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February 5, 2016

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
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Washington, D.C. 20581
Telefacsimile: (202) 418-5521
Email to secretary@cftc.gov and electronically to http://comments.cftc.gov

Re: Comments on Interim Final Rule on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038-AC97)

Dear Mr. Kirkpatrick:

On January 6, 2016, the Commodity Futures Trading Commission ("Commission" or "CFTC") issued an Interim Final Rule on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants ("IFR"), which was embedded in the final rule "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants" ("Final Margin Rule").[1] The International Energy Credit Association ("IECA") respectfully provides these comments in response to the request for public comment on the IFR set forth in the Final Margin Rule.

Following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA") and its amendments of the Commodity Exchange Act ("CEA"), the IECA has filed numerous comments with the Commission seeking to protect the rights and advance the interests of the commercial end-user community that makes up the majority of its membership. Many of the IECA's members are representatives of commercial end-users that rely on futures contracts and swaps to help them mitigate and manage (i.e., hedge) the risks of energy commodity price volatility to their physical energy businesses.

I. The IECA Endorses the CMC Comments on the IFR.

By these comments, the IECA wishes to endorse, support and recommend to the Commission the comments on the Preliminary Report ("CMC Comments"), which were

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[1] IFR and Final Margin Rule, (RIN 3038-AC97) 81 Fed.Reg. 636 (January 6, 2016).

submitted to the Commission by the Commodity Markets Council ("CMC") earlier in the day on February 5, 2016. In its CMC Comments, the CMC stated:

> "As stated in the preamble to the interim final rule, the CFTC seeks to "capture all financial counterparties without being overly broad and capturing commercial firms."[2] CMC respectfully submits that the changes to the rule text set forth [herein] are necessary to accomplish this goal and to provide commercial end-users the clarity and certainty needed to avoid unnecessary and cost prohibitive cash margin requirements.
>
> To implement the suggested rule changes described above, the CFTC would need to make only modest changes to the current rule text by [replacing] current Section 23.151 (1) (xi), with the following language:
>
>> "An entity, person, or arrangement that is, or holds itself out as being, an entity, person, or arrangement that raises money from investors, accepts money from clients, or uses its own money ***predominantly*** ~~primarily~~ for investing or trading or facilitating the investing or trading in loans, securities, swaps, funds, or other ***financial*** assets ***(other than for hedging or mitigating an entity's own commercial risk)***;" (***emphasis added***)."[3]

The IECA agrees with the CMC that these changes to the proposed definition of "financial end user" in Section 23.151(1)(xi) of the Commission's IFR will help ensure that the Commission achieves its stated objective by minimally revising the proposed rule in order to "capture all financial counterparties without being overly broad and capturing commercial firms."

II. Request for Clarifications to the IFR Necessary to Address the Recent Amendment of CEA Section 2(h)(7)(D) under the Consolidated Appropriations Act, 2016.

The IECA offers the following additional comments on the IFR, which are intended to address the recent amendment to CEA Section 2(h)(7)(D) established in Section 705 of Title VII of the Consolidated Appropriations Act, 2016 enacted into law on December 18, 2015 ("CAA-2016").[4].

A. Description of the Effect on the IFR of the Amendment of CEA Section 2(h)(7)(D) under the CAA-2016.

The IFR is described on pages 677 to 679 of the Final Margin Rule. Therein, the IFR says that in response to the President's signing into law on January 12, 2015, of the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA"), the Commission has added a new

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2 See IFR, 81 Fed.Reg. at 640.

[3] We have modified the grammar, but not the substance, in the quoted text.

[4] See Section 705 of Title VII of the *Consolidated Appropriations Act, 2016*, Public Law 114-113, H.R. 2029, at pages 784 – 786 (December 18, 2015). See copy of Title VII attached as Exhibit A to these IECA Comments.

