

Union Calendar No. 259

114TH CONGRESS
1ST SESSION**H. R. 1317****[Report No. 114–311, Parts I and II]**

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 26, 2015

Reported from the Committee on Agriculture with an amendment

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

NOVEMBER 16, 2015

Reported from the Committee on Financial Services with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

[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 *mercial 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.”.*

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

15 **(a) COMMODITY EXCHANGE ACT AMEND-**
 16 **MENT.—Section 2(h)(7)(D)(i) of the Commodity**
 17 **Exchange Act (7 U.S.C. 2(h)(7)(D)(i)) is amend-**
 18 **ed to read as follows:**

19 **“(i) IN GENERAL.—An affiliate**
 20 **of a person that qualifies for an**
 21 **exception under subparagraph**
 22 **(A) (including affiliate entities**
 23 **predominantly engaged in pro-**
 24 **viding financing for the purchase**
 25 **of the merchandise or manufac-**

1 tured goods of the person) may
2 qualify for the exception only if
3 the affiliate enters into the swap
4 to hedge or mitigate the commer-
5 cial risk of the person or other af-
6 filiate of the person that is not a
7 financial entity, provided that if
8 the hedge or mitigation of such
9 commercial risk is addressed by
10 entering into a swap with a swap
11 dealer or major swap participant,
12 an appropriate credit support
13 measure or other mechanism
14 must be utilized.”.

15 **(b) SECURITIES EXCHANGE ACT OF 1934**
16 **AMENDMENT.—Section 3C(g)(4) of the Securi-**
17 **ties Exchange Act of 1934 (15 U.S.C. 78c-**
18 **3(g)(4)) is amended to read as follows:**

19 (1) by redesignating subparagraph
20 **(C) as subparagraph (E);**

21 (2) by striking subparagraphs (A) and
22 **(B) and inserting the following:**

23 **“(A) IN GENERAL.—An affiliate of a**
24 **person that qualifies for an exception**
25 **under this subsection (including affil-**

1 **iate entities predominantly engaged**
2 **in providing financing for the pur-**
3 **chase of the merchandise or manufac-**
4 **tured goods of the person) may qual-**
5 **ify for the exception only if the affil-**
6 **iate—**

7 **“(i) enters into the security-**
8 **based swap to hedge or mitigate**
9 **the commercial risk of the person**
10 **or other affiliate of the person**
11 **that is not a financial entity, and**
12 **the commercial risk that the affil-**
13 **iate is hedging or mitigating has**
14 **been transferred to the affiliate;**

15 **“(ii) is directly and wholly-**
16 **owned by another affiliate quali-**
17 **fied for the exception under this**
18 **paragraph or an entity that is not**
19 **a financial entity;**

20 **“(iii) is not indirectly major-**
21 **ity-owned by a financial entity;**

22 **“(iv) is not ultimately owned**
23 **by a parent company that is a fi-**
24 **nancial entity; and**

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

8 “(B) LIMITATION ON QUALIFYING AF-
9 FILIATES.—The exception in subpara-
10 graph (A) shall not apply if the affil-
11 iate is—

12 “(i) a swap dealer;

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

15 “(iii) a major swap partici-
16 pant;

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

19 “(v) a commodity pool;

20 “(vi) a bank holding company;

21 “(vii) a private fund, as de-
22 fined in section 202(a) of the In-
23 vestment Advisers Act of 1940 (15
24 U.S.C. 80-b-2(a));

1 “(viii) an employee benefit
2 plan or government plan, as de-
3 fined in paragraphs (3) and (32) of
4 section 3 of the Employee Retire-
5 ment Income Security Act of 1974
6 (29 U.S.C. 1002);

7 “(ix) an insured depository in-
8 stitution;

9 “(x) a farm credit system insti-
10 tution;

11 “(xi) a credit union;

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

17 “(xiii) an entity engaged in
18 the business of insurance and
19 subject to capital requirements
20 established by an insurance gov-
21 ernmental authority of a State, a
22 territory of the United States, the
23 District of Columbia, a country
24 other than the United States, or a
25 political subdivision of a country

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

5 “(C) LIMITATION ON AFFILIATES’ AF-
6 FILIATES.—Unless the Commission de-
7 termines, by order, rule, or regula-
8 tion, that it is in the public interest,
9 the exception in subparagraph (A)
10 shall not apply with respect to an af-
11 filiate if such affiliate is itself affili-
12 ated with—

13 “(i) a major security-based
14 swap participant;

15 “(ii) a security-based swap
16 dealer;

17 “(iii) a major swap partici-
18 pant; or

19 “(iv) a swap dealer.

20 “(D) CONDITIONS ON TRANS-
21 ACTIONS.—With respect to an affiliate
22 that qualifies for the exception in
23 subparagraph (A)—

24 “(i) such affiliate may not
25 enter into any security-based

1 swap other than for the purpose
2 of hedging or mitigating commer-
3 cial risk; and

4 “(ii) neither such affiliate nor
5 any person affiliated with such af-
6 filiate that is not a financial enti-
7 ty may enter into a security-based
8 swap with or on behalf of any af-
9 filiate that is a financial entity or
10 otherwise assume, net, combine,
11 or consolidate the risk of secu-
12 rity-based swaps entered into by
13 any such financial entity, except
14 one that is an affiliate that quali-
15 fies for the exception under sub-
16 paragraph (A).”; and

17 (3) by adding at the end the fol-
18 lowing:

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

1 **monitor and manage the risks associ-**
2 **ated with the security-based swap**
3 **and to identify each of the affiliates**
4 **on whose behalf a security-based**
5 **swap was entered into.”.**

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