

Commodity End-User Relief Act Section Descriptions

Sec. 101 directs registered futures associations to submit rules to the Commission requiring that their futures commission merchant members maintain written policies and procedures regarding members' residual interest in customer segregated funds, foreign futures and options customer secured amount funds, and cleared swaps customer collateral, as well as the withdrawal, transfer or disbursement of the same funds or collateral.

Sec. 102 directs registered futures associations to submit rules to the Commission requiring that their futures commission merchant members use an electronic system to report, according to association rules, certain financial and operational information to the association or its designee, that depositories holding certain funds and collateral of the futures commission merchant report, according to association rules, balances of such funds accounts and collateral to the association or its designee, and that their futures commission merchant members hold certain funds and collateral in a depository that reports the futures commission merchants' account balances of such funds and collateral, according to association rules, to the association or its designee.

Sec. 103 requires immediate notification to the Commission by a futures commission merchant with less adjusted net capital or an insufficient amount of funds in certain customer accounts than the amount required by regulation; also requires a report regarding the assessment of internal compliance programs.

Sec. 104 requires that any rules or regulations regarding maintenance of a residual interest, in excess of all uncollected margin deficits and held for the benefit of customers, provide that a futures commission merchant meet the residual interest requirement calculated at the close of that business day at the end of the next business day.

Sec. 105 includes certain estate property as customer property, subject to otherwise unavoidable security interests or contractual offset or netting rights of creditors, but only to the extent other customer property is insufficient to satisfy claims of public customers of the commodity broker.

Sec. 201 authorizes the appropriation of such sums as necessary through fiscal year 2019.

Sec. 202 amends current law to authorize general exemption authority for the Commission regarding swaps and repeals the requirement for express authority for exemptions regarding certain provisions.

Sec. 203 deems that both the Commission and certain entities have not waived applicable, defined privileges by the transfer or use of information under certain existing disclosure authority. The provision also provides additional protection regarding privileged information from a foreign future or law enforcement authority if that authority in good faith determines the information is privileged. CFTC would not be compelled to disclose such information regardless of whether the information is actually privileged.

Sec. 204 defines proprietary information of a commodity trading advisor or commodity pool operator and prohibits the Commission from compelled disclosure of such information except as provided and with certain exceptions. However, proprietary information from Forms CPO-PQR or CTA-PR is subject to public disclosure in the same manner as currently authorized regarding investigations or publication in

the aggregate. Also, proprietary information is exempted from the disclosure requirements in 5 U.S.C. 552.

Sec. 205 provides a choice of forum for a plaintiff adversely affected by a Commission rule to obtain by petition review of the rule and requires notice of the petition to the agency. Prior to the agency filing the rule's record with the court, the forum selected is not yet exclusive. Standards for judicial review are set forth.

Sec. 206 requires CFTC to submit to Congress a report regarding metals exchanges and warehousing.

Sec. 301 for the purpose of the de minimis exception to the definition of swap dealer, directs the Commission to treat utility operations-related swaps with a utility special entity as if no special entity were involved; requires transactions in utility operations-related swaps to be subject to the same reporting requirements as uncleared swaps; amends the definition of swap to include utility operations-related swaps and defines the terms utility-operations related swap and utility special entity.

Sec. 302 provides that with an exception, unregistered members of a designated contract market or a swap execution facility satisfy all recordkeeping requirements by maintaining a written record of certain and related transactions. The provision also deems sufficiency regarding written records and preserves existing books and records requirements for large trader reporting.

Sec. 303 adds exclusions to the definition of swap.

Sec. 304 directs CFTC to conduct a study regarding a de minimis exemption for swap dealing and requires promulgation of a regulation setting such level. It also directs that the exemption level upon the date of enactment remain effective until changed by rulemaking, and that such rulemaking takes effect not less than 1 year after its publication.

Sec. 305 provides for consultation between the Commission, prudential regulators and the SEC as well as authorizes the use of comparable financial models by non-bank swap dealers and major swap participants to the extent that bank swap dealers and major swap participants are allowed to use an approved model.

Sec. 306 clarifies that a bona fide hedge for the purpose of position limits includes swaps and the management of current or anticipated risks, and authorizes the Commission to further define the term "bona fide hedging transaction" in a consistent manner.

Sec. 307 amends the definition of commodity pool to exclude certain charitable organizations and church plans not included in the definition of an "investment company" for the purpose of the Investment Company Act of 1940 (Act); those excluded charitable organizations must provide disclosure according to requirements in the Act. Exempts from the requirements of section 4m a commodity trading advisory that is a certain defined type of charitable organization or church plan, company or account.

Title IV provides for various technical corrections to the Commodity Exchange Act.