

114TH CONGRESS
2D SESSION

S. 3118

To amend the Commodity Exchange Act to clarify which fees the Commodity Futures Trading Commission may assess and collect, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2016

Ms. WARREN (for herself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to clarify which fees the Commodity Futures Trading Commission may assess and collect, 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 “Derivatives Oversight
5 and Taxpayer Protection Act”.

1 **TITLE I—STRENGTHENING**
2 **OVERSIGHT AND ENFORCEMENT**

3 **SEC. 101. FEES TO RECOVER COSTS.**

4 (a) IN GENERAL.—The Commodity Exchange Act is
5 amended by inserting after section 10 (7 U.S.C. 17) the
6 following:

7 **“SEC. 11. FEES TO RECOVER COSTS.**

8 “(a) RECOVERY OF CERTAIN COSTS OF ANNUAL AP-
9 PROPRIATION.—

10 “(1) IN GENERAL.—Effective beginning Octo-
11 ber 1, 2016, so as to recover the costs to the Fed-
12 eral Government of the annual appropriation to the
13 Commission by Congress, the Commission shall as-
14 sess and collect fees under this subsection.

15 “(2) REQUIREMENTS.—Subject to paragraph
16 (3), the Commission may—

17 “(A) assess fees to recover the costs of the
18 regulatory services provided by the Commission;
19 and

20 “(B) assess fees from registered entities
21 and persons registered under this Act.

22 “(3) SERVICE FEES.—The Commission may as-
23 sess fees to recover the costs of the following regu-
24 latory services provided by the Commission:

1 “(A) Designated contract market compli-
2 ance examinations.

3 “(B) Foreign board of trade registration
4 reviews.

5 “(C) Swap execution facility designation
6 reviews.

7 “(D) Swap data repository registration re-
8 views.

9 “(E) Designated contract market designa-
10 tion reviews.

11 “(F) Swap execution facility compliance
12 examinations.

13 “(G) Swap data repository compliance re-
14 views.

15 “(H) Designated contract market contract
16 review and approvals.

17 “(I) Swap execution facility contract re-
18 view and approvals.

19 “(J) Designated contract market contract
20 certification and rule reviews.

21 “(K) Swap execution facility contract cer-
22 tification and rule reviews.

23 “(L) Swap data repository rule reviews.

24 “(M) Reviews of mergers, transfers, and
25 other action requests from designated contract

1 markets, swap execution facilities, and swap
2 data repositories.

3 “(N) Designated self-regulatory organiza-
4 tion financial surveillance reviews.

5 “(O) Registered futures association compli-
6 ance program reviews.

7 “(P) Derivatives clearing organization re-
8 views.

9 “(Q) Futures commission merchant exami-
10 nations.

11 “(R) Registered foreign exchange dealer
12 examinations.

13 “(S) Swap dealer registration reviews.

14 “(T) Swap dealer examinations.

15 “(U) Other entity registration, reviews, or
16 examinations, or other regulatory services pro-
17 vided by the Commission.

18 “(4) FEE RATES.—Fees assessed shall—

19 “(A) be reasonably related to the cost to
20 the Commission of providing the services of the
21 Commission;

22 “(B) take into consideration the full-time
23 equivalent number of employees performing the
24 services, overhead costs, and other factors that

1 the Commission determines are necessary in the
2 public interest;

3 “(C) support market access for smaller
4 market participants hedging or mitigating com-
5 mercial or agricultural risk, including farmers
6 and ranchers; and

7 “(D) minimize negative impacts on market
8 liquidity and maintain the efficiency, competi-
9 tiveness, and financial integrity of futures and
10 swaps markets in the United States.

11 “(5) COLLECTION OF FEES.—The Commission
12 shall collect fees paid in accordance with paragraph
13 (2) in a manner and within such time as determined
14 by the Commission.

15 “(b) PUBLICATION.—Not later than 60 days after the
16 date on which a law providing a regular appropriation to
17 the Commission for a fiscal year is enacted, the Commis-
18 sion shall publish in the Federal Register—

19 “(1) notices of the fee rates for the fiscal year,
20 including any estimates or projections on which the
21 fees are based; and

22 “(2) a schedule of fees for the fiscal year, in-
23 cluding an explanation of the method used for calcu-
24 lating applicable fee rates.

