

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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

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**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; or

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 VIOLATIONS.—  
12 Section 6c(d) of the Commodity Exchange Act (7 U.S.C.  
13 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-  
17                  modity 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.