

114TH CONGRESS
1ST SESSION

H. R. 2289

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commodity End-User
 5 Relief Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—CUSTOMER PROTECTIONS

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

TITLE II—COMMODITY FUTURES TRADING COMMISSION
REFORMS

- Sec. 201. Extension of operations.
- Sec. 202. Consideration by the Commodity Futures Trading Commission of the costs and benefits of its regulations and orders.
- Sec. 203. Division directors.
- Sec. 204. Office of the Chief Economist.
- Sec. 205. Procedures governing actions taken by Commission staff.
- Sec. 206. Strategic technology plan.
- Sec. 207. Internal risk controls.
- Sec. 208. Subpoena duration and renewal.
- Sec. 209. Applicability of notice and comment requirements of the Administrative Procedure Act to guidance voted on by the Commission.
- Sec. 210. Judicial review of Commission rules.
- Sec. 211. GAO study on use of Commission resources.
- Sec. 212. Disclosure of required data of other registered entities.
- Sec. 213. Report on status of any application of metals exchange to register as a foreign board of trade; deadline for action on application.

TITLE III—END-USER RELIEF

- Sec. 301. Relief for hedgers utilizing centralized risk management practices.
- Sec. 302. Indemnification requirements.
- Sec. 303. Transactions with utility special entities.
- Sec. 304. Utility special entity defined.
- Sec. 305. Utility operations-related swap.
- Sec. 306. End-users not treated as financial entities.
- Sec. 307. Reporting of illiquid swaps so as to not disadvantage certain non-financial end-users.

- Sec. 308. Relief for grain elevator operators, farmers, agricultural counterparties, and commercial market participants.
- Sec. 309. Relief for end-users who use physical contracts with volumetric optionality.
- Sec. 310. Commission vote required before automatic change of swap dealer de minimis level.
- Sec. 311. Capital requirements for non-bank swap dealers.
- Sec. 312. Harmonization with the Jumpstart Our Business Startups Act.
- Sec. 313. Bona fide hedge defined to protect end-user risk management needs.
- Sec. 314. Cross-border regulation of derivatives transactions.
- Sec. 315. Exemption of qualified charitable organizations from designation and regulation as commodity pool operators.
- Sec. 316. Small bank holding company clearing exemption.
- Sec. 317. Core principle certainty.
- Sec. 318. Treatment of Federal Home Loan Bank products.
- Sec. 319. Treatment of certain funds.

TITLE IV—TECHNICAL CORRECTIONS

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

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

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

7 “(t) A registered futures association shall—
 8 “(1) require each member of the association
 9 that is a futures commission merchant to maintain

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (1) by striking paragraphs (1) and (2) and in-
15 serting the following:

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

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

4 “(A) considerations of protection of market
5 participants and the public;

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

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

11 “(D) considerations of price discovery;

12 “(E) considerations of sound risk manage-
13 ment practices;

14 “(F) available alternatives to direct regula-
15 tion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(12) RULES AND REGULATIONS.—

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

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

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

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

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

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

8 “(17) STRATEGIC TECHNOLOGY PLAN.—

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

16 “(B) CONTENTS.—The plan shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(5) SUBPOENA.—

19 “(A) IN GENERAL.—For”; and

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

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

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

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

3 “(ii) DEFINITION.—In clause (i), the
4 term ‘omnibus order of investigation’
5 means an order of the Commission author-
6 izing 1 or more members of the Commis-
7 sion or its staff to issue subpoenas under
8 subparagraph (A) to multiple persons in
9 relation to a particular subject matter
10 area.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (A) market surveillance and risk detection;

22 and

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

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

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

10 (A) market surveillance and risk detection;

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

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

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

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

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

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

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

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

13 “(B) prevents the Commission from—

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

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

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

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

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

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

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

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

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

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

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

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

4 **SEC. 213. REPORT ON STATUS OF ANY APPLICATION OF**
5 **METALS EXCHANGE TO REGISTER AS A FOR-**
6 **EIGN BOARD OF TRADE; DEADLINE FOR AC-**
7 **TION ON APPLICATION.**

8 (a) **REPORT TO CONGRESS.**—Within 90 days after
9 the date of the enactment of this section, the Commodity
10 Futures Trading Commission shall submit to the Congress
11 a written report on—

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

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 including major pro-
21 ducers and consumers.

22 (b) **DEADLINE FOR ACTION.**—Not later than Sep-
23 tember 30, 2016, the Commission shall take action on any
24 such application submitted to the Commission on or before
25 August 14, 2012.

TITLE III—END-USER RELIEF**SEC. 301. RELIEF FOR HEDGERS UTILIZING CENTRALIZED
RISK MANAGEMENT PRACTICES.**

(a) IN GENERAL.—

(1) COMMODITY EXCHANGE ACT AMENDMENT.—Section 2(h)(7)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(D)(i)) is amended to read as follows:

“(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including an affiliate entity predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, provided that if the hedge or mitigation of such commercial risk is addressed by entering into a swap with a swap dealer or major swap participant, an appropriate credit support measure or other mechanism must be utilized.”.

1 (2) SECURITIES EXCHANGE ACT OF 1934
2 AMENDMENT.—Section 3C(g)(4)(A) of the Securities
3 Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)(A))
4 is amended to read as follows:

5 “(A) IN GENERAL.—An affiliate of a per-
6 son that qualifies for an exception under para-
7 graph (1) (including affiliate entities predomi-
8 nantly engaged in providing financing for the
9 purchase of the merchandise or manufactured
10 goods of the person) may qualify for the excep-
11 tion only if the affiliate enters into the security-
12 based swap to hedge or mitigate the commercial
13 risk of the person or other affiliate of the per-
14 son that is not a financial entity, provided that
15 if the hedge or mitigation of such commercial
16 risk is addressed by entering into a security-
17 based swap with a security-based swap dealer
18 or major security-based swap participant, an
19 appropriate credit support measure or other
20 mechanism must be utilized.”.

21 (b) APPLICABILITY OF CREDIT SUPPORT MEASURE
22 REQUIREMENT.—The requirements in section
23 2(h)(7)(D)(i) of the Commodity Exchange Act and section
24 3C(g)(4)(A) of the Securities Exchange Act of 1934, as
25 amended by subsection (a), requiring that a credit support

1 measure or other mechanism be utilized if the transfer of
2 commercial risk referred to in such sections is addressed
3 by entering into a swap with a swap dealer or major swap
4 participant or a security-based swap with a security-based
5 swap dealer or major security-based swap participant, as
6 appropriate, shall not apply with respect to swaps or secu-
7 rity-based swaps, as appropriate, entered into before the
8 date of the enactment of this Act.

