

JUNE 12, 2014

**RULES COMMITTEE PRINT 113-47**  
**TEXT OF H.R. 4413, CUSTOMER PROTECTION AND**  
**END USER RELIEF ACT**

[Showing text based on H.R. 4413 as reported by the Committee on Agriculture, H.R. 634, H.R. 677, H.R. 742, H.R. 1003, H.R. 1256, H.R. 3814, H.R. 4267, and H.R. 4330.]

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Customer Protection  
3 and End-User Relief Act”.

**4 SEC. 2. TABLE OF CONTENTS.**

5       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. Short title.  
Sec. 102. Enhanced protections for futures customers.  
Sec. 103. Electronic confirmation of customer funds.  
Sec. 104. Notice and certifications providing additional customer protections.  
Sec. 105. Futures commission merchant compliance.  
Sec. 106. Certainty for futures customers and market participants.  
Sec. 107. Study on high-frequency trading.

TITLE II—COMMODITY FUTURES TRADING COMMISSION  
REFORMS

Sec. 201. Short title.  
Sec. 202. Extension of operations.  
Sec. 203. Consideration by the Commodity Futures Trading Commission of the costs and benefits of its regulations and orders.  
Sec. 204. Division directors.  
Sec. 205. Office of the Chief Economist.  
Sec. 206. Procedures governing actions taken without a commission vote.  
Sec. 207. Strategic technology plan.  
Sec. 208. Internal risk controls.  
Sec. 209. Subpoena duration and renewal.  
Sec. 210. Implementation plan for Commission rulemakings.

- Sec. 211. Applicability of notice and comment requirements of the Administrative Procedure Act to guidance voted on by the Commission.
- Sec. 212. Judicial review of Commission rules.
- Sec. 213. GAO study on adequacy of CFTC resources.
- Sec. 214. Disclosure of required data of other registered entities.

### TITLE III—END-USER RELIEF

- Sec. 301. Short title.

#### Subtitle A—End-User Exemption From Margin Requirements

- Sec. 311. End-user margin requirements.
- Sec. 312. Implementation.

#### Subtitle B—Inter-Affiliate Swaps

- Sec. 321. Treatment of affiliate transactions.

#### Subtitle C—Indemnification Requirements Related to Swap Data Repositories

- Sec. 331. Indemnification requirements.

#### Subtitle D—Relief for Municipal Utilities

- Sec. 341. Transactions with utility special entities.
- Sec. 342. Utility special entity defined.
- Sec. 343. Utility operations-related swap.

#### Subtitle E—End-User Regulatory Relief

- Sec. 351. End-users not treated as financial entities.
- Sec. 352. Reporting of illiquid swaps so as to not disadvantage certain non-financial end-users.
- Sec. 353. Relief for grain elevator operators, farmers, agricultural counterparties, and commercial market participants.
- Sec. 354. Relief for end-users who use physical contracts with volumetric optionality.
- Sec. 355. Commission vote required before automatic change of swap dealer de minimis level.
- Sec. 356. Capital requirements for non-bank swap dealers.
- Sec. 357. Harmonization with the Jumpstart Our Business Startups Act.
- Sec. 358. Bona fide hedge defined to protect end-user risk management needs.
- Sec. 359. Cross-border regulation of derivatives transactions.
- Sec. 360. Report on foreign boards of trade.

#### Subtitle F—Effective Date

- Sec. 371. Effective date.

1                   **TITLE I—CUSTOMER**  
2                   **PROTECTIONS**

3 **SEC. 101. SHORT TITLE.**

4           This title may be cited as the “Futures Customer  
5 Protection Act”.

6 **SEC. 102. ENHANCED PROTECTIONS FOR FUTURES CUS-**  
7                   **TOMERS.**

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

10           “(s) A registered futures association shall—

11                   “(1) require each member of the association  
12                   that is a futures commission merchant to maintain  
13                   written policies and procedures regarding the main-  
14                   tenance of—

15                           “(A) the residual interest of the member,  
16                           as described in section 1.23 of title 17, Code of  
17                           Federal Regulations, in any customer seg-  
18                           regated funds account of the member, as identi-  
19                           fied in section 1.20 of such title, and in any for-  
20                           eign futures and foreign options customer se-  
21                           cured amount funds account of the member, as  
22                           identified in section 30.7 of such title; and

23                           “(B) the residual interest of the member,  
24                           as described in section 22.2(e)(4) of such title,  
25                           in any cleared swaps customer collateral ac-

1 count of the member, as identified in section  
2 22.2 of such title; and

3 “(2) establish rules to govern the withdrawal,  
4 transfer or disbursement by any member of the asso-  
5 ciation, that is a futures commission merchant, of  
6 the member’s residual interest in customer seg-  
7 regated funds as provided in such section 1.20, in  
8 foreign futures and foreign options customer secured  
9 amount funds, identified as provided in such section  
10 30.7, and from a cleared swaps customer collateral,  
11 identified as provided in such section 22.2.”.

12 **SEC. 103. ELECTRONIC CONFIRMATION OF CUSTOMER**  
13 **FUNDS.**

14 Section 17 of the Commodity Exchange Act (7 U.S.C.  
15 21), as amended by section 102 of this Act, is amended  
16 by adding at the end the following:

17 “(t) A registered futures association shall require any  
18 member of the association that is a futures commission  
19 merchant to—

20 “(1) use an electronic system or systems to re-  
21 port financial and operational information to the as-  
22 sociation, including information related to customer  
23 segregated funds, foreign futures and foreign options  
24 customer secured amount funds accounts, and  
25 cleared swaps customer collateral, in accordance

1 with such terms, conditions, documentation stand-  
2 ards, and regular time intervals as are established  
3 by the association;

4 “(2) instruct each depository, including any  
5 bank, trust company, derivatives clearing organiza-  
6 tion, or futures commission merchant, holding cus-  
7 tomer segregated funds under section 1.20 of title  
8 17, Code of Federal Regulations, foreign futures and  
9 foreign options customer secured amount funds  
10 under section 30.7 of such title, or cleared swap cus-  
11 tomer funds under section 22.2 of such title, to re-  
12 port balances in the futures commission merchant’s  
13 section 1.20 customer segregated funds, section 30.7  
14 foreign futures and foreign options customer secured  
15 amount funds, and section 22.2 cleared swap cus-  
16 tomer funds, to the registered futures association or  
17 another party designated by the registered futures  
18 association, in the form, manner, and interval pre-  
19 scribed by the registered futures association; and

20 “(3) hold section 1.20 customer segregated  
21 funds, section 30.7 foreign futures and foreign op-  
22 tions customer secured amount funds and section  
23 22.2 cleared swaps customer funds in a depository  
24 that reports the balances in these accounts of the fu-  
25 tures commission merchant held at the depository to

1 the registered futures association or another party  
2 designated by the registered futures association in  
3 the form, manner, and interval prescribed by the  
4 registered futures association.”.