Section 23.150(b) to the Final Margin Rule, which adopts the statutory exemptions required under TRIPRA. As the Commission noted on page 637 of the Final Margin Rule:

> "Specifically, section 302 of Title III amends sections 731 and 764 of the Dodd-Frank Act to provide that the Commission's rules on margin requirements under those sections shall not apply to a swap in which a counterparty: (1) Qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act; (2) qualifies for an exemption issued under section 4(c)(1) of the Commodity Exchange Act for cooperative entities as defined in such exemption, or (3) satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act."

The Commission then describes the IFR on page 678 of the Final Margin Rule as:

> "This interim final rule, which adds a new section 23.150(b) to the final rule, adopts the statutory exemptions and exceptions as required under TRIPRA. TRIPRA provides that the initial and variation margin requirements do not apply to the uncleared swaps of three categories of counterparties. In particular, section 302 of TRIPRA amends section 731 so that initial and variation margin requirements will not apply to a swap in which a counterparty (to a CSE) is (1) a non-financial entity (including small financial institution and a captive finance company) that qualifies for the clearing exception under section 2(h)(7)(A) of the Act; (2) a cooperative entity that qualifies for an exemption from the clearing requirements issued under section 4(c)(1) of the Act; or (3) a treasury affiliate acting as agent that satisfies the criteria for an exception from clearing in section 2(h)(7)(D) of the Act."

In fact, new Section 23.150(b) of the CFTC's regulations says:

"(b) The requirements set forth in §§ 23.150 through 23.161 shall not apply to a swap if the counterparty:

(1) Qualifies for an exception from clearing under section 2(h)(7)(A) of the Act and implementing regulations;

(2) Qualifies for an exemption from clearing under a rule, regulation, or order issued by the Commission pursuant to section 4(c)(1) of the Act concerning cooperative entities that would otherwise be subject to the requirements of section 2(h)(1)(A) of the Act; or

(3) Satisfies the criteria in section 2(h)(7)(D) of the Act and implementing regulations."

Finally, the definition of "financial end user" in Section 23.151 of the Commission's regulations lists numerous types of entities that are "financial end users" and then says:

"(2) The term ''financial end user'' does not include any counterparty that is:

(i) A sovereign entity;

(ii) A multilateral development bank;

(iii) The Bank for International Settlements;

(iv) An entity that is exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(iii) of the Act and implementing regulations;
(v) An affiliate that qualifies for the exemption from clearing pursuant to section 2(h)(7)(D) of the Act; or
(vi) An eligible treasury affiliate that the Commission exempts from the requirements of §§ 23.150 through 23.161 by rule."

After the Commission approved the Final Margin Rule and the IFR on December 16, 2015, Congress and the President enacted the CAA-2016 on December 18, 2015 and Section 705 of Title VII of CAA-2016 specifically amended CEA section 2(h)(7)(D).

As shown above, the IFR in the Final Margin Rule refers expressly to CEA section 2(h)(7)(D) in the proposed new CFTC regulations under section 23.150(b) and in clause (2)(v) of the definition of "financial end user," wherein the Commission specifies the various classifications of counterparty that are "**not**" a financial end user.

There is no mention of CAA-2016 in the Commission's Final Margin Rule or its IFR, so it appears that the Commission will need to consider the amended text of CEA Section 2(h)(7)(D) as and when the Commission implements its Final Margin Rule and the IFR (and particularly in new CFTC regulations section 23.150(b) and clause (2)(v) of the definition of "financial end user" in CFTC regulations section 23.151).

Section 705 of Title VII of the CAA-2016 essentially amended CEA Section 2(h)(7)(D) to incorporate many of the conditions that were set forth in the CFTC Staff's No-Action Letter No. 14-144, dated November 26, 2014 ("Letter No. 14-144"). Letter No. 14-144 allows eligible treasury affiliates to qualify for the end-user exception to clearing for swaps that hedge their affiliated end-user's commercial risks, so long as the various conditions in Letter No. 14-144 have been met.

As a result of Section 705 of Title VII of the CAA–2016, CEA Section 2(h)(7)(D) has now been amended to include the language allowing treasury affiliates to enter into uncleared swaps on essentially the same conditions as were set forth in the CFTC Staff's No-Action Letter 14-144.