9 **SEC. 302. INDEMNIFICATION REQUIREMENTS.**

10 (a) DERIVATIVES CLEARING ORGANIZATIONS.—Sec-
11 tion 5b(k)(5) of the Commodity Exchange Act (7 U.S.C.
12 7a–1(k)(5)) is amended to read as follows:

13 “(5) CONFIDENTIALITY AGREEMENT.—Before
14 the Commission may share information with any en-
15 tity described in paragraph (4), the Commission
16 shall receive a written agreement from each entity
17 stating that the entity shall abide by the confiden-
18 tiality requirements described in section 8 relating to
19 the information on swap transactions that is pro-
20 vided.”.

21 (b) SWAP DATA REPOSITORIES.—Section 21 of such
22 Act (7 U.S.C. 24a) is amended—

23 (1) in subsection (c)(7)—

1 (A) in the matter preceding subparagraph
2 (A), by striking “all” and inserting “swap”;
3 and

4 (B) in subparagraph (E)—

5 (i) in clause (ii), by striking “and” at
6 the end; and

7 (ii) by adding at the end the fol-
8 lowing:

9 “(iv) other foreign authorities; and”;
10 and

11 (2) by striking subsection (d) and inserting the
12 following:

13 “(d) CONFIDENTIALITY AGREEMENT.—Before the
14 swap data repository may share information with any enti-
15 ty described in subsection (c)(7), the swap data repository
16 shall receive a written agreement from each entity stating
17 that the entity shall abide by the confidentiality require-
18 ments described in section 8 relating to the information
19 on swap transactions that is provided.”.

20 (e) SECURITY-BASED SWAP DATA REPOSITORIES.—

21 Section 13(n)(5) of the Securities Exchange Act of 1934
22 25 (15 U.S.C. 78m(n)(5)) is amended—

23 (1) in subparagraph (G)—

1 (A) in the matter preceding clause (i), by
2 striking “all” and inserting “security-based
3 swap”; and

4 (B) in subclause (v)—

5 (i) in subclause (II), by striking “;
6 and” and inserting a semicolon;

7 (ii) in subclause (III), by striking the
8 period at the end and inserting “; and”;
9 and

10 (iii) by adding at the end the fol-
11 lowing:

12 “(IV) other foreign authorities.”;

13 and

14 (2) by striking subparagraph (H) and inserting
15 the following:

16 “(H) CONFIDENTIALITY AGREEMENT.—

17 Before the security-based swap data repository
18 may share information with any entity de-
19 scribed in subparagraph (G), the security-based
20 swap data repository shall receive a written
21 agreement from each entity stating that the en-
22 tity shall abide by the confidentiality require-
23 ments described in section 24 relating to the in-
24 formation on security-based swap transactions
25 that is provided.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect as if enacted on July 21,
3 2010.

4 **SEC. 303. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.**

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

8 “(E) CERTAIN TRANSACTIONS WITH A
9 UTILITY SPECIAL ENTITY.—

10 “(i) Transactions in utility operations-
11 related swaps shall be reported pursuant to
12 section 4r.

13 “(ii) In making a determination to ex-
14 empt pursuant to subparagraph (D), the
15 Commission shall treat a utility operations-
16 related swap entered into with a utility
17 special entity, as defined in section
18 4s(h)(2)(D), as if it were entered into with
19 an entity that is not a special entity, as de-
20 fined in section 4s(h)(2)(C).”.

21 **SEC. 304. UTILITY SPECIAL ENTITY DEFINED.**

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

1 “(D) UTILITY SPECIAL ENTITY.—For pur-
2 poses of this Act, the term ‘utility special enti-
3 ty’ means a special entity, or any instrumen-
4 tality, department, or corporation of or estab-
5 lished by a State or political subdivision of a
6 State, that—

7 “(i) owns or operates, or anticipates
8 owning or operating, an electric or natural
9 gas facility or an electric or natural gas
10 operation;

11 “(ii) supplies, or anticipates sup-
12 plying, natural gas and or electric energy
13 to another utility special entity;

14 “(iii) has, or anticipates having, pub-
15 lic service obligations under Federal, State,
16 or local law or regulation to deliver electric
17 energy or natural gas service to customers;
18 or

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

22 **SEC. 305. UTILITY OPERATIONS-RELATED SWAP.**

23 (a) SWAP FURTHER DEFINED.—Section
24 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.
25 1a(47)(A)(iii)) is amended—

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

3 (2) by adding “and” at the end of subclause
4 (XXII); and

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

6 “(XXIII) a utility operations-re-
7 lated swap;”.

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

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

12 The term ‘utility operations-related swap’ means a
13 swap that—

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

16 “(B) is not a contract, agreement, or
17 transaction based on, derived on, or ref-
18 erencing—

19 “(i) an interest rate, credit, equity, or
20 currency asset class;

21 “(ii) except as used for fuel for elec-
22 tric energy generation, a metal, agricul-
23 tural commodity, or crude oil or gasoline
24 commodity of any grade; or

1 “(iii) any other commodity or category
2 of commodities identified for this purpose
3 in a rule or order adopted by the Commis-
4 sion in consultation with the appropriate
5 Federal and State regulatory commissions;
6 and

7 “(C) is associated with—

8 “(i) the generation, production, pur-
9 chase, or sale of natural gas or electric en-
10 ergy, the supply of natural gas or electric
11 energy to a utility, or the delivery of nat-
12 ural gas or electric energy service to utility
13 customers;

14 “(ii) fuel supply for the facilities or
15 operations of a utility;

16 “(iii) compliance with an electric sys-
17 tem reliability obligation;

18 “(iv) compliance with an energy, en-
19 ergy efficiency, conservation, or renewable
20 energy or environmental statute, regula-
21 tion, or government order applicable to a
22 utility; or

23 “(v) any other electric energy or nat-
24 ural gas swap to which a utility is a
25 party.”.