5 **SEC. 104. NOTICE AND CERTIFICATIONS PROVIDING ADDI-**  
6 **TIONAL CUSTOMER PROTECTIONS.**

7 Section 17 of the Commodity Exchange Act (7 U.S.C.  
8 21), as amended by sections 102 and 103 of this Act, is  
9 amended by adding at the end the following:

10 “(u) A futures commission merchant that has ad-  
11 justed net capital in an amount less than the amount re-  
12 quired by regulations established by the Commission or  
13 a self-regulatory organization of which the futures com-  
14 mission merchant is a member shall immediately notify  
15 the Commission and the self-regulatory organization of  
16 this occurrence.

17 “(v) A futures commission merchant that does not  
18 hold a sufficient amount of funds in segregated accounts  
19 for futures customers under section 1.20 of title 17, Code  
20 of Federal Regulations, in foreign futures and foreign op-  
21 tions secured amount accounts for foreign futures and for-  
22 eign options secured amount customers under section 30.7  
23 of such title, or in segregated accounts for cleared swap  
24 customers under section 22.2 of such title, as required by  
25 regulations established by the Commission or a self-regu-

1 latory organization of which the futures commission mer-  
2 chant is a member, shall immediately notify the Commis-  
3 sion and the self-regulatory organization of this occur-  
4 rence.

5 “(w) Within such time period established by the Com-  
6 mission after the end of each fiscal year, a futures com-  
7 mission merchant shall file with the Commission a report  
8 from the chief compliance officer of the futures commis-  
9 sion merchant containing an assessment of the internal  
10 compliance programs of the futures commission mer-  
11 chant.”.

12 **SEC. 105. FUTURES COMMISSION MERCHANT COMPLIANCE.**

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

15 (1) by redesignating paragraphs (1) and (2) as  
16 subparagraphs (A) and (B);

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

19 (3) by adding at the end the following new  
20 paragraph:

21 “(2) Any rules or regulations requiring a futures  
22 commission merchant to maintain a residual interest in  
23 accounts held for the benefit of customers in amounts at  
24 least sufficient to exceed the sum of all uncollected margin  
25 deficits of such customers shall provide that a futures

1 commission merchant shall meet its residual interest re-  
2 quirement as of the end of each business day calculated  
3 as of the close of business on the previous business day.”.

4 (b) CONFORMING AMENDMENT.—Section 4d(h) of  
5 the Commodity Exchange Act (7 U.S.C. 6d(h)) is amend-  
6 ed by striking “Notwithstanding subsection (a)(2)” and  
7 inserting “Notwithstanding subsection (a)(1)(B)”.

8 **SEC. 106. CERTAINTY FOR FUTURES CUSTOMERS AND MAR-**  
9 **KET PARTICIPANTS.**

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

12 (1) by striking “and” at the end of paragraph  
13 (4);

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

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

17 “(6) that cash, securities, or other property of  
18 the estate of a commodity broker, including the  
19 trading or operating accounts of the commodity  
20 broker and commodities held in inventory by the  
21 commodity broker, shall be included in customer  
22 property, subject to any otherwise unavoidable secu-  
23 rity interest, or otherwise unavoidable contractual  
24 offset or netting rights of creditors (including rights  
25 set forth in a rule or bylaw of a derivatives clearing



1 organization or a clearing agency) in respect of such  
2 property, but only to the extent that the property  
3 that is otherwise customer property is insufficient to  
4 satisfy the net equity claims of public customers (as  
5 such term may be defined by the Commission by  
6 rule or regulation) of the commodity broker.”.

7 **SEC. 107. STUDY ON HIGH-FREQUENCY TRADING.**

8 (a) IN GENERAL.—Not later than one year after the  
9 date of the enactment of this Act, the Commodity Futures  
10 Trading Commission shall submit to the Committee on  
11 Agriculture of the House of Representatives and the Com-  
12 mittee on Agriculture, Nutrition, and Forestry of the Sen-  
13 ate a report examining the effect of the practice commonly  
14 referred to as high-frequency trading on markets under  
15 its jurisdiction.

16 (b) SPECIFIC AREAS EXAMINED IN REPORT.—In  
17 preparing the report submitted under subsection (a), the  
18 Commission shall particularly examine each of the fol-  
19 lowing areas:

20 (1) The technology, personnel, or other re-  
21 sources the Commission may require for purposes of  
22 monitoring the effect of high-frequency trading.

23 (2) The role such trading plays in providing  
24 market liquidity.

1           (3) Whether the technology creates discrep-  
2           ancies in the marketplace between market partici-  
3           pants.

4           (4) Whether the existing authority of the Com-  
5           mission with respect to such trading is sufficient to  
6           meet the Commission’s mission to—

7                   (A) protect market participants and the  
8                   public from fraud, manipulation, abusive prac-  
9                   tices, and systemic risk related to derivatives;  
10                  and

11                   (B) foster transparent, open, competitive,  
12                  and financially sound markets.

13 **TITLE II—COMMODITY FUTURES**  
14 **TRADING COMMISSION RE-**  
15 **FORMS**

16 **SEC. 201. SHORT TITLE.**

17           This title may be cited as the “Commodity Futures  
18 Trading Commission Reform Act”.

19 **SEC. 202. EXTENSION OF OPERATIONS.**

20           Section 12(d) of the Commodity Exchange Act (7  
21 U.S.C. 16(d)) is amended by striking “2013” and insert-  
22 ing “2018”.

1 **SEC. 203. CONSIDERATION BY THE COMMODITY FUTURES**  
2 **TRADING COMMISSION OF THE COSTS AND**  
3 **BENEFITS OF ITS REGULATIONS AND OR-**  
4 **DERS.**

5 Section 15(a) of the Commodity Exchange Act (7  
6 U.S.C. 19(a)) is amended by striking paragraphs (1) and  
7 (2) and inserting the following:

8 “(1) IN GENERAL.—Before promulgating a reg-  
9 ulation under this Act or issuing an order (except as  
10 provided in paragraph (3)), the Commission,  
11 through the Office of the Chief Economist, shall as-  
12 sess and publish in the regulation or order the costs  
13 and benefits, both qualitative and quantitative, of  
14 the proposed regulation or order, and the proposed  
15 regulation or order shall state its statutory justifica-  
16 tion.