B. First Requested IFR Clarification: Please clarify the impact of the amendment of CEA Section 2(h)(7)(D) on Commission Staff's No-Action Letter No. 14-144. Will Letter No. 14-144 remain in effect, be withdrawn, or be revised and reissued?

The IECA respectfully requests that the Commission clarify or amend clause (2)(vi) of the definition of "financial end user," in light of Congress' amendment of CEA Section 2(h)(7)(D) under CAA-2016, to explain the meaning of clause (2)(vi) of the definition of "financial end user" when it says "An eligible treasury affiliate that the Commission exempts from the requirements of §§23.150 through 23.161 **by rule.**" (Emphasis added.)

Would the CFTC Staff's No-Action Letter No. 14-144 satisfy the "by rule" portion of the above clause (2)(vi) to enable swaps by "treasury affiliates" to be exempt from margin requirements or is something more formal and binding on the Commission required to satisfy the "by rule" requirement?

Now, as a result of CAA-2016 having amended CEA Section 2(h)(7)(D) to incorporate many of the provisions of Letter No. 14-144, what happens to Letter No. 14-144? Does it no longer have any meaning? Will it be eliminated by the CFTC Staff? Will Letter No. 14-144 be revised and reissued to address significant matters not addressed in the amended text of CEA Section 2(h)(7)(d)? (See Second Requested IFR Clarification below.)

C. Second Requested IFR Clarification: Please clarify that the obligation in CEA Section 2(h)(7)(D) to "transfer" the risk from one affiliate to the other affiliate can be satisfied (as was allowed under Letter No. 14-144) by having the affiliate identify the end-user affiliate on whose behalf the commercial risk has been hedged, in lieu of "transferring" the risk via back to back swaps between the two affiliates.

In addition, CEA Section 2(h)(7)(D) is first and foremost an exception to mandatory clearing. The old version of CEA Section 2(h)(7)(D) said: "[a]n affiliate of a person that qualifies for an exception under [CEA Section 2(h)(7)(A), i.e., the end-user exception to clearing] (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception [to mandatory clearing] only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity."

For several reasons, many treasury affiliates, including some central trading affiliates of energy companies, needed relief from old CEA Section 2(h)(7)(D) in order to qualify for the exemption from clearing, such as relief from the requirement to be "acting on behalf of the person and as an agent," which relief was provided by the CFTC Staff's No-Action Letter No. 14-144.

Section 705 of Title VII of CAA-2016 amended CEA Section 2(h)(7)(D) to now read as follows, which includes language taken expressly from Letter No. 14-144:

"SEC. 705. TREATMENT OF AFFILIATE TRANSACTIONS.
(a) COMMODITY EXCHANGE ACT AMENDMENTS.—Section 2(h)(7)(D) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(D)) is amended—
(1)by redesignating clause (iii) as clause (v);
(2)by striking clauses (i) and (ii) and inserting the following:

''(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

(I) enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;"

(Note that new CEA Section 2(h)(7)(D) continues on beyond paragraph (I) shown above for another page and a half of conditions largely taken from Letter No. 14-144.)

While the above shown amended text in CEA Section 2(h)(7)(D)(i)(I) has removed the most troubling text of the old version of CEA Section 2(h)(7)(D), which required the affiliate to be "acting on behalf of the person and as an agent," the new version of CEA Section 2(h)(7)(D)(i)(I) includes the requirement from Letter No. 14-144 that says "the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate."