1 **SEC. 306. END-USERS NOT TREATED AS FINANCIAL ENTI-**
2 **TIES.**

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

6 “(iii) LIMITATION.—Such definition
7 shall not include an entity—

8 “(I) whose primary business is
9 providing financing, and who uses de-
10 rivatives for the purpose of hedging
11 underlying commercial risks related to
12 interest rate and foreign currency ex-
13 posures, 90 percent or more of which
14 arise from financing that facilitates
15 the purchase or lease of products, 90
16 percent or more of which are manu-
17 factured by the parent company or
18 another subsidiary of the parent com-
19 pany; or

20 “(II) who is not supervised by a
21 prudential regulator, and is not de-
22 scribed in any of subclauses (I)
23 through (VII) of clause (i), and—

24 “(aa) is a commercial mar-
25 ket participant; or

1 “(bb) enters into swaps,
2 contracts for future delivery, and
3 other derivatives on behalf of, or
4 to hedge or mitigate the commer-
5 cial risk of, whether directly or in
6 the aggregate, affiliates that are
7 not so supervised or described.”.

8 (b) COMMERCIAL MARKET PARTICIPANT DE-
9 FINED.—

10 (1) IN GENERAL.—Section 1a of such Act (7
11 U.S.C. 1a), as amended by section 305(b) of this
12 Act, is amended by redesignating paragraphs (7)
13 through (52) as paragraphs (8) through (53), re-
14 spectively, and by inserting after paragraph (6) the
15 following:

16 “(7) COMMERCIAL MARKET PARTICIPANT.—The
17 term ‘commercial market participant’ means any
18 producer, processor, merchant, or commercial user
19 of an exempt or agricultural commodity, or the prod-
20 ucts or byproducts of such a commodity.”.

21 (2) CONFORMING AMENDMENTS.—

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

24 (i) in subparagraph (A) of paragraph
25 (18) (as so redesignated by paragraph (1)

1 of this subsection), in the matter preceding
2 clause (i), by striking “(18)(A)” and in-
3 serting “(19)(A)”;

4 (ii) in subparagraph (A)(vii) of para-
5 graph (19) (as so redesignated by para-
6 graph (1) of this subsection), in the matter
7 following subclause (III), by striking
8 “(17)(A)” and inserting “(18)(A)”.

9 (B) Section 4(c)(1)(A)(i)(I) of such Act (7
10 U.S.C. 6(c)(1)(A)(i)(I)) is amended by striking
11 “(7), paragraph (18)(A)(vii)(III), paragraphs
12 (23), (24), (31), (32), (38), (39), (41), (42),
13 (46), (47), (48), and (49)” and inserting “(8),
14 paragraph (19)(A)(vii)(III), paragraphs (24),
15 (25), (32), (33), (39), (40), (42), (43), (47),
16 (48), (49), and (50)”.

17 (C) Section 4q(a)(1) of such Act (7 U.S.C.
18 6o-1(a)(1)) is amended by striking “1a(9)” and
19 inserting “1a(10)”.

20 (D) Section 4s(f)(1)(D) of such Act (7
21 U.S.C. 6s(f)(1)(D)) is amended by striking
22 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

23 (E) Section 4s(h)(5)(A)(i) of such Act (7
24 U.S.C. 6s(h)(5)(A)(i)) is amended by striking
25 “1a(18)” and inserting “1a(19)”.

1 (F) Section 4t(b)(1)(C) of such Act (7
2 U.S.C. 6t(b)(1)(C)) is amended by striking
3 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

4 (G) Section 5(d)(23) of such Act (7 U.S.C.
5 7(d)(23)) is amended by striking
6 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

7 (H) Section 5(e)(1) of such Act (7 U.S.C.
8 7(e)(1)) is amended by striking “1a(9)” and in-
9 serting “1a(10)”.

10 (I) Section 5b(k)(3)(A) of such Act (7
11 U.S.C. 7a–1(k)(3)(A)) is amended by striking
12 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

13 (J) Section 5h(f)(10)(A)(iii) of such Act (7
14 U.S.C. 7b–3(f)(10)(A)(iii)) is amended by strik-
15 ing “1a(47)(A)(v)” and inserting
16 “1a(48)(A)(v)”.

17 (K) Section 21(f)(4)(C) of such Act (7
18 U.S.C. 24a(f)(4)(C)) is amended by striking
19 “1a(48)” and inserting “1a(49)”.

20 **SEC. 307. REPORTING OF ILLIQUID SWAPS SO AS TO NOT**
21 **DISADVANTAGE CERTAIN NON-FINANCIAL**
22 **END-USERS.**

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

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

4 (2) by redesignating subparagraphs (D)
5 through (G) as subparagraphs (E) through (H), re-
6 spectively, and inserting after subparagraph (C) the
7 following:

8 “(D) REQUIREMENTS FOR SWAP TRANS-
9 ACTIONS IN ILLIQUID MARKETS.—Notwith-
10 standing subparagraph (C):

11 “(i) The Commission shall provide by
12 rule for the public reporting of swap trans-
13 actions, including price and volume data,
14 in illiquid markets that are not cleared and
15 entered into by a non-financial entity that
16 is hedging or mitigating commercial risk in
17 accordance with subsection (h)(7)(A).

18 “(ii) The Commission shall ensure
19 that the swap transaction information re-
20 ferred to in clause (i) of this subparagraph
21 is available to the public no sooner than 30
22 days after the swap transaction has been
23 executed or at such later date as the Com-
24 mission determines appropriate to protect
25 the identity of participants and positions in

1 illiquid markets and to prevent the elimi-
2 nation or reduction of market liquidity.

3 “(iii) In this subparagraph, the term
4 ‘illiquid markets’ means any market in
5 which the volume and frequency of trading
6 in swaps is at such a level as to allow iden-
7 tification of individual market partici-
8 pants.”.

9 **SEC. 308. RELIEF FOR GRAIN ELEVATOR OPERATORS,**
10 **FARMERS, AGRICULTURAL COUNTERPAR-**
11 **TIES, AND COMMERCIAL MARKET PARTICI-**
12 **PANTS.**

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

15 **“SEC. 4u. RECORDKEEPING REQUIREMENTS APPLICABLE**
16 **TO NON-REGISTERED MEMBERS OF CERTAIN**
17 **REGISTERED ENTITIES.**

18 “Except as provided in section 4(a)(3), a member of
19 a designated contract market or a swap execution facility
20 that is not registered with the Commission and not re-
21 quired to be registered with the Commission in any capac-
22 ity shall satisfy the recordkeeping requirements of this Act
23 and any recordkeeping rule, order, or regulation under
24 this Act by maintaining a written record of each trans-
25 action in a contract for future delivery, option on a future,

1 swap, swaption, trade option, or related cash or forward
2 transaction. The written record shall be sufficient if it in-
3 cludes the final agreement between the parties and the
4 material economic terms of the transaction.”.