25 “(c) DEPOSIT OF FEES.—

1 “(1) OFFSETTING COLLECTIONS.—Fees col-
2 lected under subsection (a) for any fiscal year—

3 “(A) shall be deposited and credited as off-
4 setting collections to the account providing ap-
5 propriations to the Commission; and

6 “(B) except as provided in subsection (e),
7 shall not be collected or available for obligation
8 for any fiscal year except to the extent provided
9 in advance in appropriation Acts.

10 “(2) GENERAL REVENUES PROHIBITED.—No
11 fees collected under subsection (a) shall be deposited
12 and credited as general revenue of the Treasury.

13 “(d) FEE ORDERS.—

14 “(1) ANNUAL ADJUSTMENT.—For each fiscal
15 year, the Commission shall by order set the fees ap-
16 plicable under subsection (a) for the fiscal year at
17 rates that are reasonably likely to produce aggregate
18 fee collections under this section that are equal to
19 the costs to the Federal Government of the annual
20 appropriation to the Commission by Congress.

21 “(2) MID-YEAR ADJUSTMENT.—

22 “(A) IN GENERAL.—For each fiscal year,
23 the Commission shall determine, not later than
24 March 1 of the fiscal year, whether, based on
25 the actual fees collected during the first 5

1 months of the fiscal year, the collections gen-
2 erated under the fee rates determined under
3 paragraph (1) for the fiscal year are reasonably
4 likely to be 10 percent (or more) greater or less
5 than the annual appropriation to the Commis-
6 sion for the fiscal year.

7 “(B) ADJUSTMENT.—

8 “(i) IN GENERAL.—If the Commission
9 makes an affirmative determination, the
10 Commission shall by order, not later than
11 March 1, adjust the fees for the fiscal year
12 to rates that are reasonably likely to
13 produce aggregate fee collections under
14 this section that are equal to the cost to
15 the Federal Government of the annual ap-
16 propriation to the Commission by Con-
17 gress.

18 “(ii) FACTORS.—The fee rates shall
19 be assessed based on the same factors de-
20 scribed in subsection (a).

21 “(e) LAPSE OF APPROPRIATION.—If on the first day
22 of a fiscal year a regular appropriation to the Commission
23 has not been enacted, the Commission shall continue to
24 collect (as offsetting collections) the fees and assessments
25 under subsection (a) at the rates in effect on September

1 30 of the preceding fiscal year, until 90 days after the
 2 date a regular appropriation is enacted.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 2(d) of the Commodity Exchange
 5 Act (7 U.S.C. 2(d)) is amended by striking “and 9”
 6 and inserting “9, and 11”.

7 (2) Section 4(c)(1)(A)(i)(I) of the Commodity
 8 Exchange Act (7 U.S.C. 6(c)(1)(A)(i)(I)) is amended
 9 by inserting “11,” after “8e,”.

10 (3) Section 15(a)(3) of the Commodity Ex-
 11 change Act (7 U.S.C. 19(a)(3)) is amended by add-
 12 ing at the end the following:

13 “(D) An action under section 11.”.

14 **SEC. 102. CIVIL PENALTIES AND FINES UNDER THE COM-**
 15 **MODITY EXCHANGE ACT AND RELATED EN-**
 16 **FORCEMENT ACTIONS.**

17 (a) CIVIL PENALTIES GENERALLY.—Section
 18 6(c)(10) of the Commodity Exchange Act (7 U.S.C. 9(10))
 19 is amended by striking subparagraph (C) and inserting
 20 the following:

21 “(C) assess such person—

22 “(i) a civil penalty of not more than
 23 an amount equal to the greater of—

1 “(I) \$1,000,000, in the case of a
2 person who is an individual, for each
3 violation;

4 “(II) \$10,000,000, in the case of
5 any person other than an individual,
6 for each violation;

7 “(III) triple the monetary gain to
8 the person and all other persons act-
9 ing in concert with the person, for
10 each such violation; or