Many energy companies relying on the relief granted by Letter No. 14-144 were not happy with this requirement that the risk of their end-user affiliate had to be "transferred to the affiliate" for its swaps to also be exempt from clearing. However, those energy companies got comfortable with that "transfer" requirement because of the presence of other language in Letter No. 14-144, which said:

> "iv. The requirement that treasury affiliates transfer the risk of related affiliates through the use of swaps.
>
> Market participants have expressed concern with the first General Condition to Swap Activity in No-Action Letter 13-22. The condition requires the eligible treasury affiliate enter into the exempted swap for the sole purpose of hedging or mitigating the commercial risk of one or more related affiliates that was transferred to the eligible treasury affiliate by operation of one or more swaps with such related affiliates.
>
> According to market participants, there are a number of ways for commercial risk to be transferred between affiliates, and that the risk that a treasury affiliate may have been seeking to hedge or mitigate would not necessarily be transferred from the operating affiliate to the treasury affiliate by way of a swap transaction as required by No-Action Letter 13-22. The method by which the risk is transferred can be dependent on the type of risk being hedged. For example, it may be more common for foreign exchange risk to be transferred between affiliates through the use of book-entry transfers, as opposed to interest rate risk, where the use of back-to-back swaps may be more prevalent. The Division agrees that this limitation is unnecessarily strict and is revising the condition accordingly. However, as the transfer of risk from the related affiliate to the treasury affiliate will no longer be evinced by back-to-back swaps, the Division will require that the treasury affiliate be able to identify the related affiliate or affiliates on whose behalf the swap was entered into by the treasury affiliate."

The above discussion taken from Letter No. 14-144 was not included in the amendment to CEA Section 2(h)(7)(D). So the clarification this language in Letter No. 14-144 provided to the meaning of the obligation to "transfer" the risk did not find its way into the statute.

As amended by the CAA-20016, CEA Section 2(h)(7)(D) now requires the end-user to have "transferred" its commercial risk to its affiliate for the affiliate's swap to be exempt from clearing, and under the IFR, to be exempt from margin requirements.

The IECA respectfully requests that the Commission clarify this statutory obligation to "transfer" the risk from one affiliate to the other affiliate by reinstating the requirement that was in Letter No. 14-144 to allow the affiliate to identify the end-user affiliate on whose behalf the commercial risk has been hedged, in lieu of "transferring" the risk via back to back swaps between the two affiliates.

III. Addresses for Communications and Correspondence

Please direct correspondence concerning these comments to:

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CONCLUSION

The IECA appreciates this opportunity to bring these concerns to the Commission and respectfully requests that the Commission consider the concerns and analysis set forth herein and further requests that the Commission clarify the IFR and the CFTC's proposed new regulations in the Final Margin Rule as more fully set forth in these Comments.

Yours truly,
INTERNATIONAL ENERGY CREDIT ASSOCIATION

/s/ Phillip G. Lookadoo
Phillip G. Lookadoo, Esq.
Haynes and Boone, LLP

/s/ Jeremy D. Weinstein
Jeremy D. Weinstein
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EXHIBIT A

TITLE VII – FINANCIAL SERVICES

excerpted from

CONSOLIDATED APPROPRIATIONS ACT, 2016,
Public Law 114-114, H.R. 2029, at pages 783-789
(December 18, 2015)

"subsection (d) hospital" and inserting "hospital that is a subsection (d) hospital or a subsection (d) Puerto Rico hospital".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b)(3)(B)(ix) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended—

(A) in subclause (I), by striking "(n)(6)(A)" and inserting "(n)(6)(B)"; and

(B) in subclause (II), by striking "a subsection (d) hospital" and inserting "an eligible hospital".

(2) Paragraphs (2) and (4)(A) of section 1853(m) of the Social Security Act (42 U.S.C. 1395w–23(m)) are each amended by striking "1886(n)(6)(A)" and inserting "1886(n)(6)(B)".

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the enactment of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), except that, in order to take into account delays in the implementation of this section, in applying subsections (b)(3)(B)(ix), (n)(2)(E)(ii), and (n)(2)(G)(i) of section 1886 of the Social Security Act, as amended by this section, any reference in such subsections to a particular year shall be treated with respect to a subsection (d) Puerto Rico hospital as a reference to the year that is 5 years after such particular year (or 7 years after such particular year in the case of applying subsection (b)(3)(B)(ix) of such section).

TITLE VII—FINANCIAL SERVICES

SEC. 701. TABLE OF CONTENTS.

