

116TH CONGRESS
1ST SESSION

H. R. 4772

To provide for the protection of proprietary information provided to the
Commodity Futures Trading Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2019

Mr. RODNEY DAVIS of Illinois introduced the following bill; which was referred
to the Committee on Agriculture

A BILL

To provide for the protection of proprietary information pro-
vided to the Commodity Futures Trading Commission,
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. SHORT TITLE.**

4 This Act may be cited as the “CFTC Cybersecurity
5 and Data Protection Enhancement Act”.

6 **SEC. 2. PROTECTION OF PROPRIETARY INFORMATION BY**
7 **THE COMMODITY FUTURES TRADING COM-**
8 **MISSION.**

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

(1) in the first proviso of paragraph (1), by striking “customers:” and inserting “customers, or disclose the proprietary information of any person:”; and

(2) by adding at the end the following:

“(4) TREATMENT OF PROPRIETARY INFORMATION.—

“(A) WRITTEN REQUEST; AGREEMENT.—Except as provided in subparagraph (B), the Commission shall not examine, receive, obtain, or otherwise access the proprietary information of any person subject to this Act, unless—

“(i) the Commission has transmitted to the person a written request for the information, which details—

“(I) the records sought by the Commission;

“(II) a reasonable schedule to fulfill the request;

“(III) the method proposed for the Commission to be provided with access to the records;

“(IV) any reasonable requirements for data structures or file formats of the records; and

1 “(V) an explanation of the purpose of
2 the request; and

3 “(ii) the person has agreed to the request.

4 “(B) EXCEPTIONS.—Subparagraph (A) shall
5 not apply with respect to proprietary information of
6 a person if—

7 “(i) the person has been served with a sub-
8 poena compelling the person to provide the
9 Commission with access to the information;

10 “(ii) the information is otherwise required
11 by or under this Act to be disclosed to the Com-
12 mission;

13 “(iii) the information was received from a
14 whistleblower pursuant to section 23;

15 “(iv) the information was lawfully obtained
16 from a foreign or domestic authority in connec-
17 tion with a confidential investigation by the
18 Commission; or

19 “(v) the person has agreed to provide the
20 Commission with access to the information.

21 “(C) OBLIGATIONS OF THE RECIPIENT.—

22 “(i) ACKNOWLEDGEMENT OF RECEIPT OF
23 REQUEST.—Within 3 business days after a per-
24 son receives a request made in accordance with
25 subparagraph (A) or a subsequent communica-

tion from the Commission in relation to the request, the person shall acknowledge to the Commission that the recipient has received the request or communication.

“(ii) RESPONSE TO REQUEST.—Within 10 business days after a person receives such a request or communication, the person shall respond to the request or communication in accordance with subparagraph (D).

“(iii) RETENTION OF REQUESTED RECORDS.—A person who receives such a request shall retain all records identified in the request until the request or any subpoena for the records has been resolved.

“(D) RESPONSE OPTIONS OF THE RECIPIENT.—A person who receives such a request shall—

“(i) agree to, and comply with, the request;

“(ii) request the Commission to provide additional information regarding the request;

“(iii) request the Commission modify any aspect of the request;

“(iv) seek a review of any aspect of the request by the Commission or a division director to whom the authority to conduct such a review has been delegated; or

1 “(v) refuse the request.

2 “(5) ESTABLISHMENT OF RULES FOR SAFE-
3 GUARDING INFORMATION PROVIDED TO THE COMMIS-
4 SION.—

5 “(A) IN GENERAL.—The Commission shall pre-
6 scribe rules regarding—

7 “(i) the retention of information provided
8 to the Commission under this Act, including—

9 “(I) the manner of retention;

10 “(II) the duration of retention, which
11 shall ensure that information is retained
12 for only so long as is necessary to carry
13 out this Act or other Federal law; and

14 “(III) the process for the return or
15 destruction of the information, as appro-
16 priate; and

17 “(ii) access to information provided to the
18 Commission under this Act, including—

19 “(I) limitations on access to relevant,
20 essential individuals; and

21 “(II) additional limitations on disclo-
22 sure by the individuals, including after
23 leaving a position at the Commission.

1 “(B) INCORPORATION OF BEST PRACTICES.—

2 The rules shall incorporate best practices regard-
3 ing—

4 “(i) data collection;

5 “(ii) data access;

6 “(iii) data retention;

7 “(iv) physical security; and

8 “(v) information security and data protec-
9 tion, including cybersecurity.

10 “(6) PROPRIETARY INFORMATION DEFINED.—In

11 this subsection, the term ‘proprietary information’ means
12 sensitive, non-public information of a person, including—

13 “(A) trading strategies;

14 “(B) analytical or research methodologies;

15 “(C) trading activity in asset classes and not
16 subject to this Act;

17 “(D) physical and cyber vulnerabilities; and

18 “(E) computer hardware or software containing
19 intellectual property.”.

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