

114TH CONGRESS  
1ST SESSION

# H. R. 1317

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2015

Received; read twice and referred to the Committee on Agriculture, Nutrition,  
and Forestry

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## AN ACT

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,*

1 **SECTION 1. TREATMENT OF AFFILIATE TRANSACTIONS.**

2 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—

3 Section 2(h)(7)(D) of the Commodity Exchange Act (7  
4 U.S.C. 2(h)(7)(D)) is amended—

5 (1) by redesignating clause (iii) as clause (v);

6 (2) by striking clauses (i) and (ii) and inserting  
7 the following:

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

16 “(I) enters into the swap to  
17 hedge or mitigate the commercial risk  
18 of the person or other affiliate of the  
19 person that is not a financial entity,  
20 and the commercial risk that the affil-  
21 iate is hedging or mitigating has been  
22 transferred to the affiliate;

23 “(II) is directly and wholly-owned  
24 by another affiliate qualified for the  
25 exception under this subparagraph or  
26 an entity that is not a financial entity;

1 “(III) is not indirectly majority-  
2 owned by a financial entity;

3 “(IV) is not ultimately owned by  
4 a parent company that is a financial  
5 entity; and

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

13 “(ii) LIMITATION ON QUALIFYING AF-  
14 FILLATES.—The exception in clause (i)  
15 shall not apply if the affiliate is—

16 “(I) a swap dealer;

17 “(II) a security-based swap deal-  
18 er;

19 “(III) a major swap participant;

20 “(IV) a major security-based  
21 swap participant;

22 “(V) a commodity pool;

23 “(VI) a bank holding company;

24 “(VII) a private fund, as defined  
25 in section 202(a) of the Investment

1           Advisers Act of 1940 (15 U.S.C. 80–  
2           b–2(a));

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

9           “(IX) an insured depository insti-  
10          tution;

11          “(X) a farm credit system insti-  
12          tution;

13          “(XI) a credit union;

14          “(XII) a nonbank financial com-  
15          pany supervised by the Board of Gov-  
16          ernors (as defined under section 102  
17          of the Financial Stability Act of  
18          2010); or

19          “(XIII) an entity engaged in the  
20          business of insurance and subject to  
21          capital requirements established by an  
22          insurance governmental authority of a  
23          State, a territory of the United  
24          States, the District of Columbia, a  
25          country other than the United States,

1 or a political subdivision of a country  
2 other than the United States that is  
3 engaged in the supervision of insur-  
4 ance companies under insurance law.

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

12 “(I) a major security-based swap  
13 participant;

14 “(II) a security-based swap deal-  
15 er;

16 “(III) a major swap participant;  
17 or

18 “(IV) a swap dealer.

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

22 “(I) the affiliate may not enter  
23 into any swap other than for the pur-  
24 pose of hedging or mitigating com-  
25 mercial risk; and

1                   “(II) neither the affiliate nor any  
2                   person affiliated with the affiliate that  
3                   is not a financial entity may enter  
4                   into a swap with or on behalf of any  
5                   affiliate that is a financial entity or  
6                   otherwise assume, net, combine, or  
7                   consolidate the risk of swaps entered  
8                   into by any such financial entity, ex-  
9                   cept one that is an affiliate that quali-  
10                  fies for the exception under clause  
11                  (i).”;

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

13                   “(vi) RISK MANAGEMENT PROGRAM.—  
14                   Any swap entered into by an affiliate that  
15                   qualifies for the exception in clause (i)  
16                   shall be subject to a centralized risk man-  
17                   agement program of the affiliate, which is  
18                   reasonably designed both to monitor and  
19                   manage the risks associated with the swap  
20                   and to identify each of the affiliates on  
21                   whose behalf a swap was entered into.”.

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

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

3           (2) by striking subparagraphs (A) and (B) and  
4           inserting the following:

5           “(A) IN GENERAL.—An affiliate of a per-  
6           son that qualifies for an exception under this  
7           subsection (including affiliate entities predomi-  
8           nantly engaged in providing financing for the  
9           purchase of the merchandise or manufactured  
10          goods of the person) may qualify for the excep-  
11          tion only if the affiliate—

12           “(i) enters into the security-based  
13          swap to hedge or mitigate the commercial  
14          risk of the person or other affiliate of the  
15          person that is not a financial entity, and  
16          the commercial risk that the affiliate is  
17          hedging or mitigating has been transferred  
18          to the affiliate;

19           “(ii) is directly and wholly-owned by  
20          another affiliate qualified for the exception  
21          under this paragraph or an entity that is  
22          not a financial entity;

23           “(iii) is not indirectly majority-owned  
24          by a financial entity;

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

3 “(v) does not provide any services, fi-  
4 nancial or otherwise, to any affiliate that is  
5 a nonbank financial company supervised by  
6 the Board of Governors (as defined under  
7 section 102 of the Financial Stability Act  
8 of 2010).

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

12 “(i) a swap dealer;

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

14 “(iii) a major swap participant;

15 “(iv) a major security-based swap par-  
16 ticipant;

17 “(v) a commodity pool;

18 “(vi) a bank holding company;

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

22 “(viii) an employee benefit plan or  
23 government plan, as defined in paragraphs  
24 (3) and (32) of section 3 of the Employee



1 Retirement Income Security Act of 1974  
2 (29 U.S.C. 1002);

3 “(ix) an insured depository institu-  
4 tion;

5 “(x) a farm credit system institution;

6 “(xi) a credit union;

7 “(xii) a nonbank financial company  
8 supervised by the Board of Governors (as  
9 defined under section 102 of the Financial  
10 Stability Act of 2010); or

11 “(xiii) an entity engaged in the busi-  
12 ness of insurance and subject to capital re-  
13 quirements established by an insurance  
14 governmental authority of a State, a terri-  
15 tory of the United States, the District of  
16 Columbia, a country other than the United  
17 States, or a political subdivision of a coun-  
18 try other than the United States that is  
19 engaged in the supervision of insurance  
20 companies under insurance law.

21 “(C) LIMITATION ON AFFILIATES’ AFFILI-  
22 ATES.—Unless the Commission determines, by  
23 order, rule, or regulation, that it is in the public  
24 interest, the exception in subparagraph (A)

1 shall not apply with respect to an affiliate if  
2 such affiliate is itself affiliated with—

3 “(i) a major security-based swap par-  
4 ticipant;

5 “(ii) a security-based swap dealer;

6 “(iii) a major swap participant; or

7 “(iv) a swap dealer.

8 “(D) CONDITIONS ON TRANSACTIONS.—

9 With respect to an affiliate that qualifies for  
10 the exception in subparagraph (A)—

11 “(i) such affiliate may not enter into  
12 any security-based swap other than for the  
13 purpose of hedging or mitigating commer-  
14 cial risk; and

15 “(ii) neither such affiliate nor any  
16 person affiliated with such affiliate that is  
17 not a financial entity may enter into a se-  
18 curity-based swap with or on behalf of any  
19 affiliate that is a financial entity or other-  
20 wise assume, net, combine, or consolidate  
21 the risk of security-based swaps entered  
22 into by any such financial entity, except  
23 one that is an affiliate that qualifies for  
24 the exception under subparagraph (A).”;  
25 and

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

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

Passed the House of Representatives November 16,  
2015.

Attest:

KAREN L. HAAS,

*Clerk.*