

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 78) TO IMPROVE THE CONSIDERATION BY THE SECURITIES AND EXCHANGE COMMISSION OF THE COSTS AND BENEFITS OF ITS REGULATIONS AND ORDERS; PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 238) TO REAUTHORIZE THE COMMODITY FUTURES TRADING COMMISSION, TO BETTER PROTECT FUTURES CUSTOMERS, TO PROVIDE END-USERS WITH MARKET CERTAINTY, TO MAKE BASIC REFORMS TO ENSURE TRANSPARENCY AND ACCOUNTABILITY AT THE COMMISSION, TO HELP FARMERS, RANCHERS, AND END-USERS MANAGE RISKS, TO HELP KEEP CONSUMER COSTS LOW, AND FOR OTHER PURPOSES; AND FOR OTHER PURPOSES

JANUARY 10, 2017.—Referred to the House Calendar and ordered to be printed

Mr. NEWHOUSE, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 40]

The Committee on Rules, having had under consideration House Resolution 40, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 78, the SEC Regulatory Accountability Act, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their respective designees. The resolution waives all points of order against consideration of the bill. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions in the bill. The resolution makes in order only those amendments printed in part A of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments print-

ed in part A of this report. The resolution provides one motion to recommit with or without instructions.

Section 2 of the resolution provides for consideration of H.R. 238, the Commodity End-User Relief Act, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the Majority Leader and the Minority Leader or their respective designees. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of the Rules Committee Print 115–2, and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those further amendments printed in part B of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in part B of this report. The resolution provides one motion to recommit with or without instructions.

Section 3 of the resolution provides that on any legislative day during the period from January 16, 2017, through January 20, 2017: the Journal of the proceedings of the previous day shall be considered as approved; and the Chair may at any time declare the House adjourned to meet at a date and time to be announced by the Chair in declaring the adjournment.

Section 4 of the resolution provides that the Speaker may appoint Members to perform the duties of the Chair for the duration of the period addressed by section 3 of the resolution as though under clause 8(a) of rule I.

Section 5 of the resolution provides that it shall be in order at any time on the legislative day of January 13, 2017, for the Speaker to entertain motions that the House suspend the rules as though under clause 1 of rule XV, and that the Speaker or his designee shall consult with the Minority Leader or her designee on the designation of any matter for consideration pursuant to this section.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of H.R. 78, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in H.R. 78, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 78 printed in part A of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H.R. 238, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendment in the nature of a substitute made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 238 printed in part B of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 8

Motion by Mr. McGovern to report open rules for H.R. 78 and H.R. 238.

Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mr. Cole	Nay	Ms. Slaughter	Yea
Mr. Woodall	Nay	Mr. McGovern	Yea
Mr. Burgess	Nay	Mr. Hastings of Florida	Yea
Mr. Collins	Nay	Mr. Polis	Yea
Mr. Byrne	Nay		
Mr. Newhouse	Nay		
Mr. Buck	Nay		
Ms. Cheney	Nay		
Mr. Sessions, Chairman	Nay		

SUMMARY OF THE AMENDMENTS TO H.R. 78 IN PART A MADE IN ORDER

1. Waters (CA): Requires the SEC to identify, analyze and address potential conflicts of interest related to its rulemakings. (10 minutes)

2. Velázquez (NY): Requires the SEC consider the protection of investors, in addition to promoting efficiency, competition, and capital formation when conducting such a review and also expressly instructs the SEC to consider the public interest, the protection of investors as well as the promotion of efficiency, competition, and capital formation when conducting such a review of existing SEC regulations. (10 minutes)

3. Green, Al (TX): Exempts regulations promulgated to maintain or support U.S. financial stability or prevent or reduce systemic risk. (10 minutes)

4. DeSaulnier (CA): Requires the Chairman of the SEC and his immediate family to divest from too-big-to-fail banks. (10 minutes)

