

114TH CONGRESS
1ST SESSION

H. R. 1317

[Report No. 114-]

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to specify how clearing requirements apply to certain affiliate transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 2015

Ms. MOORE (for herself, Ms. FUDGE, Mr. GIBSON, and Mr. STIVERS) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER --, 2015

Reported from the Committee on Agriculture with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 4, 2105]

A BILL

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to specify how clearing requirements apply to certain affiliate transactions, 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. TREATMENT OF AFFILIATE TRANSACTIONS.**

4 *(a) COMMODITY EXCHANGE ACT AMENDMENTS.—Sec-*
5 *tion 2(h)(7)(D) of the Commodity Exchange Act (7 U.S.C.*
6 *2(h)(7)(D)) is amended—*

7 *(1) by redesignating clause (iii) as clause (v);*

8 *(2) by striking clauses (i) and (ii) and inserting*
9 *the following:*

10 *“(i) IN GENERAL.—An affiliate of a*
11 *person that qualifies for an exception under*
12 *subparagraph (A) (including affiliate enti-*
13 *ties predominantly engaged in providing fi-*
14 *nancing for the purchase of the merchandise*
15 *or manufactured goods of the person) may*
16 *qualify for the exception only if the affil-*
17 *iate—*

18 *“(I) enters into the swap to hedge*
19 *or mitigate the commercial risk of the*
20 *person or other affiliate of the person*
21 *that is not a financial entity, and the*
22 *commercial risk that the affiliate is*
23 *hedging or mitigating has been trans-*
24 *ferred to the affiliate;*

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

6 “(III) is not indirectly majority-
7 owned by a financial entity;

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

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

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

21 “(I) a swap dealer;

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

24 “(III) a major swap participant;

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

3 “(V) a commodity pool;

4 “(VI) a bank holding company;

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

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

14 “(IX) an insured depository insti-
15 tution;

16 “(X) a farm credit system institu-
17 tion;

18 “(XI) a credit union;

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

24 “(XIII) an entity engaged in the
25 business of insurance and subject to

1 *capital requirements established by an*
2 *insurance governmental authority of a*
3 *State, a territory of the United States,*
4 *the District of Columbia, a country*
5 *other than the United States, or a po-*
6 *litical subdivision of a country other*
7 *than the United States that is engaged*
8 *in the supervision of insurance compa-*
9 *nies under insurance law.*

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

17 “(I) *a major security-based swap*
18 *participant;*

19 “(II) *a security-based swap deal-*
20 *er;*

21 “(III) *a major swap participant;*

22 *or*

23 “(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 commer-*
7 *cial 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 con-*
14 *solidate the risk of swaps entered into*
15 *by any such financial entity, except*
16 *one that is an affiliate that qualifies*
17 *for the exception under clause (i).”;*
18 *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) shall*
23 *be subject to a centralized risk management*
24 *program of the affiliate, which is reasonably*
25 *designed both to monitor and manage the*

1 *risks associated with the swap and to iden-*
2 *tify each of the affiliates on whose behalf a*
3 *swap was entered into.”.*

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

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

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

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

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

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
8 parent company that is a financial entity;
9 and

10 “(v) does not provide any services, fi-
11 nancial or otherwise, to any affiliate that is
12 a nonbank financial company supervised by
13 the Board of Governors (as defined under
14 section 102 of the Financial Stability Act of
15 2010).

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

19 “(i) a swap dealer;

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

21 “(iii) a major swap participant;

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

24 “(v) a commodity pool;

25 “(vi) a bank holding company;

1 “(vii) a private fund, as defined in sec-
2 tion 202(a) of the Investment Advisers Act
3 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 (29
8 U.S.C. 1002);

9 “(ix) an insured depository institution;

10 “(x) a farm credit system institution;

11 “(xi) a credit union;

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

16 “(xiii) an entity engaged in the busi-
17 ness of insurance and subject to capital re-
18 quirements established by an insurance gov-
19 ernmental authority of a State, a territory
20 of the United States, the District of Colum-
21 bia, a country other than the United States,
22 or a political subdivision of a country other
23 than the United States that is engaged in
24 the supervision of insurance companies
25 under insurance law.

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

7 “(i) *a major security-based swap par-*
8 *ticipant;*

9 “(ii) *a security-based swap dealer;*

10 “(iii) *a major swap participant; or*

11 “(iv) *a swap dealer.*

12 “(D) *CONDITIONS ON TRANSACTIONS.—With*
13 *respect to an affiliate that qualifies for the excep-*
14 *tion in subparagraph (A)—*

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

19 “(ii) *neither such affiliate nor any per-*
20 *son affiliated with such affiliate that is not*
21 *a financial entity may enter into a secu-*
22 *rity-based swap with or on behalf of any af-*
23 *affiliate that is a financial entity or otherwise*
24 *assume, net, combine, or consolidate the risk*
25 *of security-based swaps entered into by any*

1 *such financial entity, except one that is an*
2 *affiliate that qualifies for the exception*
3 *under subparagraph (A).”; and*

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

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