5 **SEC. 309. RELIEF FOR END-USERS WHO USE PHYSICAL**
6 **CONTRACTS WITH VOLUMETRIC**
7 **OPTIONALITY.**

8 Section 1a(48)(B)(ii) of the Commodity Exchange
9 Act (7 U.S.C. 1a(47)(B)(ii)), as so redesignated by section
10 306(b)(1) of this Act, is amended to read as follows:

11 “(ii) any purchase or sale of a non-
12 financial commodity or security for de-
13 ferred shipment or delivery, so long as the
14 transaction is intended to be physically set-
15 tled, including any stand-alone or embed-
16 ded option for which exercise results in a
17 physical delivery obligation;”.

18 **SEC. 310. COMMISSION VOTE REQUIRED BEFORE AUTO-**
19 **MATIC CHANGE OF SWAP DEALER DE MINI-**
20 **MIS LEVEL.**

21 Section 1a(50)(D) of the Commodity Exchange Act
22 (7 U.S.C. 1a(49)(D)), as so redesignated by section
23 306(b)(1) of this Act, is amended—

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

1 “(D) EXCEPTION.—

2 “(i) IN GENERAL.—The Commission”;

3 and

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

6 “(ii) DE MINIMIS QUANTITY.—The de
7 minimis quantity of swap dealing described
8 in clause (i) shall be set at a quantity of
9 \$8,000,000,000, and may be amended or
10 changed only through a new affirmative
11 action of the Commission undertaken by
12 rule or regulation.”.

13 **SEC. 311. CAPITAL REQUIREMENTS FOR NON-BANK SWAP**
14 **DEALERS.**

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

18 (1) in paragraph (2)(B), by striking “shall”
19 and inserting the following: “and the Securities and
20 Exchange Commission, in consultation with the pru-
21 dential regulators, shall jointly”; and

22 (2) in paragraph (3)(D)—

23 (A) in clause (ii), by striking “shall, to the
24 maximum extent practicable,” and inserting
25 “shall”; and

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

2 “(iii) FINANCIAL MODELS.—To the
3 extent that swap dealers and major swap
4 participants that are banks are permitted
5 to use financial models approved by the
6 prudential regulators or the Securities and
7 Exchange Commission to calculate min-
8 imum capital requirements and minimum
9 initial and variation margin requirements,
10 including the use of non-cash collateral,
11 the Commission shall, in consultation with
12 the prudential regulators and the Securi-
13 ties and Exchange Commission, permit the
14 use of comparable financial models by
15 swap dealers and major swap participants
16 that are not banks.”.

17 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
18 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C.
19 78o–10(e)) is amended—

20 (1) in paragraph (2)(B), by striking “shall”
21 and inserting the following: “and the Commodity
22 Futures Trading Commission, in consultation with
23 the prudential regulators, shall jointly”; and

24 (2) in paragraph (3)(D)—

1 (A) in clause (ii), by striking “shall, to the
2 maximum extent practicable,” and inserting
3 “shall”; and

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

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

21 **SEC. 312. HARMONIZATION WITH THE JUMPSTART OUR**
22 **BUSINESS STARTUPS ACT.**

23 Within 90 days after the date of the enactment of
24 this Act, the Commodity Futures Trading Commission
25 shall—

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

4 “(b) Relief available to commodity pool operators.
5 Upon filing the notice required by paragraph (d) of this
6 section, and subject to compliance with the conditions
7 specified in paragraph (d) of this section, any registered
8 commodity pool operator who sells participations in a pool
9 solely to qualified eligible persons in an offering which
10 qualifies for exemption from the registration requirements
11 of the Securities Act pursuant to section 4(2) of that Act
12 or pursuant to Regulation S, 17 CFR 230.901 et seq.,
13 and any bank registered as a commodity pool operator in
14 connection with a pool that is a collective trust fund whose
15 securities are exempt from registration under the Securi-
16 ties Act pursuant to section 3(a)(2) of that Act and are
17 sold solely to qualified eligible persons, may claim any or
18 all of the following relief with respect to such pool:”;

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

21 “(i) Interests in the pool are exempt
22 from registration under the Securities Act
23 of 1933, and such interests are offered and
24 sold pursuant to section 4 of the Securities

1 Act of 1933 and the regulations there-
2 under;”.

3 **SEC. 313. BONA FIDE HEDGE DEFINED TO PROTECT END-**
4 **USER RISK MANAGEMENT NEEDS.**

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

7 (1) in paragraph (1)—

8 (A) by striking “may” and inserting
9 “shall”; and

10 (B) by striking “future for which” and in-
11 serting “future, to be determined by the Com-
12 mission, for which either an appropriate swap is
13 available or”;

14 (2) in paragraph (2)—

15 (A) in the matter preceding subparagraph
16 (A), by striking “subsection (a)(2)” and all that
17 follows through “position as” and inserting
18 “paragraphs (2) and (5) of subsection (a) for
19 swaps, contracts of sale for future delivery, or
20 options on the contracts or commodities, a bona
21 fide hedging transaction or position is”; and

22 (B) in subparagraph (A)(ii), by striking
23 “of risks” and inserting “or management of
24 current or anticipated risks”; and

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

1 foreign jurisdiction shall be exempt from United
2 States swaps requirements.

3 (b) CONTENT OF THE RULE.—

4 (1) CRITERIA.—In the rule, the Commission
5 shall establish criteria for determining that 1 or
6 more categories of the swaps regulatory require-
7 ments of a foreign jurisdiction are comparable to
8 and as comprehensive as United States swaps re-
9 quirements. The criteria shall include—

10 (A) the scope and objectives of the swaps
11 regulatory requirements of the foreign jurisdic-
12 tion;

13 (B) the effectiveness of the supervisory
14 compliance program administered;

15 (C) the enforcement authority exercised by
16 the foreign jurisdiction; and

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

20 (2) COMPARABILITY.—In the rule, the Commis-
21 sion shall—

22 (A) provide that any non-United States
23 person or any transaction between 2 non-United
24 States persons shall be exempt from United
25 States swaps requirements if the person or

1 transaction is in compliance with the swaps reg-
2 ulatory requirements of a foreign jurisdiction
3 which the Commission has determined to be
4 comparable to and as comprehensive as United
5 States swaps requirements; and

6 (B) set forth the circumstances in which a
7 United States person or a transaction between
8 a United States person and a non-United
9 States person shall be exempt from United
10 States swaps requirements if the person or
11 transaction is in compliance with the swaps reg-
12 ulatory requirements of a foreign jurisdiction
13 which the Commission has determined to be
14 comparable to and as comprehensive as United
15 States swaps requirements.

