

# Calendar No. 461

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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.

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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

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## 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, agricul-  
 tural 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 con-  
 tract.
- 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 facili-  
 ties.
- 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)”; and

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 sserting “a registered entity”; and

17 (ii) by striking “the exchange” and in-  
18 sserting “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**

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2917**

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**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.

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MAY 10, 2016

Read twice and placed on the calendar