11 “(IV) triple the total amount of
12 losses to persons proximately caused
13 by each such violation; or

14 “(ii) a civil penalty of triple the max-
15 imum amount otherwise available under
16 clause (i) if the person, within 5 years pre-
17 ceding the violation, has been—

18 “(I) found in a proceeding
19 brought by the Commission, or by
20 agreement of settlement to which the
21 Commission is a party, to have reck-
22 lessly, knowingly, or willfully violated
23 any provision of this Act or of the
24 rules, regulations, or orders of the
25 Commission thereunder;

1 “(II) found in a proceeding
2 brought by the Securities and Ex-
3 change Commission, or by agreement
4 of settlement to which the Securities
5 and Exchange Commission is a party,
6 to have recklessly, knowingly, or will-
7 fully violated any provision of the Se-
8 curities Act of 1933 (15 U.S.C. 77a
9 et seq.), the Securities Exchange Act
10 of 1934 (15 U.S.C. 78a et seq.), the
11 Investment Company Act of 1940 (15
12 U.S.C. 80a-1 et seq.), or the Invest-
13 ment Advisers Act of 1940 (15 U.S.C.
14 80b-1 et seq.), or of the rules, regula-
15 tions, or orders of the Securities and
16 Exchange Commission thereunder;

17 “(III) found in a proceeding
18 brought by the Federal Energy Regu-
19 latory Commission, or by agreement
20 of settlement to which the Federal
21 Energy Regulatory Commission is a
22 party, to have recklessly, knowingly,
23 or willfully violated any provision of
24 the Federal Power Act (16 U.S.C.
25 792 et seq.), the Natural Gas Act (15

1 U.S.C. 717 et seq.), the Public Utility
2 Regulatory Policies Act of 1978 (16
3 U.S.C. 2601 et seq.), the Natural Gas
4 Policy Act of 1978 (15 U.S.C. 3301
5 et seq.), or the rules, regulations, or
6 orders of the Federal Energy Regu-
7 latory Commission issued thereunder;

8 “(IV) convicted of any criminal
9 violation of this Act or of the rules,
10 regulations, or orders of the Commis-
11 sion thereunder;

12 “(V) convicted of any criminal
13 violation of the Securities Act of 1933
14 (15 U.S.C. 77a et seq.), the Securities
15 Exchange Act of 1934 (15 U.S.C. 78a
16 et seq.), the Investment Company Act
17 of 1940 (15 U.S.C. 80a–1 et seq.), or
18 the Investment Advisers Act of 1940
19 (15 U.S.C. 80b–1 et seq.), or of the
20 rules, regulations, or orders of the Se-
21 curities and Exchange Commission
22 thereunder; or

23 “(VI) convicted of any other
24 criminal offense that involves any con-
25 duct, transaction, advice or activity

1 related to any commodity interest, as
2 that term is defined by the Commis-
3 sion, or security-based swap; and”.

4 (b) FINES AND CIVIL PENALTIES RELATED TO VIO-
5 LATION OF CEASE AND DESIST ORDER.—Section 6(d) of
6 the Commodity Exchange Act (7 U.S.C. 13b) is amend-
7 ed—

8 (1) by inserting “(1)” after “(d)”;

9 (2) by striking “\$140,000 or triple the mone-
10 tary gain to such person,” and inserting “(A)
11 \$1,000,000, in the case of a person who is an indi-
12 vidual, for each violation, (B) \$10,000,000, in the
13 case of any person other than an individual, for each
14 violation, (C) triple the monetary gain to the person
15 and all other persons acting in concert with the per-
16 son, for each such violation, or (D) triple the total
17 amount of losses to persons proximately caused by
18 each such violation,”; and

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

20 “(2) A person may be held liable for a civil penalty
21 in triple the amount otherwise available for a violation
22 under this subsection if the person, within 5 years pre-
23 ceding such violation, has been—

24 “(A) found in a proceeding brought by the
25 Commission, or by agreement of settlement to which

1 the Commission is a party, to have recklessly, know-
2 ingly, or willfully violated any provision of this Act
3 or the rules, regulations, or orders of the Commis-
4 sion thereunder;