The table of contents for this title is as follows:

Sec. 701. Table of contents.
Sec. 702. Limitations on sale of preferred stock.
Sec. 703. Confidentiality of information shared between State and Federal financial services regulators.
Sec. 704. Application of FACA.
Sec. 705. Treatment of affiliate transactions.
Sec. 706. Ensuring the protection of insurance policyholders.
Sec. 707. Limitation on SEC funds.
Sec. 708. Elimination of reporting requirement.
Sec. 709. Extension of Hardest Hit Fund; Termination of Making Home Affordable initiative.

SEC. 702. LIMITATIONS ON SALE OF PREFERRED STOCK.

(a) DEFINITIONS.—In this section:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(2) SENIOR PREFERRED STOCK PURCHASE AGREEMENT.—The term "Senior Preferred Stock Purchase Agreement" means—

(A) the Amended and Restated Senior Preferred Stock Purchase Agreement, dated September 26, 2008, as such Agreement has been amended on May 6, 2009, December 24, 2009, and August 17, 2012, respectively, and as such Agreement may be further amended and restated, entered into between the Department of the Treasury and each enterprise, as applicable; and

(B) any provision of any certificate in connection with such Agreement creating or designating the terms, powers, preferences, privileges, limitations, or any other conditions of the Variable Liquidation Preference Senior Preferred Stock of an enterprise issued or sold pursuant to such Agreement.

(b) LIMITATIONS ON SALE OF PREFERRED STOCK.—Notwithstanding any other provision of law or any provision of the Senior Preferred Stock Purchase Agreement, until at least January 1, 2018, the Secretary may not sell, transfer, relinquish, liquidate, divest, or otherwise dispose of any outstanding shares of senior preferred stock acquired pursuant to the Senior Preferred Stock Purchase Agreement, unless Congress has passed and the President has signed into law legislation that includes a specific instruction to the Secretary regarding the sale, transfer, relinquishment, liquidation, divestiture, or other disposition of the senior preferred stock so acquired.

(c) SENSE OF CONGRESS.—It is the Sense of Congress that Congress should pass and the President should sign into law legislation determining the future of Fannie Mae and Freddie Mac, and that notwithstanding the expiration of subsection (b), the Secretary should not sell, transfer, relinquish, liquidate, divest, or otherwise dispose of any outstanding shares of senior preferred stock acquired pursuant to the Senior Preferred Stock Purchase Agreement until such legislation is enacted.

SEC. 703. CONFIDENTIALITY OF INFORMATION SHARED BETWEEN STATE AND FEDERAL FINANCIAL SERVICES REGULATORS.

Section 1512(a) of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5111(a)) is amended by inserting “or financial services” before “industry”.

SEC. 704. APPLICATION OF FACA.

Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493) is amended by adding at the end the following:

“(h) APPLICATION OF FACA.—Notwithstanding any provision of the Federal Advisory Committee Act (5 U.S.C. App.), such Act shall apply to each advisory committee of the Bureau and each subcommittee of such an advisory committee.”.

SEC. 705. TREATMENT OF AFFILIATE TRANSACTIONS.

(a) COMMODITY EXCHANGE ACT AMENDMENTS.—Section 2(h)(7)(D) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(D)) is amended—

(1) by redesignating clause (iii) as clause (v);

(2) by striking clauses (i) and (ii) and inserting the following:

“(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

“(I) enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;

“(II) is directly and wholly-owned by another affiliate qualified for the exception under this subparagraph or an entity that is not a financial entity;

“(III) is not indirectly majority-owned by a financial entity;

“(IV) is not ultimately owned by a parent company that is a financial entity; and

“(V) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010).

“(ii) LIMITATION ON QUALIFYING AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) a commodity pool;

“(VI) a bank holding company;

“(VII) a private fund, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

“(VIII) an employee benefit plan or government plan, as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(IX) an insured depository institution;

“(X) a farm credit system institution;

“(XI) a credit union;

“(XII) a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010); or

“(XIII) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

“(iii) LIMITATION ON AFFILIATES’ AFFILIATES.—Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in clause (i) shall not apply with respect to an affiliate if the affiliate is itself affiliated with—

“(I) a major security-based swap participant;

“(II) a security-based swap dealer;

“(III) a major swap participant; or

“(IV) a swap dealer.

