THE REPUBLICAN STUDY COMMITTEE
Rep. Bill Flores, Chairman
Freedom ★ Liberty ★ Opportunity ★ Security
202.225.6105
rsc.flores.house.gov

H.R. 2289—Commodity End-User Relief Act (Conaway, R-TX)

CONTACT: ANDREW SHAW, ANDREW.SHAW@MAIL.HOUSE.GOV, 6-9143

FLOOR SCHEDULE: JUNE 9, 2015 UNDER A STRUCTURED RULE, WITH FIVE AMENDMENTS MADE IN ORDER.

TOPLINE SUMMARY: H. R. 2289 would authorize appropriations for the Commodity Futures Trading Commission (CFTC) through 2019.

COST: The Congressional Budget Office (CBO) estimates that H.R. 2289 would cost $1.1 billion over the 2016-2020 period, assuming appropriation of the necessary amounts. CBO estimates that this bill would affect direct spending, and pay-as-you-go procedures apply.

CONSERVATIVE CONCERNS: There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS: The bill would seek to protect customers from market failures such as in cases like MF Global and Peregrine Financial scandals, and from certain regulations implemented after the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) that the CFTC is tasked with implementing. The CFTC was last authorized in the Food, Conservation, and Energy Act of 2008. A section-by-section guide and summary of the bill provided by the House Committee on Agriculture can be found here.

Title I of the legislation includes provisions to protect end-users who use the futures markets by adding several new regulatory customer protections into law by:

- requiring electronic confirmation of customer fund account balances held at depository institutions.
- requiring firms that move more than a certain percentage of customer funds from one account to another to follow strict reporting and permission requirements before doing so.
- requiring firms who become undercapitalized to immediately notify regulators so they can assess the firm's viability and move if needed to protect customer funds.
- requiring firms to file an annual report with regulators from the chief compliance officer containing an assessment of a futures commission merchant's (FCM) internal compliance programs.
- ensuring farmers, ranchers, and other futures customers have a full business day to get their needed margin to an FCM, which mitigates the effect of pre-funding accounts.
- providing legal clarity for futures customers that the assets of a bankrupt commodity broker would be used to help pay back any misappropriated or illegally transferred customer segregated funds.

Title II would provide a number of reforms to the Commodity Futures Trading Commission by:

- modifying the Commodity Exchange Act's (CEA's) cost-benefit analysis requirements for proposed rules, to closely track President Obama's Executive Order 13563 for the entire executive branch. The administration's implementation of this EO has received mixed reviews.

- making the Commodity Futures Trading Commission's division directors answerable to the entire commission, not just the chairman's office.
- creating a new Office of the Chief Economist, answerable to the entire commission, to provide objective economic data and analysis.
- enhancing the CFTC staff procedures governing the issuance of "no-action" or interpretive letters to improve commission oversight of the process outside the rulemaking process.
- requiring the Commission and the Office of the Chief Economist to develop comprehensive internal risk control mechanisms to safeguard market data
- requiring the commission to develop a strategic technology plan every five years focused on market surveillance and detection.
- ensuring every commissioner has a seat at the table in approving omnibus orders of investigation (that authorize the issuance of subpoenas).
- creating a judicial review process similar to that of the U.S. Securities and Exchange Commission's (SEC's) for rulemakings to ensure the two regulators charged with overseeing the derivatives markets have similar procedures in place to allow market participants to challenge commission rules.
- prohibiting the commission from issuing policy statements, guidance, and other rules without complying with provisions under the Administrative Procedures Act.
- directing the Government Accountability Office (GAO) to conduct a study on the sufficiency of CFTC resources and examine prior expenditures of funds on market surveillance and market data collection, standardization, and harmonization.

Title III would address the commission's response to Dodd-Frank. According the committee, the CFTC has narrowly interpreted the law, which has threatened the ability of producers to affordably protect against risks associated with farming and ranching. The CFTC has finalized more than 60 rules to enforce the Dodd-Frank Act, and has issued an unprecedented 170 "no-action" letters to delay, revise, or exempt application of these regulations upon various market participants. The rulemaking process has proven confusing given the lack of a comprehensive plan for setting a schedule for compliance. The bill would:

- reduce clearing requirements on companies using centralized treasury units to manage and offset the risk of their affiliates
- remove the provision that requires foreign regulators to indemnify the CFTC for costs associated with the loss of state from a U.S. Swap Data Repository, while maintaining the requirement for written confidentiality agreements.
- codify municipal utility companies' cost-effective access to the customized, non-financial commodity swaps that utility special entities have used for years.
- Ensure that commercial end-users should not be classified and treated like banks, and the bill fixes the definition of "financial entity" to ensure that they are not.
- ensure that end-users hedging in thinly-traded markets are provided adequate time between completing and reporting a transaction to protect their position.
- reduce reporting requirement for grain elevators, farmers, agriculture counterparties, and commercial market participants that require the recording of all forms of communication that may possibly lead to a trade. The bill would specify that keeping written records of the final material economic terms of an agreement will be sufficient for market participants who are only managing their own money.
- clarify that contracts that contain an option to change the amount of a commodity delivered, but result in actual physical delivery of a commodity should not be regulated as swaps. This impacts utilities that use natural gas to produce electricity, in addition to millions of consumers who use natural gas to heat their homes.
- ensure that non-bank swap dealers should not be required to hold exponentially more capital than their bank counterparts. This bill would ensure that swap dealers without a prudential regulator would be able to use workable capital requirement formulas.