5 “(B) found in a proceeding brought by the Se-
6 curities and Exchange Commission, or by agreement
7 of settlement to which the Securities and Exchange
8 Commission is a party, to have recklessly, know-
9 ingly, or willfully violated any provision of the Secu-
10 rities Act of 1933 (15 U.S.C. 77a et seq.), the Secu-
11 rities Exchange Act of 1934 (15 U.S.C. 78a et seq.),
12 the Investment Company Act of 1940 (15 U.S.C.
13 80a–1 et seq.), or the Investment Advisers Act of
14 1940 (15 U.S.C. 80b–1 et seq.), or of the rules, reg-
15 ulations, or orders of the Securities and Exchange
16 Commission thereunder;

17 “(C) found in a proceeding brought by the Fed-
18 eral Energy Regulatory Commission, or by agree-
19 ment of settlement to which the Federal Energy
20 Regulatory Commission is a party, to have reck-
21 lessly, knowingly, or willfully violated any provision
22 of the Federal Power Act (16 U.S.C. 792 et seq.),
23 the Natural Gas Act (15 U.S.C. 717 et seq.), the
24 Public Utility Regulatory Policies Act of 1978 (16
25 U.S.C. 2601 et seq.), the Natural Gas Policy Act of

1 1978 (15 U.S.C. 3301 et seq.), or the rules, regula-
2 tions, or orders of the Federal Energy Regulatory
3 Commission issued thereunder;

4 “(D) convicted of any criminal violation of this
5 Act or the rules, regulations, or orders of the Com-
6 mission thereunder;

7 “(E) convicted of any criminal violation of the
8 Securities Act of 1933 (15 U.S.C. 77a et seq.), the
9 Securities Exchange Act of 1934 (15 U.S.C. 78a et
10 seq.), the Investment Company Act of 1940 (15
11 U.S.C. 80a–1 et seq.), or the Investment Advisers
12 Act of 1940 (15 U.S.C. 80b–1 et seq.), or of the
13 rules, regulations, or orders of the Securities and
14 Exchange Commission thereunder; or

15 “(F) convicted of any other criminal offense
16 that involves any conduct, transaction, advice or ac-
17 tivity related to any commodity interest, as that
18 term is defined by the Commission, or security-based
19 swap.”.

20 (c) NONENFORCEMENT OF RULES OF GOVERNMENT
21 OR OTHER VIOLATIONS.—Section 6b of the Commodity
22 Exchange Act (7 U.S.C. 13a) is amended—

23 (1) in the first sentence, by striking “\$500,000
24 for each such violation, or, in any case of manipula-
25 tion or attempted manipulation in violation of sec-

1 tion 6(c), 6(d), or 9(a)(2), a civil penalty of not
2 more than \$1,000,000 for each such violation” and
3 inserting “(A) \$1,000,000, in the case of a person
4 who is an individual, for each violation, (B)
5 \$10,000,000, in the case of any person other than
6 an individual, for each violation, (C) triple the mone-
7 tary gain to the person and all other persons acting
8 in concert with the person, for each such violation,
9 or (D) triple the total amount of losses to persons
10 proximately caused by each such violation, and such
11 civil penalty shall be assessed for each violation on
12 which a failure to enforce or other violation occurs
13 or has occurred; provided that such registered entity,
14 director, officer, agent, or employee may be assessed
15 a civil penalty of triple the amount otherwise avail-
16 able if the person, within 5 years of such violation,
17 has been (i) found in a proceeding brought by the
18 Commission, or by agreement of settlement to which
19 the Commission is a party, to have recklessly, know-
20 ingly, or willfully violated any provision of this Act
21 or the rules, regulations, or orders of the Commis-
22 sion thereunder, (ii) found in a proceeding brought
23 by the Securities and Exchange Commission, or by
24 agreement of settlement to which the Securities and
25 Exchange Commission is a party, to have recklessly,