5. Raskin (MD): Requires the Chairman of the Securities and Exchange Commission to be trained on ethical standards and codes of conduct to ensure all regulations enacted are not done so with a conflict of interest, specifically regarding prior employment and legal representation of too-big-to-fail banks. (10 minutes)

SUMMARY OF THE AMENDMENTS TO H.R. 238 IN PART B MADE IN ORDER

1. Aderholt (AL): Amends the Commodity Exchange Act to give the Commodity Futures Trading Commission authority to designate other agencies to manage its leases. (10 minutes)

2. Scott, Austin (GA): Reforms the Customer Protection Fund at the CFTC to amend the size of the fund, annual expenditures from the fund and return excess balance to the Treasury. (10 minutes)

3. Conaway (TX): Makes technical and conforming changes. (10 minutes)

4. Conaway (TX): Makes clear Congress's intent that the Commission may impose and implement position limits as it finds necessary, provided the Commission makes a finding prior to imposing such limits. It makes no changes to the longstanding federal position limits regime for the enumerated agricultural commodities or the existing statutory requirements that Designated Contract Markets impose position limits or accountability levels on all contracts. (10 minutes)

5. Duffy (WI), Scott, David (GA): Prohibits the CFTC from compelling the production of algorithmic trading source code and similar intellectual property unless it has issued a subpoena. (10 minutes)

6. LaMalfa (CA): Prevents a situation in which an end-user loses its ability to rely on the end-user exception to the clearing requirement due simply to the positive performance of transactions entered into solely to mitigate the prospect of falling revenues and asset values. (10 minutes)

7. Lucas (OK): Exempts all inter-affiliate transactions from being regulated as "swaps" under the Dodd-Frank related provisions of the Commodity Exchange Act ("CEA") and Commodity Futures Trading Commission ("CFTC") regulations promulgated thereunder. (10 minutes)

8. Hartzler (MO): Delays implementation of the CFTC Ownership and Control Reports Rule until the Chairman determines the rule has been amended by adjusting reporting trading volume levels to 300 contracts per day, removing the requirements for natural person controller data, and ensuring the rule does not require entities to violate foreign privacy laws. (10 minutes)

PART A—TEXT OF AMENDMENTS TO H.R. 78 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATERS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 3, strike "and".

Page 3, line 8, strike the period and insert "; and".

Page 3, after line 8, insert the following:

"(E) in consultation with the Office of Ethics Counsel of the Commission, identify any former nongovernmental employer of a Commissioner, Director, Deputy Director, Associate Director, or Assistant Director that would receive direct or indirect benefit from a rule or regulation, analyze the benefits to such employer, and whether the regulation should be amended to address any potential conflict of interest or appearance of a conflict of interest."

Page 6, after line 5, insert the following:

"(5) CONFLICTS OF INTEREST.—The Commission shall identify the employers of any Commissioners, Directors, Deputy Directors, Associate Directors, and Assistant Directors who have left the Commission within five years of the scheduled adoption of the final rule, and whether such employers receive direct or in-

direct benefits, and whether the Commission should amend the rule to address the identified conflict of interest.”.

Page 7, line 19, insert after the period the following: “The assessment plan shall also include an analysis of whether and how any former nongovernmental employer of a Commissioner, Director, Deputy Director, Associate Director, or Assistant Director, or the current employer of a former Commissioner, Director, Deputy Director, Associate Director, or Assistant Director who departed the Commission within five years of the scheduled adoption of the regulation, directly and indirectly benefits from the regulation, and a recommendation as to whether such regulation should be amended to address the identified conflict of interest.”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VELÁZQUEZ OF NEW YORK OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, line 1, insert after “making” the following: “, in addition to being in the interest of protecting investors,”.

Page 5, line 21, insert after the period the following: “Whenever pursuant to this paragraph the Commission is engaged in a review, it shall consider whether an action is necessary or appropriate in the public interest, the protection of investors, and whether the action will promote efficiency, competition, and capital formation.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GREEN OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 10, line 16, strike “and”.

Page 10, line 20, strike the first period and all that follows and insert “; and”.