16 (3) OUTCOMES-BASED COMPARISON.—In devel-
17 oping and applying the criteria, the Commission
18 shall emphasize the results and outcomes of, rather
19 than the design and construction of, foreign swaps
20 regulatory requirements.

21 (4) RISK-BASED RULEMAKING.—In the rule, the
22 Commission shall not take into account, for the pur-
23 poses of determining the applicability of United
24 States swaps requirements, the location of personnel
25 that arrange, negotiate, or execute swaps.

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

4 (c) APPLICATION OF THE RULE.—

5 (1) ASSESSMENTS OF FOREIGN JURISDIC-
6 TIONS.—Beginning on the date on which a final rule
7 is issued under this section, the Commission shall
8 begin to assess the swaps regulatory requirements of
9 foreign jurisdictions, in the order the Commission
10 determines appropriate, in accordance with the cri-
11 teria established pursuant to subsection (b)(1). Fol-
12 lowing each assessment, the Commission shall deter-
13 mine, by rule or by order, whether the swaps regu-
14 latory requirements of the foreign jurisdiction are
15 comparable to and as comprehensive as United
16 States swaps requirements.

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

20 (A) the swaps regulatory requirements of
21 each of the 8 foreign jurisdictions with the larg-
22 est swaps markets, as calculated by notional
23 value during the 12-month period ending with
24 such date of enactment, except those with re-
25 spect to which a determination has been made

1 under paragraph (1), shall be considered to be
2 comparable to and as comprehensive as United
3 States swaps requirements; and

4 (B) a non-United States person or a trans-
5 action between 2 non-United States persons
6 shall be exempt from United States swaps re-
7 quirements if the person or transaction is in
8 compliance with the swaps regulatory require-
9 ments of any of such unexcepted foreign juris-
10 dictions.

11 (3) SUSPENSION OF SUBSTITUTED COMPLI-
12 ANCE.—If the Commission determines, by rule or by
13 order, that—

14 (A) the swaps regulatory requirements of a
15 foreign jurisdiction are not comparable to and
16 as comprehensive as United States swaps re-
17 quirements, using the categories and criteria es-
18 tablished under subsection (b)(1);

19 (B) the foreign jurisdiction does not ex-
20 empt from its swaps regulatory requirements
21 United States persons who are in compliance
22 with United States swaps requirements; or

23 (C) the foreign jurisdiction is not providing
24 equivalent recognition of, or substituted compli-
25 ance for, registered entities (as defined in sec-

1 tion 1a(41) of the Commodity Exchange Act)
2 domiciled in the United States,
3 the Commission may suspend, in whole or in part,
4 a determination made under paragraph (1) or a con-
5 sideration granted under paragraph (2).

6 (d) PETITION FOR REVIEW OF FOREIGN JURISDIC-
7 TION PRACTICES.—A registered entity, commercial mar-
8 ket participant (as defined in section 1a(7) of the Com-
9 modity Exchange Act), or Commission registrant (within
10 the meaning of such Act) who petitions the Commission
11 to make or change a determination under subsection
12 (c)(1) or (c)(3) of this section shall be entitled to expedited
13 consideration of the petition. A petition shall include any
14 evidence or other supporting materials to justify why the
15 petitioner believes the Commission should make or change
16 the determination. Petitions under this section shall be
17 considered by the Commission any time following the en-
18 actment of this Act. Within 180 days after receipt of a
19 petition for a rulemaking under this section, the Commis-
20 sion shall take final action on the petition. Within 90 days
21 after receipt of a petition to issue an order or change an
22 order issued under this section, the Commission shall take
23 final action on the petition.

24 (e) REPORT TO CONGRESS.—If the Commission
25 makes a determination described in this section through

1 an order, the Commission shall articulate the basis for the
2 determination in a written report published in the Federal
3 Register and transmitted to the Committee on Agriculture
4 of the House of Representatives and Committee on Agri-
5 culture, Nutrition, and Forestry of the Senate within 15
6 days of the determination. The determination shall not be
7 effective until 15 days after the committees receive the re-
8 port.

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

12 (1) UNITED STATES PERSON.—The term
13 “United States person”—

14 (A) means—

15 (i) any natural person resident in the
16 United States;

17 (ii) any partnership, corporation,
18 trust, or other legal person organized or
19 incorporated under the laws of the United
20 States or having its principal place of busi-
21 ness in the United States;

22 (iii) any account (whether discre-
23 tionary or non-discretionary) of a United
24 States person; and

1 (iv) any other person as the Commis-
2 sion may further define to more effectively
3 carry out the purposes of this section; and
4 (B) does not include the International
5 Monetary Fund, the International Bank for Re-
6 construction and Development, the Inter-Amer-
7 ican Development Bank, the Asian Development
8 Bank, the African Development Bank, the
9 United Nations, their agencies or pension plans,
10 or any other similar international organizations
11 or their agencies or pension plans.

12 (2) UNITED STATES SWAPS REQUIREMENTS.—
13 The term “United States swaps requirements”
14 means the provisions relating to swaps contained in
15 the Commodity Exchange Act (7 U.S.C. 1a et seq.)
16 that were added by title VII of the Dodd-Frank Wall
17 Street Reform and Consumer Protection Act (15
18 U.S.C. 8301 et seq.) and any rules or regulations
19 prescribed by the Commodity Futures Trading Com-
20 mission pursuant to such provisions.

21 (3) FOREIGN JURISDICTION.—The term “for-
22 eign jurisdiction” means any national or supra-
23 national political entity with common rules gov-
24 erning swaps transactions.

1 (4) SWAPS REGULATORY REQUIREMENTS.—The
 2 term “swaps regulatory requirements” means any
 3 provisions of law, and any rules or regulations pur-
 4 suant to the provisions, governing swaps trans-
 5 actions or the counterparties to swaps transactions.