1 knowingly, or willfully violated any provision of the
2 Securities Act of 1933 (15 U.S.C. 77a et seq.), the
3 Securities Exchange Act of 1934 (15 U.S.C. 78a et
4 seq.), the Investment Company Act of 1940 (15
5 U.S.C. 80a–1 et seq.), or the Investment Advisers
6 Act of 1940 (15 U.S.C. 80b–1 et seq.), or of the
7 rules, regulations, or orders of the Securities and
8 Exchange Commission thereunder, (iii) found in a
9 proceeding brought by the Federal Energy Regu-
10 latory Commission, or by agreement of settlement to
11 which the Federal Energy Regulatory Commission is
12 a party, to have recklessly, knowingly, or willfully
13 violated any provision of the Federal Power Act (16
14 U.S.C. 792 et seq.), the Natural Gas Act (15 U.S.C.
15 717 et seq.), the Public Utility Regulatory Policies
16 Act of 1978 (16 U.S.C. 2601 et seq.), the Natural
17 Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), or
18 the rules, regulations, or orders of the Federal En-
19 ergy Regulatory Commission issued thereunder, (iv)
20 convicted of any criminal violation of this Act or the
21 rules, regulations, or orders of the Commission
22 thereunder, (v) convicted of any criminal violation of
23 the Securities Act of 1933 (15 U.S.C. 77a et seq.),
24 the Securities Exchange Act of 1934 (15 U.S.C. 78a
25 et seq.), the Investment Company Act of 1940 (15

1 U.S.C. 80a–1 et seq.), or the Investment Advisers
2 Act of 1940 (15 U.S.C. 80b–1 et seq.), or of the
3 rules, regulations, or orders of the Securities and
4 Exchange Commission thereunder, or (vi) convicted
5 of any other criminal offense that involves any con-
6 duct, transaction, advice or activity related to any
7 commodity interest, as that term is defined by the
8 Commission, or security-based swap”; and

9 (2) in the second sentence, by striking
10 “\$500,000” and inserting “\$1,000,000”.

11 (d) ACTION TO ENJOIN OR RESTRAIN VIOLA-
12 TIONS.—Section 6e(d) of the Commodity Exchange Act (7
13 U.S.C. 13a–1(d)) is amended—

14 (1) in paragraph (1), in the matter preceding
15 subparagraph (A), by inserting “a civil penalty in
16 the amount of” after “violation”; and

17 (2) by striking subparagraphs (A) and (B) of
18 paragraph (1) and inserting the following:

19 “(A) not more than the greater of—

20 “(i) \$1,000,000, in the case of a per-
21 son who is an individual, for each violation;

22 “(ii) \$10,000,000, in the case of any
23 person other than an individual, for each
24 violation;

1 “(iii) triple the monetary gain to the
2 person and all other persons acting in con-
3 cert with the person, for each such viola-
4 tion; or

5 “(iv) triple the total amount of losses
6 by persons proximately caused by each
7 such violation; or

8 “(B) triple the maximum amount other-
9 wise available under subparagraph (A) if the
10 person, within 5 years preceding the violation,
11 has been—

12 “(i) found in a proceeding brought by
13 the Commission, or by agreement of settle-
14 ment to which the Commission is a party,
15 to have recklessly, knowingly, or willfully
16 violated any provision of this Act or of the
17 rules, regulations, or orders of the Com-
18 mission thereunder;

19 “(ii) found in a proceeding brought by
20 the Securities and Exchange Commission,
21 or by agreement of settlement to which the
22 Securities and Exchange Commission is a
23 party, to have recklessly, knowingly, or
24 willfully violated any provision of the Secu-
25 rities Act of 1933 (15 U.S.C. 77a et seq.),

1 the Securities Exchange Act of 1934 (15
2 U.S.C. 78a et seq.), the Investment Com-
3 pany Act of 1940 (15 U.S.C. 80a–1 et
4 seq.), or the Investment Advisers Act of
5 1940 (15 U.S.C. 80b–1 et seq.), or of the
6 rules, regulations, or orders of the Com-
7 mission thereunder;

