

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1317
OFFERED BY M . _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. TREATMENT OF AFFILIATE TRANSACTIONS.

2 (a) COMMODITY EXCHANGE ACT AMENDMENT.—

3 Section 2(h)(7)(D)(i) of the Commodity Exchange Act (7
4 U.S.C. 2(h)(7)(D)(i)) is amended to read as follows:

5 (i) IN GENERAL.—An affiliate of a
6 person that qualifies for an exception
7 under subparagraph (A) (including affiliate
8 entities predominantly engaged in pro-
9 viding financing for the purchase of the
10 merchandise or manufactured goods of the
11 person) may qualify for the exception only
12 if the affiliate enters into the swap to
13 hedge or mitigate the commercial risk of
14 the person or other affiliate of the person
15 that is not a financial entity, provided that
16 if the hedge or mitigation of such commer-
17 cial risk is addressed by entering into a
18 swap with a swap dealer or major swap

1 participant, an appropriate credit support
2 measure or other mechanism must be uti-
3 lized.”.

4 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
5 MENT.—Section 3C(g)(4) of the Securities Exchange Act
6 of 1934 (15 U.S.C. 78c-3(g)(4)) is amended to read as
7 follows:

8 (1) by redesignating subparagraph (C) as sub-
9 paragraph (E);

10 (2) by striking subparagraphs (A) and (B) and
11 inserting the following:

12 “(A) IN GENERAL.—An affiliate of a per-
13 son that qualifies for an exception under this
14 subsection (including affiliate entities predomi-
15 nantly engaged in providing financing for the
16 purchase of the merchandise or manufactured
17 goods of the person) may qualify for the excep-
18 tion only if the affiliate—

19 “(i) enters into the security-based
20 swap to hedge or mitigate the commercial
21 risk of the person or other affiliate of the
22 person that is not a financial entity, and
23 the commercial risk that the affiliate is
24 hedging or mitigating has been transferred
25 to the affiliate;

1 “(ii) is directly and wholly-owned by
2 another affiliate qualified for the exception
3 under this paragraph or an entity that is
4 not a financial entity;

5 “(iii) is not indirectly majority-owned
6 by a financial entity;

7 “(iv) is not ultimately owned by a par-
8 ent company that is a financial entity; and

9 “(v) does not provide any services, fi-
10 nancial or otherwise, to any affiliate that is
11 a nonbank financial company supervised by
12 the Board of Governors (as defined under
13 section 102 of the Financial Stability Act
14 of 2010).

15 “(B) LIMITATION ON QUALIFYING AFFILI-
16 ATES.—The exception in subparagraph (A)
17 shall not apply if the affiliate is—

18 “(i) a swap dealer;

19 “(ii) a security-based swap dealer;

20 “(iii) a major swap participant;

21 “(iv) a major security-based swap par-
22 ticipant;

23 “(v) a commodity pool;

24 “(vi) a bank holding company;

1 “(vii) a private fund, as defined in
2 section 202(a) of the Investment Advisers
3 Act of 1940 (15 U.S.C. 80-b-2(a));

4 “(viii) an employee benefit plan or
5 government plan, as defined in paragraphs
6 (3) and (32) of section 3 of the Employee
7 Retirement Income Security Act of 1974
8 (29 U.S.C. 1002);

9 “(ix) an insured depository institu-
10 tion;

11 “(x) a farm credit system institution;

12 “(xi) a credit union;

13 “(xii) a nonbank financial company
14 supervised by the Board of Governors (as
15 defined under section 102 of the Financial
16 Stability Act of 2010); or

17 “(xiii) an entity engaged in the busi-
18 ness of insurance and subject to capital re-
19 quirements established by an insurance
20 governmental authority of a State, a terri-
21 tory of the United States, the District of
22 Columbia, a country other than the United
23 States, or a political subdivision of a coun-
24 try other than the United States that is

1 engaged in the supervision of insurance
2 companies under insurance law.

3 “(C) LIMITATION ON AFFILIATES’ AFFILI-
4 ATES.—Unless the Commission determines, by
5 order, rule, or regulation, that it is in the public
6 interest, the exception in subparagraph (A)
7 shall not apply with respect to an affiliate if
8 such affiliate is itself affiliated with—

9 “(i) a major security-based swap par-
10 ticipant;

11 “(ii) a security-based swap dealer;

12 “(iii) a major swap participant; or

13 “(iv) a swap dealer.

14 “(D) CONDITIONS ON TRANSACTIONS.—
15 With respect to an affiliate that qualifies for
16 the exception in subparagraph (A)—

17 “(i) such affiliate may not enter into
18 any security-based swap other than for the
19 purpose of hedging or mitigating commer-
20 cial risk; and

21 “(ii) neither such affiliate nor any
22 person affiliated with such affiliate that is
23 not a financial entity may enter into a se-
24 curity-based swap with or on behalf of any
25 affiliate that is a financial entity or other-

1 wise assume, net, combine, or consolidate
2 the risk of security-based swaps entered
3 into by any such financial entity, except
4 one that is an affiliate that qualifies for
5 the exception under subparagraph (A).”;
6 and

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

8 “(F) RISK MANAGEMENT PROGRAM.—Any
9 security-based swap entered into by an affiliate
10 that qualifies for the exception in subparagraph
11 (A) shall be subject to a centralized risk man-
12 agement program of the affiliate, which is rea-
13 sonably designed both to monitor and manage
14 the risks associated with the security-based
15 swap and to identify each of the affiliates on
16 whose behalf a security-based swap was entered
17 into.”.