- require a vote on a new regulation to change the current de minimis threshold after the commission completes a planned study on the issue. The Dodd-Frank Act provides an exemption for a person who "engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers." On December 31, 2017, the de minimis exception from the swap dealer definition will be reduced by $5 billion because several years ago, the commission arbitrarily decided it should.
- would make a conforming change to CFTC regulations to bring them in line with the JOBS Act.
- ensure that end-users' ability to hedge against anticipated business risks should not be limited by the CFTC's arbitrary narrowing of acceptable hedging activities. The bill would provide a more workable definition of bona fide hedging as it relates to position limits.
- require the CFTC to put in place a comprehensive plan for how to address the international nature of swaps trading and to determine how to share regulatory obligations over transactions that cross international boundaries.

Title IV contains a section of technical edits and changes to the Commodity Exchange Act. These changes would correct references, remove obsolete terms, comport ambiguous text to existing practices, fix formatting errors, and remove a study due to Congress in 1986.

GLOSSARY:

- **Swap**: In general, the exchange of one asset or liability for a similar asset or liability for the purpose of lengthening or shortening maturities, or otherwise shifting risks. This may entail selling one securities issue and buying another in foreign currency; it may entail buying a currency on the spot market and simultaneously selling it forward. Swaps also may involve exchanging income flows; for example, exchanging the fixed rate coupon stream of a bond for a variable rate payment stream, or vice versa, while not swapping the principal component of the bond. Swaps are generally traded over-the-counter.

- **Swap Dealer**: An entity such as a bank or investment bank that markets swaps to end users. Swap dealers often hedge their swap positions in futures markets.

- **Commodity Swap**: A swap in which the payout to at least one counterparty is based on the price of a commodity or the level of a commodity index.

- **Commodity**: (1) A commodity, as defined in the Commodity Exchange Act, includes the agricultural commodities enumerated in Section 1a(4) of the Commodity Exchange Act, 7 USC 1a(4), and all other goods and articles, except onions as provided in Public Law 85-839 (7 USC 13-1), a 1958 law that banned futures trading in onions, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in; (2). A physical commodity such as an agricultural product or a natural resource as opposed to a financial instrument such as a currency or interest rate.

- **Derivative**: A financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments, or any agreed upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). They are used to hedge risk or to exchange a floating rate of return for fixed rate of return. Derivatives include futures, options, and swaps. For example, futures contracts are derivatives of the physical contract and options on futures are derivatives of futures contracts.

More information on the Commodities Future Trading Commission can be found here.

AMENDMENTS MADE IN ORDER:

1. **Conaway (R-TX):** (manager's amendment) would make conforming changes.

2. **Gallego (D-AZ):** would express a sense of Congress that the Commodity Futures Trading Commission should take all appropriate actions to encourage applications for positions in the Office of the Chief Economist from members of minority groups, women, disabled persons, and veterans.

3. **Takai (D-HI):** would require a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a

4. **Moore (D-WI):** would narrow the scope of the provisions in the bill to ensure that only swap data, and not any other data, held by an SDR is required to be shared with other regulators. It also would ensure that the language in the Securities Exchange Act and the Commodity Exchange Act mirror each other.

5. **Waloski (R-IN):** would clarify that the bill's required report on status of any application of metals exchange to register as a foreign board of trade should include the status of consultations with all US market participants including major producers and consumers.

OUTSIDE GROUPS IN SUPPORT:

- **Agribusiness Association of Iowa**
- **Agribusiness Council of Indiana/Indiana Grain and Feed Association**
- **American Baptist Churches**
- **American Cotton Shippers Association**
- **American Farm Bureau Federation**
- **American Feed Industry Association**
- **American Gas Association**
- **American Public Power Association**
- **American Soybean Association**
- **Commodity Markets Council**
- **Depository Trust and Clearing Corporation**
- **Edison Electric Institute**
- **Futures Industry Association**
- **Grain and Feed Association of Illinois**
- **Kansas Grain and Feed Association**
- **Michigan Agri-Business Association**
- **Michigan Bean Shippers Association**
- **Minnesota Grain and Feed Association**
- **Missouri Agribusiness Association**
- **National Association of Manufacturers**
- **National Cattlemen's Beef Association**
- **National Corn Growers Association**
- **National Cotton Council**
- **National Council of Farmer Cooperatives**
- **National Grain and Feed Association**
- **National Pork Producers Council**
- **National Rural Electric Cooperative Association**
- **Nebraska Grain and Feed Association**
- **North American Export Grain Association**
- **North Dakota Grain Dealers Association**

- **Northeast Agribusiness and Feed Alliance**
- **Ohio AgriBusiness Association**
- **Oklahoma Grain and Feed Association**
- **Pacific Northwest Grain and Feed Association**
- **Reform Pensions Board**
- **Rocky Mountain Agribusiness Association**
- **Southeast Minnesota Grain and Feed Dealers Association**
- **South Dakota Grain and Feed Association**
- **Tennessee Feed and Grain Association**
- **Texas Grain and Feed Association**
- **United Methodist Church**
- **US Chamber of Commerce**
- **USA Rice Federation**
- **Wisconsin Agri-Business Association**

COMMITTEE ACTION: This bill was introduced on May 13, 2015, by Representative Conaway and referred to the House Committee on Agriculture. The committee reported the bill (as amended) on May 15, 2015, by a voice vote.

ADMINISTRATION POSITION: According to the statement of administration policy, "If the President were presented with H.R. 2289, his senior advisors would recommend that he veto the bill."

CONSTITUTIONAL AUTHORITY: "Congress has the power to enact this legislation pursuant to the following: Pursuant to Article 1, Section 8, Clause 3, Congress has the authority to regulate foreign and interstate commerce"

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*