Page 10, after line 20, insert the following:

“(iv) a regulation promulgated to maintain or support U.S. financial stability or prevent or reduce systemic risk.”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DESAULNIER OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

SEC. 5. DIVESTITURE REQUIREMENT.

The amendment made by section 2 shall not take effect until the Chairman of the Securities and Exchange Commission, and all immediate family members of the Chairman, divests all securities owned by the Chairman and such immediate family members of the Chairman from any financial institution regulated by the Securities and Exchange Commission to ensure that proper and fair rule-making is administered in accordance with this Act.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RASKIN OF MARYLAND OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

SEC. 5. TRAINING REQUIREMENT FOR THE CHAIRMAN AND COMMISSIONERS OF THE SEC.

The amendment made by section 2 shall not take effect until the Chairman and each Commissioner of the Securities and Exchange Commission undergoes effective training on conduct and ethical standards to ensure all actions of the Commission are done in a manner free of conflicts of interest, specifically those related to prior employment at financial institutions and prior legal representation of financial institutions.

PART B—TEXT OF AMENDMENTS TO H.R. 238 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ADERHOLT OF ALABAMA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end of title II the following:

SEC. 213. ELIMINATION OF CERTAIN LEASING AUTHORITY OF THE COMMISSION.

Section 12(b)(3) of the Commodity Exchange Act (7 U.S.C. 16(b)(3)) is amended—

(1) by striking “including, but not limited to,” and inserting “excluding”; and

(2) by adding at the end the following new sentence: “In the case of an existing lease contract entered into under this paragraph, the Commission may not extend the lease term, but may agree to any other contract modification that does not result in any additional cost to the Federal Government.”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCOTT OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title II, add the following:

SEC. 213. REFORM OF THE CUSTOMER PROTECTION FUND.

Section 23(g) of the Commodity Exchange Act (7 U.S.C. 26(g)) is amended—

(1) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking “or fiscal year limitation”;

(B) in subparagraph (A), by striking “; and” and inserting “, without fiscal year limitation;”; and

(C) in subparagraph (B), by striking “thereunder.” and inserting “, the total amount of which shall not exceed \$5,000,000 per fiscal year.”;

(2) in paragraph (3)(A), by striking “unless the balance of the Fund at the time the monetary judgment is collected exceeds \$100,000,000” and inserting “, but only to the extent that the resulting balance of the Fund does not exceed \$50,000,000”; and

(3) by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following:

“(5) REVERSION TO TREASURY.—Notwithstanding the preceding provisions of this subsection, to the extent the balance of the Fund exceeds \$50,000,000, the excess amount shall be

deposited in the Treasury of the United States as miscellaneous receipts.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONAWAY OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 32, after line 3, insert the following:

(L) Section 3a(68)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)(i)) is amended by striking “(47)(B)(x)” and inserting “(48)(B)(x)”.

(M) Section 3C(g)(3)(A)(v) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(3)(A)(v)) is amended by striking “1a(10)” and inserting “1a(11)”.

(N) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(i) in subclause (I), by striking “1a(18)(B)(ii)” and inserting “1a(19)(B)(ii)”;

(ii) in subclause (II), by striking “1a(18)” and inserting “1a(19)”.

(O) Section 15F(h)(5)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(h)(5)(A)(i)) is amended by striking “1a(18)” and inserting “1a(19)”.

Page 50, line 21, strike “1a(10)(C)” and insert “1a(11)(C)”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONAWAY OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 40, line 4, strike “paragraphs (2) and (5) of subsection (a)” and insert “paragraph (1)”.

Add at the end of title III the following:

SEC. 318. REQUIREMENTS RELATED TO POSITION LIMITS.

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

(1) by striking paragraphs (2), (3), (5), and (6); and

(2) by redesignating paragraphs (4) and (7) as paragraphs (2) and (3), respectively.