8 “(iii) found in a proceeding brought
9 by the Federal Energy Regulatory Com-
10 mission, or by agreement of settlement to
11 which the Federal Energy Regulatory
12 Commission is a party, to have recklessly,
13 knowingly, or willfully violated any provi-
14 sion of the Federal Power Act (16 U.S.C.
15 792 et seq.), the Natural Gas Act (15
16 U.S.C. 717 et seq.), the Public Utility Reg-
17 ulatory Policies Act of 1978 (16 U.S.C.
18 2601 et seq.), the Natural Gas Policy Act
19 of 1978 (15 U.S.C. 3301 et seq.), or the
20 rules, regulations, or orders of the Federal
21 Energy Regulatory Commission issued
22 thereunder;

23 “(iv) convicted of any criminal viola-
24 tion of this Act or of the rules, regulations,
25 or orders of the Commission thereunder;

1 “(v) convicted of any criminal viola-
2 tion of the Securities Act of 1933 (15
3 U.S.C. 77a et seq.), the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78a et
5 seq.), the Investment Company Act of
6 1940 (15 U.S.C. 80a–1 et seq.), or the In-
7 vestment Advisers Act of 1940 (15 U.S.C.
8 80b–1 et seq.), or of the rules, regulations,
9 or orders of the Securities and Exchange
10 Commission thereunder; or

11 “(vi) convicted of any other criminal
12 offense that involves any conduct, trans-
13 action, advice or activity related to any
14 commodity interest, as that term is defined
15 by the Commission, or security-based
16 swap.”.

17 (e) CRIMINAL PENALTIES.—Section 9(a) of the Com-
18 modity Exchange Act (7 U.S.C. 13(a)) is amended in the
19 matter preceding paragraph (1) by inserting after
20 “\$1,000,000” the following: “in the case of an individual
21 for each violation or \$10,000,000 in the case of any person
22 other than an individual for each violation,”.

23 (f) STATUTE OF LIMITATIONS.—Section 9 of the
24 Commodity Exchange Act (7 U.S.C. 13) is amended by
25 adding at the end the following:

1 “(f) STATUTE OF LIMITATIONS.—

2 “(1) IN GENERAL.—An action, suit or pro-
3 ceeding for the enforcement of any civil fine, pen-
4 alty, or forfeiture, pecuniary or otherwise, shall not
5 be entertained unless commenced within 10 years
6 after the date when the cause of action first accrued
7 if, within the same period, the offender or the prop-
8 erty is found within the United States in order that
9 proper service may be made thereon.

10 “(2) ACCRUAL.—A cause of action accrues as
11 of the date the Commission learns of facts sufficient
12 to give the Commission notice that a violation has
13 occurred.”.

14 (g) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date that is 90 days
16 after the date of the enactment of this Act.

17 **SEC. 103. CLOSING THE CROSS-BORDER LOOPHOLE.**

18 Section 2(i) of the Commodity Exchange Act (7
19 U.S.C. 2(i)) is amended—

20 (1) by redesignating paragraphs (1) and (2) as
21 subparagraphs (A) and (B), respectively, and adjust-
22 ing the margins accordingly;

23 (2) in the matter preceding subparagraph (A),
24 as so redesignated, by striking “The provisions” and
25 inserting the following:

1 “(1) IN GENERAL.—The provisions”;
2 (3) in paragraph (1), as so designated—
3 (A) in subparagraph (A), as so redesign-
4 dated, by striking “or” at the end;
5 (B) in subparagraph (B), as so redesign-
6 dated, by striking the period at the end and in-
7 serting “; or”; and
8 (C) by adding at the end the following:
9 “(C) except as provided in paragraph (2),
10 involve a swaps transaction in which a financial
11 entity that is domiciled or organized in the
12 United States, or a subsidiary entity that is
13 majority owned or controlled by a financial enti-
14 ty that is domiciled or organized in the United
15 States, bears swaps-related risks.”; and
16 (4) by adding at the end the following:
17 “(2) SUBSTITUTED COMPLIANCE.—Notwith-
18 standing paragraph (1)(C), the Commission may
19 allow a swaps transaction that involves a subsidiary
20 entity that is majority owned or controlled by a fi-
21 nancial entity that is domiciled or organized in the
22 United States to be conducted in whole or in part
23 under the rules and oversight of a foreign jurisdic-
24 tion if the Commission determines, by rule, that—

1 “(A) the applicable elements of the foreign
2 rules are substantively equivalent to, or offer
3 greater protection than, the applicable rules in
4 the United States; and

5 “(B) enforcement of and oversight with re-
6 spect to the rules described in subparagraph
7 (A) is not less stringent than enforcement of
8 and oversight with respect to the applicable
9 rules in the United States.”.

