

H.R. 4413
Section-by-Section

Sec. 1 is the short title of the bill.

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Title I – Customer Protections

Sec. 101 is the short title of title I.

Sec. 102 amends section 17 of the Commodity Exchange Act (CEA) to require that each member of a registered futures association (NFA) maintain written policies concerning the residual interest in segregated accounts, cleared swaps collateral accounts, and secured amount funds in foreign futures and options customer accounts. The member must also establish rules to govern the withdrawal, transfer or disbursement by a futures commission merchant (FCM) of the same funds.

Sec. 103 amends section 17 of the CEA to require an FCM to use an electronic system to report financial and operational information to the NFA in accordance with such terms and conditions that the NFA establishes. A registered FCM must require any depository institution that holds segregated accounts and the customer secured amount funds to report balances to the NFA. If the depository institution will not report the fund balances, the registered member cannot use the depository institution to hold customer segregated funds or secured amount funds.

Sec. 104 amends section 17 of the CEA to require an FCM to immediately report to the CFTC and the NFA when the funds in a customer's account, segregated account or secured amount account are less than required by regulation. It also requires the chief compliance officer of the FCM to file with the Commission a yearly assessment of the FCM's internal compliance programs.

Sec. 105 amends section 4d of the CEA to allow an FCM one business day after a trade to comply with the amounts of money, securities and property to be held in a customer account required by section 4d(a)(2) of the CEA.

Sec. 106 amends section 20(a) of the CEA to allow the use of the cash, securities or other property of a bankrupt commodity broker to satisfy any deficient public customer account.

Sec. 107 requires the CFTC to report to the authorizing committees on high-frequency trading on markets under its jurisdiction. The report shall examine the technology, personnel and other resources the Commission may require to monitor high-frequency trading; the role the trading plays in providing market liquidity; whether the technology creates discrepancies in the marketplace; and whether the Commission's existing authority protects the market and fosters transparency.

Title II

Sec. 201 is the short title of title II.

Sec. 202 amends section 12(d) of the CEA to reauthorize the CFTC through FY 2018.

Sec. 203 amends section 15(a) of the CEA to harmonize the cost benefit requirements of the CFTC with those of executive order 13563. The section also requires that the cost benefit analysis be performed by the Chief Economist and published within the proposed rule along with the rule's statutory justification.

Sec. 204 amends section 2(a) of the CEA to require that each division of the CFTC have a Director that is hired by the Commission, and performs functions as the Commission may prescribe.

Sec. 205 amends section 2(a) of the CEA to establish the Office of the Chief Economist. The structure and powers of the Office of the Chief Economist mirrors the structure and powers of the General Counsel.

Sec. 206 amends section 2(a)(12) of the CEA to require 7 days notice to the Commission before any division or office of the Commission issues an interpretive rule of general applicability, a statement of general policy, response to a petition for guidance, or an exemptive, a no-action, or an interpretive letter. After receiving notice, any member of the Commission may request a meeting of the Commission to further consider the staff-proposed action, and if the Commission decides to hold the meeting by majority vote, the matter may not be issued until the meeting has concluded. The 7 day notice requirement can be waived by a majority vote of the Commission if the Commission determines that requiring such notice would be impracticable, unnecessary, or contrary to the public interest.

Sec. 207 amends section 2(a) of the CEA to require the Commission to file with the authorizing committees a strategic technology plan every 5 years. The plan shall include a detailed technology strategy focused on market surveillance and risk detection, and must include a detailed accounting of how the funds provided for technology will be used.

Sec. 208 amends section 2(a)(12) of the CEA to require the Commission staff, led by the Chief Economist, to develop internal risk control mechanisms to safeguard the storage and privacy of market data by the Commission. Special attention should be given to market data sharing agreements and academic research performed at the Commission using market data. The Commission shall report to the authorizing committees on progress made in implementing the internal risk controls 60 days after enactment, and again 120 days after enactment of the Act.

