 417. ELIMINATION OF REPORT DUE IN 1986.**

2 Section 26 of the Futures Trading Act of 1978 (7
3 U.S.C. 16a) is amended—

4 (1) by striking subsection (b); and

5 (2) by redesignating subsection (c) as sub-
6 section (b).

Calendar No. 461

114TH CONGRESS
2^D SESSION

S. 2917

A BILL

To reauthorize the Commodity Futures Trading Commission, to ensure protections of futures customers, to provide relief for farmers, ranchers, and end-users that manage risk to help keep consumer costs low, and for other purposes.

MAY 10, 2016

Read twice and placed on the calendar