

SECTION-BY-SECTION FOR THE AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE FOR H.R. 1317

OFFERED BY MS. FUDGE OF OHIO

Section (a)(1) redesignates clause (iii) as clause (v)

Section (a)(2) amends the Commodity Exchange Act to allow an affiliate (generally referred to as a Centralized Treasury Unit; hereafter, CTU) of an end-user to qualify for the end-user clearing exemption, provided:

- the CTU does not hedge the commercial risk of a financial entity,
- the CTU is wholly owned by an entity which either qualifies for the end-user exemption or is not a financial entity,
- the CTU is not indirectly majority owned by a financial entity,
- the CTU is not ultimately owned by a parent company that is a financial entity,
- the CTU does not provide any services, financial or otherwise, to any affiliate that is a non-bank financial company supervised by the Federal Reserve Board of Governors,
- the CTU is not a financial entity,
- the CTU does not have an affiliate which is a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant
- the CTU only hedges or mitigates commercial risk,
- the CTU or any affiliate does not enter into any transaction with or on behalf of any affiliate which is a financial entity, and
- the CTU or any affiliate does not combine or consolidate the risks entered into by any financial entity

Section (a)(3) requires that any swap transaction entered into by a CTU under Section (a)(2) be subject to a centralized risk management program which can monitor and manage the associated transactions and identify each end-user affiliate on whose behalf each swap was initiated.

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 1317
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Page 1, strike line 2 and all that follows through page 2, line 3, and insert the following:

1 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—
2 Section 2(h)(7)(D)) of the Commodity Exchange Act (7
3 U.S.C. 2(h)(7)(D)) is amended—

4 (1) by redesignating clause (iii) as clause (v);
5 (2) by striking clauses (i) and (ii) and inserting
6 the following:

7 “(i) IN GENERAL.—An affiliate of a
8 person that qualifies for an exception
9 under subparagraph (A) (including affiliate
10 entities predominantly engaged in pro-
11 viding financing for the purchase of the
12 merchandise or manufactured goods of the
13 person) may qualify for the exception only
14 if the affiliate—

15 “(I) enters into the swap to
16 hedge or mitigate the commercial risk
17 of the person or other affiliate of the
18 person that is not a financial entity,

1 and the commercial risk that the affil-
2 iate is hedging or mitigating has been
3 transferred to the affiliate;

4 “(II) is directly and wholly-owned
5 by another affiliate qualified for the
6 exception under this subparagraph or
7 an entity that is not a financial entity;

8 “(III) is not indirectly majority-
9 owned by a financial entity;

10 “(IV) is not ultimately owned by
11 a parent company that is a financial
12 entity; and

13 “(V) does not provide any serv-
14 ices, financial or otherwise, to any af-
15 filiate that is a nonbank financial
16 company supervised by the Board of
17 Governors (as defined under section
18 102 of the Financial Stability Act of
19 2010).

20 “(ii) LIMITATION ON QUALIFYING AF-
21 FILIATES.—The exception in clause (i)
22 shall not apply if the affiliate is—

23 “(I) a swap dealer;

24 “(II) a security-based swap deal-
25 er;

1 “(III) a major swap participant;

2 “(IV) a major security-based
3 swap participant;

4 “(V) a commodity pool;

5 “(VI) a bank holding company;

6 “(VII) a private fund, as defined
7 in section 202(a) of the Investment
8 Advisers Act of 1940 (15 U.S.C. 80-
9 b-2(a));

10 “(VIII) an employee benefit plan
11 or government plan, as defined in
12 paragraphs (3) and (32) of section 3
13 of the Employee Retirement Income
14 Security Act of 1974 (29 U.S.C.
15 1002);

16 “(IX) an insured depository insti-
17 tution;

18 “(X) a farm credit system insti-
19 tution;

20 “(XI) a credit union;

21 “(XII) a nonbank financial com-
22 pany supervised by the Board of Gov-
23 ernors (as defined under section 102
24 of the Financial Stability Act of
25 2010); or

1 “(XIII) an entity engaged in the
2 business of insurance and subject to
3 capital requirements established by an
4 insurance governmental authority of a
5 State, a territory of the United
6 States, the District of Columbia, a
7 country other than the United States,
8 or a political subdivision of a country
9 other than the United States that is
10 engaged in the supervision of insur-
11 ance companies under insurance law.

12 “(iii) LIMITATION ON AFFILIATES’ AF-
13 FILATES.—Unless the Commission deter-
14 mines, by order, rule, or regulation, that it
15 is in the public interest, the exception in
16 clause (i) shall not apply with respect to an
17 affiliate if the affiliate is itself affiliated
18 with—

19 “(I) a major security-based swap
20 participant;

21 “(II) a security-based swap deal-
22 er;

23 “(III) a major swap participant;
24 or

25 “(IV) a swap dealer.

1 “(iv) CONDITIONS ON TRANS-
2 ACTIONS.—With respect to an affiliate that
3 qualifies for the exception in clause (i)—

4 “(I) the affiliate may not enter
5 into any swap other than for the pur-
6 pose of hedging or mitigating com-
7 mercial risk; and

8 “(II) neither the affiliate nor any
9 person affiliated with the affiliate that
10 is not a financial entity may enter
11 into a swap with or on behalf of any
12 affiliate that is a financial entity or
13 otherwise assume, net, combine, or
14 consolidate the risk of swaps entered
15 into by any such financial entity, ex-
16 cept one that is an affiliate that quali-
17 fies for the exception under clause
18 (i).”; and

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

20 “(vi) RISK MANAGEMENT PROGRAM.—
21 Any swap entered into by an affiliate that
22 qualifies for the exception in clause (i)
23 shall be subject to a centralized risk man-
24 agement program of the affiliate, which is
25 reasonably designed both to monitor and

1 manage the risks associated with the swap
2 and to identify each of the affiliates on
3 whose behalf a swap was entered into.”.