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

20 “(A) considerations of protection of market  
21 participants and the public;

22 “(B) considerations of the efficiency, com-  
23 petitiveness, and financial integrity of futures  
24 and swaps markets;

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

1 “(D) considerations of price discovery;

2 “(E) considerations of sound risk manage-  
3 ment practices;

4 “(F) available alternatives to direct regula-  
5 tion;

6 “(G) the degree and nature of the risks  
7 posed by various activities within the scope of  
8 its jurisdiction;

9 “(H) the costs of complying with the pro-  
10 posed regulation or order by all regulated enti-  
11 ties, including a methodology for quantifying  
12 the costs (recognizing that some costs are dif-  
13 ficult to quantify);

14 “(I) whether the proposed regulation or  
15 order is inconsistent, incompatible, or duplica-  
16 tive of other Federal regulations or orders;

17 “(J) whether, in choosing among alter-  
18 native regulatory approaches, those approaches  
19 maximize net benefits (including potential eco-  
20 nomic and other benefits, distributive impacts,  
21 and equity); and

22 “(K) other public interest considerations.”.

23 **SEC. 204. DIVISION DIRECTORS.**

24 Section 2(a)(6)(C) of the Commodity Exchange Act  
25 (7 U.S.C. 2(a)(6)(C)) is amended by inserting “, and the

1 heads of the units shall serve at the pleasure of the Com-  
2 mission, report directly to the Commission, and perform  
3 such functions and duties as the Commission may pre-  
4 scribe” before the period.

5 **SEC. 205. OFFICE OF THE CHIEF ECONOMIST.**

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

9 “(17) OFFICE OF THE CHIEF ECONOMIST.—

10 “(A) ESTABLISHMENT.—There is estab-  
11 lished in the Commission the Office of the Chief  
12 Economist.

13 “(B) HEAD.—The Office of the Chief  
14 Economist shall be headed by the Chief Econo-  
15 mist, who shall be appointed by the Commission  
16 and serve at the pleasure of the Commission.

17 “(C) FUNCTIONS.—The Chief Economist  
18 shall report directly to the Commission and per-  
19 form such functions and duties as the Commis-  
20 sion may prescribe.

21 “(D) PROFESSIONAL STAFF.—The Com-  
22 mission shall appoint such other economists as  
23 may be necessary to assist the Chief Economist  
24 in performing such economic analysis, regu-

1 latory cost-benefit analysis, or research as the  
2 Commission may direct.”.

3 (b) CONFORMING AMENDMENT.—Section 2(a)(6)(A)  
4 of such Act (7 U.S.C. 2(a)(6)(A)) is amended by striking  
5 “(4) and (5)” and inserting “(4), (5), and (17)”.

6 **SEC. 206. PROCEDURES GOVERNING ACTIONS TAKEN WITH-**  
7 **OUT A COMMISSION VOTE.**

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

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

12 “(12) RULES AND REGULATIONS.—

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

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

17 “(B) NOTICE TO COMMISSION.—The Com-  
18 mission shall develop and publish internal pro-  
19 cedures governing the issuance by any division  
20 or office of the Commission of any response to  
21 a formal, written request or petition from any  
22 member of the public for an exemptive, a no-ac-  
23 tion, or an interpretive letter and such proce-  
24 dures shall provide that the Commission be pro-  
25 vided with the final version of the matter to be

1 issued with sufficient notice to thoroughly re-  
2 view the matter prior to its issuance.”.

3 **SEC. 207. STRATEGIC TECHNOLOGY PLAN.**

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

7 “(18) STRATEGIC TECHNOLOGY PLAN.—

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

15 “(B) CONTENTS.—The plan shall—

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

1           how the funds provided for technology will  
2           be used and the priorities that will apply in  
3           the use of the funds; and

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

7   **SEC. 208. INTERNAL RISK CONTROLS.**

8           (a) IN GENERAL.—Section 2(a)(12) of the Com-  
9   modity Exchange Act (7 U.S.C. 2(a)(12)), as amended by  
10   section 206 of this Act, is amended by adding at the end  
11   the following:

12                   “(C) INTERNAL RISK CONTROLS.—The  
13           Commission, in consultation with the Chief  
14           Economist, shall develop comprehensive internal  
15           risk control mechanisms to safeguard and gov-  
16           ern the storage of all market data by the Com-  
17           mission, all market data sharing agreements of  
18           the Commission, and all academic research per-  
19           formed at the Commission using market data.”.

20   (b) REPORTS TO THE CONGRESS.—

21           (1) CONTENT.—The Commission shall submit  
22           to the Committee on Agriculture of the House of  
23           Representatives and the Committee on Agriculture,  
24           Nutrition, and Forestry of the Senate 2 reports on  
25           the progress made in implementing the internal risk



1 controls provided for in section 2(a)(12)(C) of the  
2 Commodity Exchange Act.

3 (2) TIMING.—The Commission shall submit the  
4 1st report required by paragraph (1) within 60 days  
5 after the date of the enactment of this Act, and the  
6 2nd such report within 120 days after such date of  
7 enactment.

8 **SEC. 209. SUBPOENA DURATION AND RENEWAL.**

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

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

13 “(5) SUBPOENA.—

14 “(A) IN GENERAL.—For”; and

15 (2) by adding after and below the end the fol-  
16 lowing:

17 “(B) CONTENT OF ORDER.—An order of  
18 the Commission authorizing the issuance of a  
19 subpoena in an investigation shall state in good  
20 faith—

21 “(i) the legitimate purpose of the in-  
22 vestigation; and

23 “(ii) the information sought by any  
24 subpoena order that will be reasonably rel-  
25 evant to that purpose.

1           “(C) DURATION AND RENEWAL.—An order  
2           issued under this paragraph shall not be for an  
3           indefinite duration and may be renewed only by  
4           Commission action.”.

5 **SEC. 210. IMPLEMENTATION PLAN FOR COMMISSION**  
6           **RULEMAKINGS.**

7           Section 2(a)(12) of the Commodity Exchange Act (7  
8 U.S.C. 2(a)(12)), as amended by sections 206 and 208(a)  
9 of this Act, is amended by adding at the end the following:

10           “(D) REQUIREMENT TO PUBLISH IMPL-  
11           MENTATION PLAN FOR COMMISSION RULES.—

12           The Commission shall direct its staff to develop  
13           and publish in any proposed rule a plan for—

14                   “(i) when and for how long the pro-  
15                   posed rule will be subject to public com-  
16                   ment; and

17                   “(ii) by when compliance with the  
18                   final rule will be required.”.

