

U.S. House of Representatives  
Committee on Agriculture

Amendment submitted in advance (numbered in order received)

Amendment #: 007

Submitted by Rep. Kuster

### **Description of the Kuster-Benishke-Ashford-Moolenaar Amendment**

Amends section 1a(10) of the Commodity Exchange Act by removing commodity pool operator registration requirements for investment trusts, syndicates, or similar forms of enterprises that are already exempt from the definition of "investment company" in the Investment Company Act of 1940. This amendment further provides for the disclosure of the material terms of the operation to each donor. The intent of this amendment is to exempt universities, churches, and other charitable organizations from needlessly registering as commodity pool operators.

AMENDMENT TO H.R. \_\_\_\_\_

OFFERED BY MS. KUSTER OF NEW HAMPSHIRE,  
MR. BENISHEK OF MICHIGAN, MR. ASHFORD  
OF NEBRASKA, AND MR. MOOLENAAR OF  
MICHIGAN

Page 45, after line 17, insert the following:

1 SEC. \_\_\_\_ . EXEMPTION OF QUALIFIED CHARITABLE ORGA-  
2 NIZATIONS FROM DESIGNATION AND REGU-  
3 LATION 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’ shall 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 sections 3(c)(10) or 3(c)(14)  
13 of the Investment Company Act of 1940.”.

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

1           (1) in paragraph (1), in the 2nd sentence, by  
2           inserting “: *Provided further*, That the provisions of  
3           this section shall not apply to any commodity trad-  
4           ing advisor that is: (A) a charitable organization, as  
5           defined in section 3(c)(10)(D) of the Investment  
6           Company Act of 1940, or a trustee, director, officer,  
7           employee, or volunteer of such a charitable organiza-  
8           tion acting within the scope of the employment or  
9           duties of the person with the organization, whose  
10          trading advice is provided only to, or with respect to,  
11          1 or more of the following: (i) any such charitable  
12          organization, or (ii) an investment trust, syndicate  
13          or similar form of enterprise excluded from the defi-  
14          nition of ‘investment company’ pursuant to section  
15          3(c)(10) of the Investment Company Act of 1940; or  
16          (B) any plan, company, or account described in sec-  
17          tion 3(c)(14) of the Investment Company Act of  
18          1940, any person or entity who establishes or main-  
19          tains such a plan, company, or account, or any  
20          trustee, director, officer, employee, or volunteer for  
21          any of the foregoing plans, persons, or entities act-  
22          ing within the scope of the employment or duties of  
23          the person with the organization, whose trading ad-  
24          vice is provided only to, or with respect to, any in-  
25          vestment trust, syndicate, or similar form of enter-

1       prise excluded from the definition of ‘investment  
2       company’ pursuant to section 3(c)(14) of the Invest-  
3       ment Company Act of 1940” before the period; and

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

5       “(4) DISCLOSURE CONCERNING EXCLUDED CHARIT-  
6       TABLE ORGANIZATIONS.—The operator of or advisor to  
7       any investment trust, syndicate, or similar form of enter-  
8       prise excluded from the definition of ‘commodity pool’ by  
9       reason of section 1a(10)(C) shall provide, to each donor  
10      to the fund, trust, syndicate, or similar form of enterprise,  
11      at the time of the donation or within 90 days after the  
12      date of the enactment of this subsection, whichever is  
13      later, written information describing the material terms of  
14      the operation of the fund, trust, syndicate, or similar form  
15      of enterprise.”.