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

11 **SEC. 315. EXEMPTION OF QUALIFIED CHARITABLE ORGANI-**
 12 **ZATIONS FROM DESIGNATION AND REGULA-**
 13 **TION AS COMMODITY POOL OPERATORS.**

14 (a) EXCLUSION FROM DEFINITION OF COMMODITY
 15 POOL.—Section 1a(11) of the Commodity Exchange Act
 16 (7 U.S.C. 1a(10)), as so redesignated by section 306(b)(1)
 17 of this Act, is amended by adding at the end the following:

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

24 (b) INAPPLICABILITY OF PROHIBITION ON USE OF
 25 INSTRUMENTALITIES OF INTERSTATE COMMERCE BY UN-

1 REGISTERED COMMODITY TRADING ADVISOR.—Section
2 4m of such Act (7 U.S.C. 6m) is amended—

3 (1) in paragraph (1), in the second sentence, by
4 inserting “: *Provided further*, That the provisions of
5 this section shall not apply to any commodity trad-
6 ing advisor that is: (A) a charitable organization, as
7 defined in section 3(c)(10)(D) of the Investment
8 Company Act of 1940, or a trustee, director, officer,
9 employee, or volunteer of such a charitable organiza-
10 tion acting within the scope of the employment or
11 duties of the person with the organization, whose
12 trading advice is provided only to, or with respect to,
13 1 or more of the following: (i) any such charitable
14 organization; or (ii) an investment trust, syndicate
15 or similar form of enterprise excluded from the defi-
16 nition of ‘investment company’ pursuant to section
17 3(c)(10) of the Investment Company Act of 1940; or
18 (B) any plan, company, or account described in sec-
19 tion 3(c)(14) of the Investment Company Act of
20 1940, any person or entity who establishes or main-
21 tains such a plan, company, or account, or any
22 trustee, director, officer, employee, or volunteer for
23 any of the foregoing plans, persons, or entities act-
24 ing within the scope of the employment or duties of
25 the person with the organization, whose trading ad-

1 vice is provided only to, or with respect to, any in-
 2 vestment trust, syndicate, or similar form of enter-
 3 prise excluded from the definition of ‘investment
 4 company’ pursuant to section 3(c)(14) of the Invest-
 5 ment Company Act of 1940” before the period; and

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

7 “(4) DISCLOSURE CONCERNING EXCLUDED CHARI-
 8 TABLE ORGANIZATIONS.—The operator of or advisor to
 9 any investment trust, syndicate, or similar form of enter-
 10 prise excluded from the definition of ‘commodity pool’ by
 11 reason of section 1a(10)(C) of this Act pursuant to section
 12 3(c)(10) of the Investment Company Act of 1940 shall
 13 provide disclosure in accordance with section 7(e) of the
 14 Investment Company Act of 1940.”.

15 **SEC. 316. SMALL BANK HOLDING COMPANY CLEARING EX-**
 16 **EMPTION.**

17 Section 2(h)(7)(C) of the Commodity Exchange Act
 18 (7 U.S.C. 2(h)(7)(C)) is amended by adding at the end
 19 the following:

20 “(iv) HOLDING COMPANIES.—A deter-
 21 mination made by the Commission under
 22 clause (ii) shall, with respect to small
 23 banks and savings associations, also apply
 24 to their respective bank holding company
 25 (as defined in section 2 of the Bank Hold-

1 ing Company Act of 1956), or savings and
2 loan holding company (as defined in sec-
3 tion 10 of the Home Owners’ Loan Act of
4 1933)), if the total consolidated assets of
5 the holding company are no greater than
6 the asset threshold set by the Commission
7 in determining small bank and savings as-
8 sociation eligibility under clause (ii).”.

9 **SEC. 317. CORE PRINCIPLE CERTAINTY.**

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

12 (1) in paragraph (1)(B), by inserting “except as
13 described in this subsection” after “Commission by
14 rule or regulation”;

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

17 “(D) have reasonable discretion in estab-
18 lishing and enforcing its rules related to trade
19 practice surveillance, market surveillance, real-
20 time marketing monitoring, and audit trail
21 given that a swap execution facility may offer
22 a trading system or platform to execute or
23 trade swaps through any means of interstate
24 commerce. A swap execution facility shall be re-

1 sponsible for monitoring trading in swaps only
2 on its own facility.”;

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

7 (4) in paragraph (6)(B)—

8 (A) by striking “shall—” and all that fol-
9 lows through “compliance with the” and insert
10 “shall monitor the trading activity on its facility
11 for compliance with any”; and

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

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

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

23 (7) in paragraph (15)—

24 (A) in subparagraph (A), by adding at the
25 end the following: “The individual may also

1 perform other responsibilities for the swap exe-
2 cution facility.”;

3 (B) in subparagraph (B)—

4 (i) in clause (i), by inserting “, a com-
5 mittee of the board,” after “directly to the
6 board”;

7 (ii) by striking clauses (iii) through
8 (v) and inserting the following:

9 “(iii) establish and administer policies
10 and procedures that are reasonably de-
11 signed to resolve any conflicts of interest
12 that may arise;

13 “(iv) establish and administer policies
14 and procedures that reasonably ensure
15 compliance with this Act and the rules and
16 regulations issued under this Act, includ-
17 ing rules prescribed by the Commission
18 pursuant to this section; and”;

19 (iii) by redesignating clause (vi) as
20 clause (v);

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

23 (D) in subparagraph (D)—

24 (i) in clause (i)—

1 (I) by striking “In accordance
2 with rules prescribed by the Commis-
3 sion, the” and inserting “The”; and

4 (II) by striking “and sign”; and
5 (ii) in clause (ii)—

6 (I) in the matter preceding sub-
7 clause (I), by inserting “or senior offi-
8 cer” after “officer”;

9 (II) by amending subclause (I) to
10 read as follows:

11 “(I) submit each report described
12 in clause (i) to the Commission; and”;
13 and

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

16 **SEC. 318. TREATMENT OF FEDERAL HOME LOAN BANK**
17 **PRODUCTS.**

18 (a) Section 1a(2) of the Commodity Exchange Act
19 (7 U.S.C. 1a(2)) is amended—

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

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

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

24 “(D) is the Federal Housing Finance
25 Agency for any Federal Home Loan Bank (as

1 defined in section 2 of the Federal Home Loan
2 Bank Act).”.

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

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

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

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

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

12 **SEC. 319. TREATMENT OF CERTAIN FUNDS.**

13 (a) AMENDMENT TO THE DEFINITION OF COM-
14 MODITY POOL OPERATOR.—Section 1a(12) of the Com-
15 modity Exchange Act (7 U.S.C. 1a(11)), as so redesi-
16 gnated by section 306(b)(1) of this Act, is amended by add-
17 ing at the end the following:

18 “(C)(i) The term ‘commodity pool oper-
19 ator’ does not include a person who serves as
20 an investment adviser to an investment com-
21 pany registered pursuant to section 8 of the In-
22 vestment Company Act of 1940 or a subsidiary
23 of such a company, if the investment company
24 or subsidiary invests, reinvests, owns, holds, or

1 trades in commodity interests limited to only fi-
2 nancial commodity interests.