Sec. 209 amends section 6(c)(5) of the CEA to require that subpoenas issued by the Commission comply with the common law standards set forth by the United States Supreme Court. A subpoena authorized to be issued by the Commission shall state in good faith the purpose of the investigation, shall require only information reasonably relevant to the purpose of the

investigation and shall be for a finite period. A subpoena may be renewed only by Commission vote.

Sec. 210 amends section 2(a)(12) of the CEA to require that all proposed rules include a plan for when and for how long a comment period will be open, and when compliance with the final rule will be required.

Sec. 211 amends section 2(a)(12) to apply the notice and comment provisions of the Administrative Procedure Act to guidance that is issued and voted on by the Commission.

Sec. 212 amends the CEA by adding a new section (section 24) committing the original jurisdiction of the review of a CFTC issued final rule to the United States Court of Appeals for the District of Columbia Circuit or the U.S. Court of Appeals for the circuit where the party resides. This parallels the judicial review process for rules and orders of the Securities and Exchange Commission set forth in section 25(b) of the Securities Exchange Act of 1934.

Sec. 213 requires the GAO to conduct a study of the Commission's resources and assess whether the resources are sufficient to enable the Commission to effectively carry out its duties. The study shall also examine the prior expenditures of the Commission on hardware, software and analytical processes designed to protect customers in the areas of market surveillance and data collection.

Title III

Sec. 301 is the short title for title III.

Subtitle A – End User Exemption from Margin Requirements

Sec. 311 amends section 4s(e) of the CEA to clarify that initial and variation margin requirements shall not apply to a swap in which one of the counterparties to the swap is not a financial entity and qualifies for the end-user clearing exception in Section 2(h)(7)(A).

Sec. 312 excludes the amendments made by this subtitle from the requirements of the Paperwork Reduction Act and from notice and comment requirements of the Administrative Procedure Act.

Subtitle B – Inter-Affiliate Swaps

Sec. 321 (a) amends 2(h)(7)(D)(i) of the CEA to clarify that transactions between affiliates need not be cleared provided that a credit support measure is utilized with a swap entered into with a swap dealer or major swap participant.

Subsection (b) clarifies that the credit support measure requirement contained in (a) shall only be effective in a prospective manner starting on the date of enactment of the act.

Subtitle C – Indemnification Requirements Related to Swap Data Repositories

Sec. 331 amends section 5b(k)(5) of the CEA by striking the confidentiality and indemnification agreement paragraph of the derivatives clearing organization reporting requirements and inserting a new confidentiality agreement paragraph, eliminating the need to indemnify the Commission for any expense arising from litigation related to information provided under section 8. An identical amendment is made to section 21(d) of the CEA eliminating the indemnification requirement for swap data repositories.

Subtitle D – Relief for Municipal Utilities

Sec. 341 amends section 1a(49) of the CEA by creating within the definition of swap dealer, a new category of transactions in utility operations-related swaps, which shall be reported according to the reporting requirements of uncleared swaps and exempted from inclusion in an entity's general de minimis calculation established in (D).

Sec. 342 amends section 4s(h)(2) of the CEA to add the definition of a “utility special entity”: an entity established by a state, or political subdivision thereof, which owns or operates an electric or natural gas facility; supplies natural gas or electric energy to another utility special entity; has public service obligation under federal, state or local law or regulation to deliver electric energy or natural gas service to customers; or is a Federal power marketing agency.

Sec. 343 amends section 1a(47) of the CEA to add to the definition of swap a list of “commonly known” transactions to further describe a utility operations-related swap. It further amends section 1a to define a “utility operations related swap” as a swap that is entered into to hedge or mitigate risk, is not based on an interest rate, credit, equity, or currency asset class nor a metal, agriculture commodity, or crude oil or gasoline commodity for any grade except as used as fuel for electric energy generation, and is associated with the generation, production or sale of natural gas or electric energy.

Subtitle E – End-user Regulatory Relief

Sec. 351(a) amends section 2(h)(7)(C)(iii) of the CEA to exclude from the definition of a financial entity those entities not supervised by a prudential regulator and that are commercial market participants, but considered financial entities because they predominantly engage in physical delivery contracts or enter into swaps, futures and other derivatives on behalf of, or to hedge the commercial risk of, non-financial affiliates.