19 **SEC. 211. APPLICABILITY OF NOTICE AND COMMENT RE-**  
20           **QUIREMENTS OF THE ADMINISTRATIVE PRO-**  
21           **CEDURE ACT TO GUIDANCE VOTED ON BY**  
22           **THE COMMISSION.**

23           Section 2(a)(12) of the Commodity Exchange Act (7  
24 U.S.C. 2(a)(12)), as amended by sections 206, 208(a),

1 and 210 of this Act, is amended by adding at the end  
2 the following:

3           “(E) APPLICABILITY OF NOTICE AND COM-  
4           MENT RULES TO GUIDANCE VOTED ON BY THE  
5           COMMISSION.—The notice and comment re-  
6           quirements of chapter 5 of title 5, United  
7           States Code, shall also apply with respect to  
8           any guidance issued by the Commission.”.

9 **SEC. 212. JUDICIAL REVIEW OF COMMISSION RULES.**

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

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

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

22       “(b) A copy of the petition shall be transmitted forth-  
23 with by the clerk of the court to an officer designated by  
24 the Commission for that purpose. Thereupon the Commis-  
25 sion shall file in the court the record on which the rule

1 complained of is entered, as provided in section 2112 of  
2 title 28, United States Code, and the Federal Rules of  
3 Appellate Procedure.

4 “(c) On the filing of the petition, the court has juris-  
5 diction, which becomes exclusive on the filing of the  
6 record, to affirm and enforce or to set aside the rule.

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

15 **SEC. 213. GAO STUDY ON ADEQUACY OF CFTC RESOURCES.**

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

19 (1) assesses whether the resources of the Com-  
20 mission are sufficient to enable the Commission to  
21 effectively carry out the duties of the Commission;  
22 and

23 (2) examines the prior expenditures of the Com-  
24 mission on hardware, software, and analytical proc-



1           “(A) authorizes the Commission to with-  
2 hold information from Congress, upon an agree-  
3 ment of confidentiality; or

4           “(B) prevents the Commission from—

5                 “(i) complying with a request for in-  
6 formation from any other Federal depart-  
7 ment or agency, any State or political sub-  
8 division thereof, or any foreign government  
9 or any department, agency, or political  
10 subdivision thereof requesting the report or  
11 information for purposes within the scope  
12 of its jurisdiction, upon an agreement of  
13 confidentiality to protect the information  
14 in a manner consistent with this paragraph  
15 and subsection (e); or

16                 “(ii) a disclosure made pursuant to a  
17 court order in connection with an adminis-  
18 trative or judicial proceeding brought  
19 under this Act, in any receivership pro-  
20 ceeding involving a receiver appointed in a  
21 judicial proceeding brought under this Act,  
22 or in any bankruptcy proceeding in which  
23 the Commission has intervened or in which  
24 the Commission has the right to appear

1                   and be heard under title 11 of the United  
2                   States Code.

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

16                  “(3) For purposes of section 552 of title 5,  
17                  United States Code, this subsection, and the infor-  
18                  mation contemplated herein, shall be considered a  
19                  statute described in subsection (b)(3)(B) of such  
20                  section 552.

21                  “(4) For purposes of the definition of propri-  
22                  etary information in paragraph (5), the records and  
23                  reports of any client account or commodity pool to  
24                  which a commodity trading advisor or commodity  
25                  pool operator registered under this title provides

1 services that are filed with the Commission on Form  
2 CPO-PQR, CTA-PR, and any successor forms there-  
3 to, shall be deemed to be the records and reports of  
4 the commodity trading advisor or commodity pool  
5 operator, respectively.

6 “(5) For purposes of this section, proprietary  
7 information of a commodity trading advisor or com-  
8 modity pool operator includes sensitive, non-public  
9 information regarding—

10 “(A) the commodity trading advisor, com-  
11 modity pool operator or the trading strategies  
12 of the commodity trading advisor or commodity  
13 pool operator;

14 “(B) analytical or research methodologies  
15 of a commodity trading advisor or commodity  
16 pool operator;

17 “(C) trading data of a commodity trading  
18 advisor or commodity pool operator; and

19 “(D) computer hardware or software con-  
20 taining intellectual property of a commodity  
21 trading advisor or commodity pool operator;”.

## 22 **TITLE III—END-USER RELIEF**

### 23 **SEC. 301. SHORT TITLE.**

24 This title may be cited as the “End-User Relief and  
25 Market Certainty Act”.



1     **Subtitle A—End-User Exemption**  
2             **From Margin Requirements**

3     **SEC. 311. END-USER MARGIN REQUIREMENTS.**

4             (a) COMMODITY EXCHANGE ACT AMENDMENT.—  
5     Section 4s(e) of the Commodity Exchange Act (7 U.S.C.  
6     6s(e)) is amended by adding at the end the following new  
7     paragraph:

8                     “(4) APPLICABILITY WITH RESPECT TO  
9             COUNTERPARTIES.—The requirements of paragraphs  
10            (2)(A)(ii) and (2)(B)(ii), including the initial and  
11            variation margin requirements imposed by rules  
12            adopted pursuant to paragraphs (2)(A)(ii) and  
13            (2)(B)(ii), shall not apply to a swap in which a  
14            counterparty qualifies for an exception under section  
15            2(h)(7)(A), or an exemption issued under section  
16            4(c)(1) from the requirements of section 2(h)(1)(A)  
17            for cooperative entities as defined in such exemption,  
18            or satisfies the criteria in section 2(h)(7)(D).”.

19            (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-  
20     MENT.—Section 15F(e) of the Securities Exchange Act of  
21     1934 (15 U.S.C. 78o–10(e)) is amended by adding at the  
22     end the following new paragraph:

23                     “(4) APPLICABILITY WITH RESPECT TO  
24             COUNTERPARTIES.—The requirements of paragraphs  
25            (2)(A)(ii) and (2)(B)(ii) shall not apply to a secu-

1 rity-based swap in which a counterparty qualifies for  
2 an exception under section 3C(g)(1) or satisfies the  
3 criteria in section 3C(g)(4).”.

4 **SEC. 312. IMPLEMENTATION.**

5 The amendment made to the Commodity Exchange  
6 Act by this subtitle shall be implemented—

7 (1) without regard to—

8 (A) chapter 35 of title 44, United States  
9 Code; and

10 (B) the notice and comment provisions of  
11 section 553 of title 5, United States Code;

12 (2) through the promulgation of an interim  
13 final rule, pursuant to which public comment will be  
14 sought before a final rule is issued; and

15 (3) such that paragraph (1) shall apply solely  
16 to changes to rules and regulations, or proposed  
17 rules and regulations, that are limited to and di-  
18 rectly a consequence of the amendment.