10 **SEC. 104. PROVIDING OVERSIGHT OF FOREIGN EXCHANGE**
11 **SWAPS.**

12 Section 1a(47) of the Commodity Exchange Act (7
13 U.S.C. 1a(47)) is amended by striking subparagraph (E)
14 and inserting the following:

15 “(E) TREATMENT OF FOREIGN EXCHANGE
16 SWAPS AND FORWARDS.—Foreign exchange
17 swaps and foreign exchange forwards shall be
18 considered swaps under this paragraph.”.

19 **SEC. 105. IMPROVING DATA SHARING BETWEEN REGU-**
20 **LATORS.**

21 Section 21 of the Commodity Exchange Act (7 U.S.C.
22 24a) is amended by adding at the end the following:

23 “(i) DATA SHARING.—The Commission shall make
24 data with respect to any person that is required to be reg-

1 istered as a swap data repository under this section avail-
2 able to any other financial regulatory agency—

3 “(1) upon request; and

4 “(2) as soon as is practicable after receiving a
5 request.”.

6 **SEC. 106. IMPROVING DATA QUALITY AND ACCESSIBILITY.**

7 Section 4s of the Commodity Exchange Act (7 U.S.C.
8 6s) is amended by adding at the end the following:

9 “(m) DATA QUALITY AND ACCESSIBILITY.—

10 “(1) IN GENERAL.—Not later than 2 years
11 after the date of enactment of this subsection, the
12 Commission and the Securities and Exchange Com-
13 mission shall determine whether the data that swap
14 dealers registered under this section provide to swap
15 data repositories—

16 “(A) are accurate; and

17 “(B) use consistent and standardized for-
18 mats that allow that data to be aggregated and
19 analyzed by regulators.

20 “(2) PENALTY.—The Commission shall revoke
21 the license of any swap dealer that the Commission
22 and the Securities and Exchange Commission has
23 found violated paragraph (1).”.

1 **TITLE II—SHIFTING DERIVA-**
 2 **TIVES RISKS FROM TAX-**
 3 **PAYERS TO FINANCIAL INSTI-**
 4 **TUTIONS**

5 **SEC. 201. ENDING FAVORABLE TREATMENT.**

6 Section 560 of title 11, United States Code, is re-
 7 pealed.

8 **SEC. 202. REVERSING THE CFTC’S INTERAFFILIATE MAR-**
 9 **GIN EXCEPTION.**

10 Not later than 180 days after the date of enactment
 11 of this Act, the Commodity Futures Trading Commission
 12 shall modify the rule on margin requirements entitled
 13 “Margin Requirements for Uncleared Swaps for Swap
 14 Dealers and Major Swap Participants” (81 Fed. Reg. 636
 15 (January 6, 2016)) to require entities to collect margin
 16 in all interaffiliate swaps.

17 **SEC. 203. BANNING CLOSEOUT NETTING FOR CAPITAL PUR-**
 18 **POSES; ENSURING MINIMUM CAPITAL.**

19 Section 165(b)(1) of the Financial Stability Act of
 20 2010 (12 U.S.C. 5365(b)(1)) is amended by adding at the
 21 end the following:

22 “(C) CONSOLIDATED ASSETS.—

23 “(i) DEFINITION.—In this subpara-
 24 graph, the term ‘covered financial institu-
 25 tion’ means—

1 “(I) a swap dealer registered
2 under section 4s of the Commodity
3 Exchange Act (7 U.S.C. 6s);

4 “(II) a security-based swap deal-
5 er, as defined in section 3(a) of the
6 Securities Exchange Act of 1934 (15
7 U.S.C. 78c(a));

8 “(III) an insured depository in-
9 stitution, as defined in section 3 of
10 the Federal Deposit Insurance Act
11 (12 U.S.C. 1813);

12 “(IV) a nonbank financial com-
13 pany supervised by the Board of Gov-
14 ernors;

15 “(V) a major swap participant,
16 as defined in section 1a of the Com-
17modity Exchange Act (7 U.S.C. 1a);

18 “(VI) a bank holding company
19 described in subsection (a); and

20 “(VII) any subsidiary of a bank
21 holding company described in sub-
22 section (a).