Subsection (b) amends section 1a of the CEA to define a commercial market participant as a producer, processor, merchant, or commercial user of an exempt or agricultural commodity, or the products or byproducts of such commodity.

Sec. 352 amends section 2(a)(13) of the CEA to require the Commission to promulgate a rule that would delay the public reporting of a non-cleared swap traded in an illiquid market and entered into by a non-financial entity to no sooner than 30 days after the transaction has been

executed. An illiquid market is defined as any market in which the volume and frequency of trading in swaps is at such a level as to allow identification of individual market participants.

Sec. 353 amends the CEA by adding a new section, 4u, which clarifies the record keeping requirements of non-registered members of a designated contract market (DCM) or swap execution facility (SEF). All recordkeeping requirements, and rules promulgated pursuant to the CEA, shall be satisfied if such entities maintain written records of each transaction in a contract for future delivery, option on a future, swap, swaption, trade option, or related cash or forward transaction. Such records must be searchable by transaction and include the final agreement between the parties as well as the material economic terms of the transaction.

Sec. 354 amends section 1a(47)(B)(ii) of the CEA to clarify that the exclusion from the definition of the term swap includes contracts that are intended to be physically settled that include any stand-alone or embedded option which, if exercised, results in a physical delivery obligation.

Sec. 355 amends section 1a(49)(D) of the CEA to require the Commission to take an affirmative action by rule or regulation to reduce the \$8 billion de minimis exception from the swap dealer definition.

Sec. 356 amends section 4s(e) of the CEA to require the Commission to permit swap dealers and major swap participants that are not banks to use financial models that calculate minimum capital requirements and minimum initial and variation margin requirements that have been approved for use by banks by prudential regulators or the SEC.

Sec. 357 requires the CFTC to change the regulation regarding the advertisement of participation in commodity pools. The changes will allow any registered commodity pool that also qualifies for an exemption from the registration requirements of the Securities Act to be sold pursuant to the changes made to section 4 of the Securities Act under the Jumpstart our Business Startups Act (P.L. 112-106).

Sec. 358 amends section 4a(c) of the CEA to require the Commission to recognize anticipatory hedging transactions as part of the exemption from trading limits.

Sec. 359(a) requires the CFTC to issue rules setting forth the application of the U.S. swaps requirements relating to swaps transacted between U.S. and non-U.S. persons. The rules shall address the nature of connections to the U.S. which would require a non-U.S. person to register as a swap dealer or major swap participant; which of the U.S. swap requirements shall apply to the activities of non-U.S. persons, U.S. persons, and their branches, agencies, subsidiaries and affiliates outside the U.S.; and the circumstances under which a non-U.S. person shall be exempt from U.S. swap requirements.

Subsection (b) prohibits the issuance of guidance, memorandum of understanding or any such other agreement in place of the Commission's requirement to issue a rule in accordance with the APA.

Subsection (c) requires the Commission to exempt from U.S. swaps requirements non-U.S. persons that are in compliance with the swaps regulatory requirements of a country or administrative region that has 1 of the world's 9 largest swap markets by notional amount in the preceding calendar year, or other foreign jurisdictions as determined by the Commission, unless the Commission determines that the regulatory requirements are not broadly equivalent to the United States swap requirements.

Exemptions for the 5 largest swap markets by notional amount shall go into effect on the date the final rule is issued. The remaining market exemptions will occur one year after the date the final rule is issued.

Once the final rules are issued, the Commission shall assess the regulatory requirements of the countries or administrative regions described in this subsection to determine if the regulatory requirements of a foreign jurisdiction are not broadly equivalent to U.S. swaps requirements.

Subsection (d) requires the Commission to report to Congress any determination that a foreign jurisdiction is not broadly equivalent to the U.S. swaps requirements within 30 days of that determination.

Subsection (e) defines the terms "U.S. person" and "United States swaps requirements."

Subsection (f) is a conforming amendment.

Subtitle F – Effective Date

Sec. 371 sets the effective date for this title as July 21, 2010.