19 **Subtitle B—Inter-Affiliate Swaps**

20 **SEC. 321. TREATMENT OF AFFILIATE TRANSACTIONS.**

21 (a) IN GENERAL.—

22 (1) COMMODITY EXCHANGE ACT AMEND-  
23 MENT.—Section 2(h)(7)(D)(i) of the Commodity Ex-  
24 change Act (7 U.S.C. 2(h)(7)(D)(i)) is amended to  
25 read as follows:

1           “(i) IN GENERAL.—An affiliate of a  
2           person that qualifies for an exception  
3           under subparagraph (A) (including affiliate  
4           entities predominantly engaged in pro-  
5           viding financing for the purchase of the  
6           merchandise or manufactured goods of the  
7           person) may qualify for the exception only  
8           if the affiliate enters into the swap to  
9           hedge or mitigate the commercial risk of  
10          the person or other affiliate of the person  
11          that is not a financial entity, provided that  
12          if the transfer of commercial risk is ad-  
13          dressed by entering into a swap with a  
14          swap dealer or major swap participant, an  
15          appropriate credit support measure or  
16          other mechanism is utilized.”.

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

21           “(A) IN GENERAL.—An affiliate of a per-  
22          son that qualifies for an exception under para-  
23          graph (1) (including affiliate entities predomi-  
24          nantly engaged in providing financing for the  
25          purchase of the merchandise or manufactured

1 goods of the person) may qualify for the excep-  
2 tion only if the affiliate enters into the security-  
3 based swap to hedge or mitigate the commercial  
4 risk of the person or other affiliate of the per-  
5 son that is not a financial entity, provided that  
6 if the transfer of commercial risk is addressed  
7 by entering into a security-based swap with a  
8 security-based swap dealer or major security-  
9 based swap participant, an appropriate credit  
10 support measure or other mechanism is uti-  
11 lized.”.

12 (b) APPLICABILITY OF CREDIT SUPPORT MEASURE  
13 REQUIREMENT.—Notwithstanding section 371 of this Act,  
14 the requirements in section 2(h)(7)(D)(i) of the Com-  
15modity Exchange Act and section 3C(g)(4)(A) of the Se-  
16curities Exchange Act of 1934, as amended by subsection  
17 (a), requiring that a credit support measure or other  
18 mechanism be utilized if the transfer of commercial risk  
19 referred to in such sections is addressed by entering into  
20 a swap with a swap dealer or major swap participant or  
21 a security-based swap with a security-based swap dealer  
22 or major security-based swap participant, as appropriate,  
23 shall not apply with respect to swaps or security-based  
24 swaps, as appropriate, entered into before the date of the  
25 enactment of this Act.

1 **Subtitle C—Indemnification Re-**  
2 **quirements Related to Swap**  
3 **Data Repositories**

4 **SEC. 331. INDEMNIFICATION REQUIREMENTS.**

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

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

16 (b) SWAP DATA REPOSITORIES.—Section 21(d) of  
17 such Act (7 U.S.C. 24a(d)) is amended to read as follows:

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

1 (c) SECURITY-BASED SWAP DATA REPOSITORIES.—  
2 Section 13(n)(5)(H) of the Securities Exchange Act of  
3 1934 (15 U.S.C. 78m(n)(5)(H)) is amended to read as  
4 follows:

5 “(H) CONFIDENTIALITY AGREEMENT.—  
6 Before the security-based swap data repository  
7 may share information with any entity de-  
8 scribed in subparagraph (G), the security-based  
9 swap data repository shall receive a written  
10 agreement from each entity stating that the en-  
11 tity shall abide by the confidentiality require-  
12 ments described in section 24 relating to the in-  
13 formation on security-based swap transactions  
14 that is provided.”.

## 15 **Subtitle D—Relief for Municipal** 16 **Utilities**

17 **SEC. 341. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.**

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

21 “(E) CERTAIN TRANSACTIONS WITH A  
22 UTILITY SPECIAL ENTITY.—

23 “(i) Transactions in utility operations-  
24 related swaps shall be reported pursuant to  
25 section 4r.

1           “(ii) In making a determination to ex-  
2           empt pursuant to subparagraph (D), the  
3           Commission shall treat a utility operations-  
4           related swap entered into with a utility  
5           special entity, as defined in section  
6           4s(h)(2)(D), as if it were entered into with  
7           an entity that is not a special entity, as de-  
8           fined in section 4s(h)(2)(C).”.

9   **SEC. 342. UTILITY SPECIAL ENTITY DEFINED.**

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

13                   “(D) UTILITY SPECIAL ENTITY.—For pur-  
14                   poses of this Act, the term ‘utility special enti-  
15                   ty’ means a special entity, or any instrumen-  
16                   tality, department, or corporation of or estab-  
17                   lished by a State or political subdivision of a  
18                   State, that—

19                           “(i) owns or operates an electric or  
20                           natural gas facility or an electric or nat-  
21                           ural gas operation;

22                           “(ii) supplies natural gas and or elec-  
23                           tric energy to another utility special entity;

24                           “(iii) has public service obligations  
25                           under Federal, State, or local law or regu-

1                   lation to deliver electric energy or natural  
2                   gas service to customers; or

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

6 **SEC. 343. UTILITY OPERATIONS-RELATED SWAP.**

7           (a)       SWAP       FURTHER       DEFINED.—Section  
8   1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.  
9   1a(47)(A)(iii)) is amended—

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

12           (2) by adding “and” at the end of subclause  
13           (XXII); and

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

15                                   “(XXIII) a utility operations-re-  
16                                   lated swap;”.

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

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

21       The term ‘utility operations-related swap’ means a  
22       swap that—

23                                   “(A) is entered into to hedge or mitigate a  
24                                   commercial risk;



1           “(B) is not a contract, agreement, or  
2 transaction based on, derived on, or ref-  
3 erencing—

4           “(i) an interest rate, credit, equity, or  
5 currency asset class; or

6           “(ii) a metal, agricultural commodity,  
7 or crude oil or gasoline commodity of any  
8 grade, except as used as fuel for electric  
9 energy generation; and

10          “(C) is associated with—

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

17           “(ii) all fuel supply for the facilities or  
18 operations of a utility;

19           “(iii) compliance with an electric sys-  
20 tem reliability obligation;

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

1                   “(v) any other electric energy or nat-  
2                   ural gas swap to which a utility is a  
3                   party.”.

4                   **Subtitle E—End-User Regulatory**  
5                   **Relief**

6                   **SEC. 351. END-USERS NOT TREATED AS FINANCIAL ENTI-**  
7                   **TIES.**

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

11                               “(iii) LIMITATION.—Such definition  
12                               shall not include an entity—

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

1                   “(II) who is not supervised by a  
2                   prudential regulator, and is not de-  
3                   scribed in any of subclauses (I)  
4                   through (VII) of clause (i), and—

5                   “(aa) is a commercial mar-  
6                   ket participant and is considered  
7                   a financial entity under clause  
8                   (i)(VIII) because the entity pre-  
9                   dominantly engages in physical  
10                  delivery contracts; or

11                  “(bb) enters into swaps,  
12                  contracts for future delivery, and  
13                  other derivatives on behalf of, or  
14                  to hedge or mitigate the commer-  
15                  cial risk of, whether directly or in  
16                  the aggregate, affiliates that are  
17                  not so supervised or described.”.