23 “(ii) IN GENERAL.—For purposes of
24 determining the amount of capital required
25 under the risk-based capital requirements

1 and leverage limits required under sub-
2 paragraph (A)(i), consolidated assets shall
3 include the fair value and potential future
4 exposure of derivatives exposures, without
5 recognizing the benefits of any netting ar-
6 rangement, unless the netting arrange-
7 ment—

8 “(I)(aa) is documented under a
9 formal master netting agreement or
10 other formal arrangement with a de-
11 rivatives clearing organization reg-
12 istered with a primary Federal finan-
13 cial regulatory agency; and

14 “(bb) meets financial standards
15 approved by the Board of Governors
16 and the Corporation; or

17 “(II)(aa) is documented under a
18 formal master netting agreement with
19 a counterparty; and

20 “(bb) requires the covered finan-
21 cial institution, as a matter of ongoing
22 business practice, to—

23 “(AA) exchange collateral
24 daily for the fulfillment of vari-

1 ation margin requirements on a
2 net basis; and

3 “(BB) fulfill all contractual
4 payment requirements, including
5 payments for contract determina-
6 tion, on a net basis, with such
7 net exchange of collateral and
8 payments encompassing all de-
9 rivatives exposures covered by the
10 formal arrangement.

11 “(D) TOTAL DERIVATIVES RISK EXPO-
12 SURES.—For purposes of determining the
13 amount of capital required under leverage limits
14 required under subparagraph (A)(i)—

15 “(i) total derivatives risk exposures
16 shall not be assessed at a level less than 2
17 percent of total gross notional derivatives
18 contracts to which the covered financial in-
19 stitution, as defined in subparagraph
20 (C)(i), is a party; and

21 “(ii) such leverage limits shall not
22 vary for derivatives exposures as compared
23 to other assets.”.

1 **SEC. 204. REPORT ON CLEARINGHOUSES.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of enactment of this Act, the Commodity Futures
4 Trading Commission, the Office of the Comptroller of the
5 Currency, the Federal Deposit Insurance Corporation, and
6 the Board of Governors of the Federal Reserve System
7 shall jointly publish a report that answers the following
8 questions:

9 (1) Are prefunded default funds at major clear-
10 inghouses, along with prefunded liquidity resources,
11 adequate to absorb losses and continue operations in
12 the event of the failure of multiple large clearing
13 members during a systemic stress event affecting the
14 financial system as a whole?

15 (2) Are capital and liquidity resources associ-
16 ated with cleared derivatives at clearinghouse mem-
17 bers adequate to meet clearinghouse capital and
18 margin calls that might occur during a systemic
19 stress event associated with the failure of multiple
20 large clearing members during a systemic stress
21 event?

22 (3) Based on planned resource levels at clear-
23 inghouses and major clearing members, in what
24 ways might a lack of prefunded resources at a clear-
25 ing house, or the level of member capital and liquid-
26 ity resources associated with cleared derivatives, con-

1 tribute to increased financial system stress during a
2 systemic event?

3 (4) How would the answers to the questions in
4 paragraphs (1) through (3) be affected if portfolio
5 correlation levels in clearinghouse margin and de-
6 fault fund models were significantly lower than those
7 assumed in current risk models?

8 (5) Are such lower correlation levels possible in
9 a stress event?

10 (6) Are capital levels held by clearinghouses
11 currently adequate to align risk management incen-
12 tives between clearinghouses themselves, their mem-
13 bers, and end user clients of their members?

14 (7) Do the fiduciary duties of clearinghouse
15 management to their stockholders in any way con-
16 flict with the public interest?

17 (b) POLICY RECOMMENDATIONS.—The report re-
18 quired under subsection (a) shall contain policy rec-
19 ommendations associated with the answers to the ques-
20 tions posed under paragraphs (1) through (7) of that sub-
21 section.

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