(b) BONA FIDE HEDGING TRANSACTION DEFINITION.—Section 4a(c)(2)(A)(i) of such Act (7 U.S.C. 6a(c)(2)(A)(i)) is amended by inserting “normally” before “represents”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this section.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DUFFY OF WISCONSIN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end of title III the following:

SEC. 318. PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.

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

“SEC. 4u. PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.

“The Commission is not authorized to compel persons to produce or furnish algorithmic trading source code or similar intellectual

property to the Commission, unless the Commission first issues a subpoena.”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LAMALFA OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title III, insert the following:

SEC. ____ . DETERMINATION OF PREDOMINANT ENGAGEMENT.

Section 2(h)(7)(C) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)), as amended by section 314 of this Act, is amended by adding at the end the following:

“(v) In determining whether a person is predominantly engaged in a business or activity for purposes of clause (i)(VIII), there shall be excluded revenues and assets that are, or result from, any transaction that is entered into solely for purposes of hedging or mitigating commercial risk (as defined by the Commission for purposes of subparagraph (A)(ii)).”.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LUCAS OF OKLAHOMA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title III, insert the following:

SEC. ____ . TREATMENT OF TRANSACTIONS BETWEEN AFFILIATES.

Section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(47)), as so redesignated by section 304(b)(1) of this Act, is amended by adding at the end the following:

“(G) TREATMENT OF TRANSACTIONS BETWEEN AFFILIATES.—

“(i) EXEMPTION FROM SWAP RULES.—An agreement, contract, or transaction described in subparagraphs (A) through (F) shall not be regulated as a swap under this Act if all of the following apply with respect to the agreement, contract, or transaction:

“(I) AFFILIATION.—1 counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, or a third party, directly or indirectly, holds a majority ownership interest in both counterparties.

“(II) FINANCIAL STATEMENTS.—The affiliated counterparty that holds the majority interest in the other counterparty or the third party that, directly or indirectly, holds the majority interests in both affiliated counterparties, reports its financial statements on a consolidated basis under generally accepted accounting principles or International Financial Reporting Standards, or other similar standards, and the financial statements include the financial results of the majority-owned affiliated counterparty or counterparties.

“(ii) REPORTING REQUIREMENT.—If at least 1 counterparty to an agreement, contract, or transaction that meets the requirements of clause (i) is a swap dealer or major swap participant, that counterparty

shall report the agreement, contract, or transaction pursuant to section 4r, within such time period as the Commission may by rule or regulation prescribe—

“(I) to a swap data repository; or

“(II) if there is no swap data repository that would accept the agreement, contract or transaction, to the Commission.

“(iii) RISK MANAGEMENT REQUIREMENT.—If at least 1 counterparty to an agreement, contract, or transaction that meets the requirements of clause (i) is a swap dealer or major swap participant, the agreement, contract, or transaction shall be subject to a centralized risk management program pursuant to section 4s(j) that is reasonably designed to monitor and to manage the risks associated with the agreement, contract, or transaction.

“(iv) VARIATION MARGIN REQUIREMENT.—Affiliated counterparties to an agreement, contract, or transaction that meets the requirements of clause (i) shall exchange variation margin to the extent prescribed under any rule promulgated by the Commission or any prudential regulator pursuant to section 4s(e).

“(v) ANTI-EVASION REQUIREMENT.—An agreement, contract, or transaction that meets the requirements of clause (i) shall not be structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of such Act.”

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HARTZLER OF MISSOURI OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. ____ . DELAY IN FULL IMPLEMENTATION OF THE FINAL RULE ON OWNERSHIP AND CONTROL REPORTING.

The Commodity Futures Trading Commission may not enforce non-compliance with the final rule titled “Ownership and Control Reports, Forms 102/2S, 40/40S, and 71” (78 FR 69178; November 18, 2013) until the Commission votes to approve a final rule that has been amended to—

(1) provide that the reportable trading volume level shall be at least 300 contracts;

(2) provide that the reporting entity shall not be required to provide natural person controller data; and

(3) provide that the reporting entity is not obligated to supply data that violates foreign privacy laws.