18                  (b) COMMERCIAL MARKET PARTICIPANT DE-  
19                  FINED.—

20                  (1) IN GENERAL.—Section 1a of such Act (7  
21                  U.S.C. 1a), as amended by section 343(b) of this  
22                  Act, is amended by redesignating paragraphs (8)  
23                  through (52) as paragraphs (9) through (53), re-  
24                  spectively, and by inserting after paragraph (6) the  
25                  following:

1           “(7) COMMERCIAL MARKET PARTICIPANT.—The  
2 term ‘commercial market participant’ means any  
3 producer, processor, merchant, or commercial user  
4 of an exempt or agricultural commodity, or the prod-  
5 ucts or byproducts of such a commodity.”.

6           (2) CONFORMING AMENDMENTS.—

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

9           (i) in subparagraph (A) of paragraph  
10 (18) (as so redesignated by paragraph (1)  
11 of this subsection), in the matter preceding  
12 clause (i), by striking “(18)(A)” and in-  
13 serting “(19)(A)”; and

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

19           (B) Section 4(c)(1)(A)(i)(I) of such Act (7  
20 U.S.C. 6(c)(1)(A)(i)(I)) is amended by striking  
21 “(7), paragraph (18)(A)(vii)(III), paragraphs  
22 (23), (24), (31), (32), (38), (39), (41), (42),  
23 (46), (47), (48), and (49)” and inserting “(8),  
24 paragraph (19)(A)(vii)(III), paragraphs (24),

1 (25), (32), (33), (39), (40), (42), (43), (47),  
2 (48), (49), and (50)”.

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

6 (D) Section 4s(f)(1)(D) of such Act (7  
7 U.S.C. 6s(f)(1)(D)) is amended by striking  
8 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

9 (E) Section 4s(h)(5)(A)(i) of such Act (7  
10 U.S.C. 6s(h)(5)(A)(i)) is amended by striking  
11 “1a(18)” and inserting “1a(19)”.

12 (F) Section 4t(b)(1)(C) of such Act (7  
13 U.S.C. 6t(b)(1)(C)) is amended by striking  
14 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

15 (G) Section 5(d)(23) of such Act (7 U.S.C.  
16 7(d)(23)) is amended by striking  
17 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

18 (H) Section 5(e)(1) of such Act (7 U.S.C.  
19 7(e)(1)) is amended by striking “1a(9)” and in-  
20 serting “1a(10)”.

21 (I) Section 5b(k)(3)(A) of such Act (7  
22 U.S.C. 7a-1(k)(3)(A)) is amended by striking  
23 “1a(47)(A)(v)” and inserting “1a(48)(A)(v)”.

1           (J) Section 5c(c)(4)(B) of such Act (7  
2           U.S.C. 7a-2(c)(4)(B)) is amended by striking  
3           “1a(10)” and inserting “1a(11)”.

4           (K) Section 5h(f)(10)(A)(iii) of such Act  
5           (7 U.S.C. 7b-3(f)(10)(A)(iii)) is amended by  
6           striking “1a(47)(A)(v)” and inserting  
7           “1a(48)(A)(v)”.

8           (L) Section 21(f)(4)(C) of such Act (7  
9           U.S.C. 24a(f)(4)(C)) is amended by striking  
10          “1a(48)” and inserting “1a(49)”.

11 **SEC. 352. REPORTING OF ILLIQUID SWAPS SO AS TO NOT**  
12                   **DISADVANTAGE CERTAIN NON-FINANCIAL**  
13                   **END-USERS.**

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

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

19           (2) by redesignating subparagraphs (D)  
20          through (G) as subparagraphs (E) through (H), re-  
21          spectively, and inserting after subparagraph (C) the  
22          following:

23                   “(D) REQUIREMENTS FOR SWAP TRANS-  
24                   ACTIONS IN ILLIQUID MARKETS.—Notwith-  
25                   standing subparagraph (C):

1           “(i) The Commission shall provide by  
2           rule for the public reporting of swap trans-  
3           actions, including price and volume data,  
4           in illiquid markets that are not cleared and  
5           entered into by a non-financial entity that  
6           is hedging or mitigating commercial risk in  
7           accordance with subsection (h)(7)(A).

8           “(ii) The Commission shall ensure  
9           that the swap transaction information re-  
10          ferred to in clause (i) of this subparagraph  
11          is available to the public no sooner than 30  
12          days after the swap transaction has been  
13          executed or at such later date as the Com-  
14          mission determines appropriate to protect  
15          the identity of participants and positions in  
16          illiquid markets and to prevent the elimi-  
17          nation or reduction of market liquidity.

18          “(iii) In this subparagraph, the term  
19          ‘illiquid markets’ means any market in  
20          which the volume and frequency of trading  
21          in swaps is at such a level as to allow iden-  
22          tification of individual market partici-  
23          pants.”.

1 **SEC. 353. RELIEF FOR GRAIN ELEVATOR OPERATORS,**  
2 **FARMERS, AGRICULTURAL COUNTERPAR-**  
3 **TIES, AND COMMERCIAL MARKET PARTICI-**  
4 **PANTS.**

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

7 **“SEC. 4u. RECORDKEEPING REQUIREMENTS APPLICABLE**  
8 **TO NON-REGISTERED MEMBERS OF CERTAIN**  
9 **REGISTERED ENTITIES.**

10 “Except as provided in section 4(a)(3), a member of  
11 a designated contract market or a swap execution facility  
12 that is not registered with the Commission and not re-  
13 quired to be registered with the Commission in any capac-  
14 ity shall satisfy the recordkeeping requirements of this Act  
15 and any recordkeeping rule, order, or regulation under  
16 this Act by maintaining a written record of each trans-  
17 action in a contract for future delivery, option on a future,  
18 swap, swaption, trade option, or related cash or forward  
19 transaction. The written record shall be sufficient if it in-  
20 cludes the final agreement between the parties and the  
21 material economic terms of the transaction and is identifi-  
22 able and searchable by transaction.”