3 “(ii) For purposes of this subparagraph
4 only, the term ‘financial commodity interest’
5 means a futures contract, an option on a fu-
6 tures contract, or a swap, involving a com-
7 modity that is not an exempt commodity or an
8 agricultural commodity, including any index of
9 financial commodity interests, whether cash set-
10 tled or involving physical delivery.

11 “(iii) For purposes of this subparagraph
12 only, the term ‘commodity’ does not include a
13 security issued by a real estate investment
14 trust, business development company, or issuer
15 of asset-backed securities, including any index
16 of such securities.”.

17 (b) AMENDMENT TO THE DEFINITION OF COM-
18 MODITY TRADING ADVISOR.—Section 1a(13) of such Act
19 (7 U.S.C. 1a(12)), as so redesignated by section 306(b)(1)
20 of this Act, is amended by adding at the end the following:

21 “(E) The term ‘commodity trading advisor’
22 does not include a person who serves as an in-
23 vestment adviser to an investment company reg-
24 istered pursuant to section 8 of the Investment
25 Company Act of 1940 or a subsidiary of such

1 a company, if the commodity trading advice re-
2 lates only to a financial commodity interest, as
3 defined in paragraph (12)(C)(ii) of this section.
4 For purposes of this subparagraph only, the
5 term ‘commodity’ does not include a security
6 issued by a real estate investment trust, busi-
7 ness development company, or issuer of asset-
8 backed securities, including any index of such
9 securities.”.

10 **TITLE IV—TECHNICAL** 11 **CORRECTIONS**

12 **SEC. 401. CORRECTION OF REFERENCES.**

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

16 (b) Section 5c(e)(5)(C)(i) of such Act (7 U.S.C. 7a-
17 2(c)(5)(C)(i)) is amended by striking “1a(2)(i))” and in-
18 serting “1a(19)(i))”.

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

22 **SEC. 402. 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 by striking sub-

1 sections (d) and (e) and redesignating subsections (f) and
2 (g) as subsections (d) and (e), respectively.

3 (b) CONFORMING AMENDMENTS.—

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

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

9 (3) Section 4k(5)(A) of such Act (7 U.S.C.
10 6k(5)(A)) is amended by striking “, (d), (e), and
11 (g)” and inserting “and (e)”.

12 (4) Section 5f(b)(1)(A) of such Act (7 U.S.C.
13 7b–1(b)(1)(A)) is amended by striking “, (e), and
14 (g)” and inserting “and (e)”.

15 (5) Section 9(a)(2) of such Act (7 U.S.C.
16 13(a)(2)) is amended by striking “through (e)” and
17 inserting “and (e)”.

18 **SEC. 403. UPDATED TRADE DATA PUBLICATION REQUIRE-**
19 **MENT.**

20 Section 4g(e) of the Commodity Exchange Act (7
21 U.S.C. 6g(e)) is amended by striking “exchange” and in-
22 serting “each designated contract market and swap execu-
23 tion facility”.

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

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

7 **SEC. 405. ELIMINATION OF OBSOLETE REFERENCES TO**
8 **ELECTRONIC TRADING FACILITIES.**

9 (a) Section 1a(19)(A)(x) of the Commodity Exchange
10 Act (7 U.S.C. 1a(18)(A)(x)), as so redesignated by section
11 306(b)(1) of this Act, is amended by striking “(other than
12 an electronic trading facility with respect to a significant
13 price discovery contract)”.

14 (b) Section 1a(40) of such Act (7 U.S.C. 1a(41)), as
15 so redesignated by section 306(b)(1) of this Act, is amend-
16 ed—

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

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

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

23 (1) in the first sentence—

24 (A) by striking “or by any electronic trad-
25 ing facility”;

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

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

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

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

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

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

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

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

24 (g) Section 12(e)(2) of such Act (7 U.S.C. 16(e)(2))
25 is amended by striking “in the case of—” and all that

1 follows and inserting “in the case of an agreement, con-
2 tract, or transaction that is excluded from this Act under
3 section 2(c) or 2(f) of this Act or title IV of the Com-
4 modity Futures Modernization Act of 2000, or exempted
5 under section 4(c) of this Act (regardless of whether any
6 such agreement, contract, or transaction is otherwise sub-
7 ject to this Act).”.

8 **SEC. 406. ELIMINATION OF OBSOLETE REFERENCE TO AL-**
9 **TERNATIVE SWAP EXECUTION FACILITIES.**

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

13 **SEC. 407. ELIMINATION OF REDUNDANT REFERENCES TO**
14 **TYPES OF REGISTERED ENTITIES.**

15 Section 6b of the Commodity Exchange Act (7 U.S.C.
16 13a) is amended in the first sentence by striking “as set
17 forth in sections 5 through 5c”.

18 **SEC. 408. CLARIFICATION OF COMMISSION AUTHORITY**
19 **OVER SWAPS TRADING.**

20 Section 8a of the Commodity Exchange Act (7 U.S.C.
21 12a) is amended—

22 (1) in paragraph (7)—

23 (A) by inserting “the protection of swaps
24 traders and to assure fair dealing in swaps,
25 for” after “appropriate for”;

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

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

5 (2) in paragraph (9)—

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

8 (B) by inserting “swap or” after “margin
9 levels on any”.

10 **SEC. 409. ELIMINATION OF OBSOLETE REFERENCE TO THE**
11 **COMMODITY EXCHANGE COMMISSION.**

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

15 **SEC. 410. ELIMINATION OF OBSOLETE REFERENCES TO DE-**
16 **RIVATIVE TRANSACTION EXECUTION FACILI-**
17 **TIES.**

18 (a) Section 1a(13)(B)(vi) of the Commodity Ex-
19 change Act (7 U.S.C. 1a(12)(B)(vi)), as so redesignated
20 by section 306(b)(1) of this Act, is amended by striking
21 “derivatives transaction execution facility” and inserting
22 “swap execution facility”.

23 (b) Section 1a(35) of such Act (7 U.S.C. 1a(34)), as
24 so redesignated by section 306(b)(1) of this Act, is amend-

1 ed by striking “or derivatives transaction execution facil-
2 ity” each place it appears.