1 **SEC. 354. RELIEF FOR END-USERS WHO USE PHYSICAL**  
2 **CONTRACTS WITH VOLUMETRIC**  
3 **OPTIONALITY.**

4 Section 1a(47)(B)(ii) of the Commodity Exchange  
5 Act (7 U.S.C. 1a(47)(B)(ii)) is amended to read as fol-  
6 lows:

7 “(ii) any purchase or sale of a non-  
8 financial commodity or security for de-  
9 ferred shipment or delivery, so long as the  
10 transaction is intended to be physically set-  
11 tled, including any stand-alone or embed-  
12 ded option—

13 “(I) for which exercise results in  
14 a physical delivery obligation;

15 “(II) that cannot be severed or  
16 marketed separately from the overall  
17 transaction for the purpose of finan-  
18 cial settlement; and

19 “(III) for which both parties are  
20 commercial market participants;”.

21 **SEC. 355. COMMISSION VOTE REQUIRED BEFORE AUTO-**  
22 **MATIC CHANGE OF SWAP DEALER DE MINI-**  
23 **MIS LEVEL.**

24 Section 1a(49)(D) of the Commodity Exchange Act  
25 (7 U.S.C. 1a(49)(D)) is amended—

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

3 “(D) DE MINIMIS EXCEPTION.—

4 “(i) IN GENERAL.—The Commission”;

5 and

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

8 “(ii) SPECIAL RULE.—The de minimis  
9 quantity of swap dealing as described in  
10 clause (i) that is currently set at a quan-  
11 tity of \$8,000,000,000 shall only be  
12 amended or reduced through a new affirm-  
13 ative action of the Commission undertaken  
14 by rule or regulation.”.

15 **SEC. 356. CAPITAL REQUIREMENTS FOR NON-BANK SWAP**  
16 **DEALERS.**

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

20 (1) in paragraph (2)(B), by striking “shall”  
21 and inserting the following: “and the Securities and  
22 Exchange Commission, in consultation with the pru-  
23 dential 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 swap dealers and major swap  
7 participants that are banks are permitted  
8 to use financial models approved by the  
9 prudential regulators or the Securities and  
10 Exchange Commission to calculate min-  
11 imum capital requirements and minimum  
12 initial and variation margin requirements,  
13 including the use of non-cash collateral,  
14 the Commission shall, in consultation with  
15 the prudential regulators and the Securi-  
16 ties and Exchange Commission, permit the  
17 use of comparable financial models by  
18 swap dealers and major swap participants  
19 that are not banks.”.

20 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
21 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C.  
22 78o–10(e)) is amended—

23 (1) in paragraph (2)(B), by striking “shall”  
24 and inserting the following: “and the Commodity

1 Futures Trading Commission, in consultation with  
2 the prudential regulators, shall jointly”; and

3 (2) in paragraph (3)(D)—

4 (A) in clause (ii), by striking “shall, to the  
5 maximum extent practicable,” and inserting  
6 “shall”; and

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

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

1 **SEC. 357. HARMONIZATION WITH THE JUMPSTART OUR**  
2 **BUSINESS STARTUPS ACT.**

3 Within 90 days after the date of the enactment of  
4 this Act, the Commodity Futures Trading Commission  
5 shall—

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

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

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

1 “(i) Interests in the pool are exempt from registration  
2 under the Securities Act of 1933, and such interests are  
3 offered and sold pursuant to section 4 of the Securities  
4 Act of 1933 and the regulations thereunder;”.

5 **SEC. 358. BONA FIDE HEDGE DEFINED TO PROTECT END-  
6 USER RISK MANAGEMENT NEEDS.**

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

9 (1) in paragraph (1)—

10 (A) by striking “may” and inserting  
11 “shall”; and

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

16 (2) in paragraph (2)—

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

1 (B) in subparagraph (A)(ii), by striking  
2 “of risks” and inserting “or management of  
3 current or anticipated risks”; and

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

5 “(3) The Commission may further define, by  
6 rule or regulation, what constitutes a bona fide  
7 hedging transaction, provided that the rule or regu-  
8 lation is consistent with the requirements of sub-  
9 paragraphs (A) and (B) of paragraph (2).”.

10 **SEC. 359. CROSS-BORDER REGULATION OF DERIVATIVES**

11 **TRANSACTIONS.**

12 (a) **JOINT RULEMAKING REQUIRED.**—

13 (1) **IN GENERAL.**—Not later than 270 days  
14 after the date of enactment of this Act, the Securi-  
15 ties and Exchange Commission and the Commodity  
16 Futures Trading Commission shall jointly issue rules  
17 setting forth the application of United States swaps  
18 requirements of the Securities Exchange Act of  
19 1934 and the Commodity Exchange Act relating to  
20 cross-border swaps and security-based swaps trans-  
21 actions involving U.S. persons or non-U.S. persons.

22 (2) **CONSTRUCTION.**—The rules required under  
23 paragraph (1) shall be identical, notwithstanding  
24 any difference in the authorities granted the Com-  
25 missions in section 30(c) of the Securities Exchange

1 Act of 1934 (15 U.S.C. 78dd(e)) and section 2(i) of  
2 the Commodity Exchange Act (7 U.S.C. 2(i)), re-  
3 spectively, except to the extent necessary to accom-  
4 modate differences in other underlying statutory re-  
5 quirements under such Acts, and the rules there-  
6 under.

7 (b) CONSIDERATIONS.—The Commissions shall joint-  
8 ly issue rules that address—

9 (1) the nature of the connections to the United  
10 States that require a non-U.S. person to register as  
11 a swap dealer, major swap participant, security-  
12 based swap dealer, or major security-based swap  
13 participant under each Commission’s respective Acts  
14 and the regulations issued under such Acts;

15 (2) which of the United States swaps require-  
16 ments shall apply to the swap and security-based  
17 swap activities of non-U.S. persons, U.S. persons,  
18 and their branches, agencies, subsidiaries, and affili-  
19 ates outside of the United States and the extent to  
20 which such requirements shall apply; and

21 (3) the circumstances under which a non-U.S.  
22 person in compliance with the regulatory require-  
23 ments of a foreign jurisdiction shall be exempt from  
24 United States swaps requirements.



1 (c) RULE IN ACCORDANCE WITH APA REQUIRED.—  
2 No guidance, memorandum of understanding, or any such  
3 other agreement may satisfy the requirement to issue a  
4 joint rule from the Commissions in accordance with sec-  
5 tion 553 of title 5, United States Code.