3 (c) Section 1a(36)(B)(iii)(I) of such Act (7 U.S.C.
4 1a(35)(B)(iii)(I)), as so redesignated by section 306(b)(1)
5 of this Act, is amended by striking “or registered deriva-
6 tives transaction execution facility”.

7 (d) Section 2(a)(1)(C)(ii) of such Act (7 U.S.C.
8 2(a)(1)(C)(ii)) is amended—

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

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

16 (3) by striking “or the derivatives transaction
17 execution facility,”.

18 (e) Section 2(a)(1)(C)(v)(I) of such Act (7 U.S.C.
19 2(a)(1)(C)(v)(I)) is amended by striking “, or any deriva-
20 tives transaction execution facility on which such contract
21 or option is traded,”.

22 (f) Section 2(a)(1)(C)(v)(II) of such Act (7 U.S.C.
23 2(a)(1)(C)(v)(II)) is amended by striking “or derivatives
24 transaction execution facility” each place it appears.

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

4 (h) Section 2(a)(1)(D)(i) of such Act (7 U.S.C.
5 2(a)(1)(D)(i)) is amended in the matter preceding sub-
6 clause (I)—

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

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

11 (i) Section 2(a)(1)(D)(i)(IV) of such Act (7 U.S.C.
12 2(a)(1)(D)(i)(IV)) is amended by striking “registered de-
13 rivatives transaction execution facility,” each place it ap-
14 pears.

15 (j) Section 2(a)(1)(D)(ii)(I) of such Act (7 U.S.C.
16 2(a)(1)(D)(ii)(I)) is amended to read as follows:

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

21 (k) Section 2(a)(1)(D)(ii)(II) of such Act (7 U.S.C.
22 2(a)(1)(D)(ii)(II)) is amended by striking “or registered
23 derivatives transaction execution facility”.

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

4 (m) Section 2(a)(9)(B)(ii) of such Act (7 U.S.C.
5 2(a)(9)(B)(ii)) is amended—

6 (1) by striking “or registration” each place it
7 appears;

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

10 (3) by striking “or register”;

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

12 (5) by striking “registration,”.

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

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

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

21 (1) by striking “or registered” after “des-
22 ignated”; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (aa) Section 5e(f) of such Act (7 U.S.C. 7a–2(f)) is
13 amended by striking “and registered derivatives trans-
14 action execution facility”.

15 (bb) Section 5e(f)(1) of such Act (7 U.S.C. 7a–
16 2(f)(1)) is amended by striking “or registered derivatives
17 transaction execution facility”.

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

19 (1) by striking “or registered”;

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

22 (3) by striking “or registration” each place it
23 appears.

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

1 (1) by striking “or registered”;

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

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

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

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

9 (2) by striking “or a derivatives transaction
10 execution facility”.

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

14 **SEC. 411. ELIMINATION OF OBSOLETE REFERENCES TO EX-**
15 **EMPT BOARDS OF TRADE.**

16 (a) Section 1a(19)(A)(x) of the Commodity Exchange
17 Act (7 U.S.C. 1a(18)(A)(x)), as so redesignated by section
18 306(b)(1) of this Act, is amended by striking “or an ex-
19 empt board of trade”.

20 (b) Section 12(e)(1)(B)(i) of such Act (7 U.S.C.
21 16(e)(1)(B)(i)) is amended by striking “or exempt board
22 of trade”.

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

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

5 **SEC. 413. COMPLIANCE REPORT FLEXIBILITY.**

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

8 “(B) REQUIREMENTS.—A compliance re-
9 port under subparagraph (A) shall—

10 “(i) include a certification that, under
11 penalty of law, the compliance report is
12 materially accurate and complete; and

13 “(ii) be furnished at such time as the
14 Commission determines by rule, regulation,
15 or order, to be appropriate.”.

16 **SEC. 414. MISCELLANEOUS CORRECTIONS.**

17 (a) Section 1a(13)(A)(i)(II) of the Commodity Ex-
18 change Act (7 U.S.C. 1a(12)(A)(i)(II)), as so redesignated
19 by section 306(b)(1) of this Act, is amended by adding
20 at the end a semicolon.

21 (b) Section 2(a)(1)(C)(ii)(III) of such Act (7 U.S.C.
22 2(a)(1)(C)(ii)(III)) is amended by moving the provision 2
23 ems to the right.

24 (c) Section 2(a)(1)(C)(iii) of such Act (7 U.S.C.
25 2(a)(1)(C)(iii)) is amended by moving the provision 2 ems
26 to the right.

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

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

7 (f) Section 2(a)(1)(C)(v)(VI) of such Act (7 U.S.C.
8 2(a)(1)(C)(v)(VI)) is amended by striking “III” and in-
9 serting “(III)”.

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

12 (h) Section 4(c)(3)(H) of such Act (7 U.S.C.
13 6(c)(3)(H)) is amended by striking “state” and inserting
14 “State”.

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

17 “(c) The Commission shall issue regulations to con-
18 tinue to permit the trading of options on contract markets
19 under such terms and conditions that the Commission
20 from time to time may prescribe.”.

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

24 (k) Section 4f(c)(3)(A) of such Act (7 U.S.C.
25 6f(c)(3)(A)) is amended by striking the first comma.

1 (l) Section 4f(c)(4)(A) of such Act (7 U.S.C.
2 6f(c)(4)(A)) is amended by striking “in developing” and
3 inserting “In developing”.

4 (m) Section 4f(c)(4)(B) of such Act (7 U.S.C.
5 6f(c)(4)(B)) is amended by striking “1817(a)” and insert-
6 ing “1817(a)”.

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

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

12 (p) Section 5f(b)(1) of such Act (7 U.S.C. 7b–
13 1(b)(1)) is amended by striking “section 5f” and inserting
14 “this section”.

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

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

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

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

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

3 (v) Section 17(b)(9)(D) of such Act (7 U.S.C.
4 21(b)(9)(D)) is amended by striking the semicolon and in-
5 serting a period.

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

8 (x) Section 17(b)(11) of such Act (7 U.S.C.
9 21(b)(11)) is amended by striking the period and inserting
10 a semicolon.

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

13 (1) by striking “(A)”; and

14 (2) by striking the period and inserting “;
15 and”.

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

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

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

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

Passed the House of Representatives June 9, 2015.

Attest:

Clerk.

114TH CONGRESS
1ST SESSION

H. R. 2289

AN ACT

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