6 (d) GENERAL APPLICATION TO COUNTRIES OR AD-  
7 MINISTRATIVE REGIONS HAVING NINE LARGEST MAR-  
8 KETS.—

9 (1) GENERAL APPLICATION.—In issuing rules  
10 under this section, the Commissions shall provide  
11 that a non-U.S. person in compliance with the swaps  
12 regulatory requirements of a country or administra-  
13 tive region that has one of the nine largest combined  
14 swap and security-based swap markets by notional  
15 amount in the calendar year preceding issuance of  
16 such rules, or other foreign jurisdiction as jointly de-  
17 termined by the Commissions, shall be exempt from  
18 United States swaps requirements in accordance  
19 with the schedule set forth in paragraph (2), unless  
20 the Commissions jointly determine that the regu-  
21 latory requirements of such country or administra-  
22 tive region or other foreign jurisdiction are not  
23 broadly equivalent to United States swaps require-  
24 ments.

1           (2) EFFECTIVE DATE SCHEDULE.—The exemp-  
2           tion described in paragraph (1) and set forth under  
3           the rules required by this section shall apply to per-  
4           sons or transactions relating to or involving—

5                   (A) countries or administrative regions de-  
6                   scribed in such paragraph, or any other foreign  
7                   jurisdiction as jointly determined by the Com-  
8                   missions, accounting for the five largest com-  
9                   bined swap and security-based swap markets by  
10                  notional amount in the calendar year preceding  
11                  issuance of such rules, on the date on which  
12                  final rules are issued under this section; and

13                   (B) the remaining countries or administra-  
14                   tive regions described in such paragraph, and  
15                   any other foreign jurisdiction as jointly deter-  
16                   mined by the Commissions, 1 year after the  
17                   date on which such rules are issued.

18           (3) CRITERIA.—In such rules, the Commissions  
19           shall jointly establish criteria for determining that  
20           one or more categories of regulatory requirements of  
21           a country or administrative region described in para-  
22           graph (1) or other foreign jurisdiction is not broadly  
23           equivalent to United States swaps requirements and  
24           shall jointly determine the appropriate application of  
25           certain United States swap requirements to persons

1 or transactions relating to or involving such country  
2 or administrative region or other foreign jurisdiction.  
3 Such criteria shall include the scope and objectives  
4 of the regulatory requirements of a country or ad-  
5 ministrative region described in paragraph (1) or  
6 other foreign jurisdiction as well as the effectiveness  
7 of the supervisory compliance program administered,  
8 and the enforcement authority exercised, by such  
9 country or administrative region or other foreign ju-  
10 risdiction, and such other factors as the Commis-  
11 sions, by rule, jointly determine to be necessary or  
12 appropriate in the public interest.

13 (4) REQUIRED ASSESSMENT.—Beginning on the  
14 date on which final rules are issued under this sec-  
15 tion, the Commissions shall begin to jointly assess  
16 the regulatory requirements of countries or adminis-  
17 trative regions described in paragraph (1), as the  
18 Commissions jointly determine appropriate, in ac-  
19 cordance with the criteria established pursuant to  
20 this subsection, to determine if one or more cat-  
21 egories of regulatory requirements of such a country  
22 or administrative region or other foreign jurisdiction  
23 is not broadly equivalent to United States swaps re-  
24 quirements.

1           (e) REPORT TO CONGRESS.—If the Commissions  
2 make the joint determination described in subsection  
3 (d)(1) that the regulatory requirements of a country or  
4 administrative region described in such subsection or other  
5 foreign jurisdiction are not broadly equivalent to United  
6 States swaps requirements, the Commissions shall articu-  
7 late the basis for such a determination in a written report  
8 transmitted to the Committee on Financial Services and  
9 the Committee on Agriculture of the House of Representa-  
10 tives and the Committee on Banking, Housing, and Urban  
11 Affairs and the Committee on Agriculture, Nutrition, and  
12 Forestry of the Senate within 30 days of the determina-  
13 tion. The determination shall not be effective until the  
14 transmission of such report.

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

18                   (1) The term “U.S. person”—

19                           (A) means—

20                                   (i) any natural person resident in the  
21                                   United States;

22                                   (ii) any partnership, corporation,  
23                                   trust, or other legal person organized or  
24                                   incorporated under the laws of the United

1 States or having its principal place of busi-  
2 ness in the United States;

3 (iii) any account (whether discre-  
4 tionary or non-discretionary) of a U.S. per-  
5 son; and

6 (iv) any other person as the Commis-  
7 sions may further jointly define to more ef-  
8 fectively carry out the purposes of this Act;  
9 and

10 (B) does not include the International  
11 Monetary Fund, the International Bank for Re-  
12 construction and Development, the Inter-Amer-  
13 ican Development Bank, the Asian Development  
14 Bank, the African Development Bank, the  
15 United Nations, their agencies and pension  
16 plans, and any other similar international orga-  
17 nizations and their agencies and pension plans.

18 (2) The term “United States swaps require-  
19 ments” means the provisions relating to swaps and  
20 security-based swaps contained in the Commodity  
21 Exchange Act (7 U.S.C. 1a et seq.) and the Securi-  
22 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.)  
23 that were added by title VII of the Dodd-Frank Wall  
24 Street Reform and Consumer Protection Act (15  
25 U.S.C. 8301 et seq.) and any rules or regulations

1 prescribed by the Securities and Exchange Commis-  
2 sion and the Commodity Futures Trading Commis-  
3 sion pursuant to such provisions.

4 (g) CONFORMING AMENDMENTS.—

5 (1) SECURITIES EXCHANGE ACT OF 1934.—  
6 Section 36(c) of the Securities Exchange Act of  
7 1934 (15 U.S.C. 78mm(c)) is amended by inserting  
8 “or except as necessary to effectuate the purposes of  
9 the Customer Protection and End-User Relief Act,”  
10 after “to grant exemptions,”.

11 (2) COMMODITY EXCHANGE ACT.—Section  
12 4(c)(1)(A) of the Commodity Exchange Act (7  
13 U.S.C. 6(c)(1)(A)) is amended by inserting “or ex-  
14 cept as necessary to effectuate the purposes of the  
15 Customer Protection and End-User Relief Act,”  
16 after “to grant exemptions,”.

17 **SEC. 360. REPORT ON FOREIGN BOARDS OF TRADE.**

18 Within 1 year after the date of the enactment of this  
19 Act, the Commodity Futures Trading Commission shall  
20 prepare and submit to the Committee on Agriculture of  
21 the House of Representatives and the Committee on Agri-  
22 culture, Nutrition, and Forestry of the Senate a written  
23 report reviewing the standards and rules of foreign boards  
24 of trade related to the physical delivery of base metals,  
25 including warehousing facilities, as compared to the stand-

1 ards and rules for domestic designated contract markets  
2 and related warehouses for base metals.

3 **Subtitle F—Effective Date**

4 **SEC. 371. EFFECTIVE DATE.**

5 Except as otherwise provided in this title, the amend-  
6 ments made by this title shall take effect as if enacted  
7 on July 21, 2010.