“(iv) CONDITIONS ON TRANSACTIONS.—With respect to an affiliate that qualifies for the exception in clause (i)—

"(I) the affiliate may not enter into any swap other than for the purpose of hedging or mitigating commercial risk; and

"(II) neither the affiliate nor any person affiliated with the affiliate that is not a financial entity may enter into a swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under clause (i)."; and

(3) by adding at the end the following:

"(vi) RISK MANAGEMENT PROGRAM.—Any swap entered into by an affiliate that qualifies for the exception in clause (i) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the swap and to identify each of the affiliates on whose behalf a swap was entered into.".

(b) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (E);

(2) by striking subparagraphs (A) and (B) and inserting the following:

"(A) IN GENERAL.—An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

"(i) enters into the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;

"(ii) is directly and wholly-owned by another affiliate qualified for the exception under this paragraph or an entity that is not a financial entity;

"(iii) is not indirectly majority-owned by a financial entity;

"(iv) is not ultimately owned by a parent company that is a financial entity; and

"(v) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010).

"(B) LIMITATION ON QUALIFYING AFFILIATES.—The exception in subparagraph (A) shall not apply if the affiliate is—

"(i) a swap dealer;

"(ii) a security-based swap dealer;

"(iii) a major swap participant;

"(iv) a major security-based swap participant;

"(v) a commodity pool;

“(vi) a bank holding company;

“(vii) a private fund, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

“(viii) an employee benefit plan or government plan, as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(ix) an insured depository institution;

“(x) a farm credit system institution;

“(xi) a credit union;

“(xii) a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010); or

“(xiii) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

“(C) LIMITATION ON AFFILIATES’ AFFILIATES.—Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in subparagraph (A) shall not apply with respect to an affiliate if such affiliate is itself affiliated with—

“(i) a major security-based swap participant;

“(ii) a security-based swap dealer;

“(iii) a major swap participant; or

“(iv) a swap dealer.

“(D) CONDITIONS ON TRANSACTIONS.—With respect to an affiliate that qualifies for the exception in subparagraph (A)—

“(i) such affiliate may not enter into any security-based swap other than for the purpose of hedging or mitigating commercial risk; and

“(ii) neither such affiliate nor any person affiliated with such affiliate that is not a financial entity may enter into a security-based swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of security-based swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under subparagraph (A).”; and

(3) by adding at the end the following:

“(F) RISK MANAGEMENT PROGRAM.—Any security-based swap entered into by an affiliate that qualifies for the exception in subparagraph (A) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the security-based swap and to identify each of the affiliates on whose behalf a security-based swap was entered into.”.

SEC. 706. ENSURING THE PROTECTION OF INSURANCE POLICYHOLDERS.

(a) SOURCE OF STRENGTH.—Section 38A of the Federal Deposit Insurance Act (12 U.S.C. 1831o–1) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following:

"(c) AUTHORITY OF STATE INSURANCE REGULATOR.—

"(1) IN GENERAL.—The provisions of section 5(g) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(g)) shall apply to a savings and loan holding company that is an insurance company, an affiliate of an insured depository institution that is an insurance company, and to any other company that is an insurance company and that directly or indirectly controls an insured depository institution, to the same extent as the provisions of that section apply to a bank holding company that is an insurance company.

"(2) RULE OF CONSTRUCTION.—Requiring a bank holding company that is an insurance company, a savings and loan holding company that is an insurance company, an affiliate of an insured depository institution that is an insurance company, or any other company that is an insurance company and that directly or indirectly controls an insured depository institution to serve as a source of financial strength under this section shall be deemed an action of the Board that requires a bank holding company to provide funds or other assets to a subsidiary depository institution for purposes of section 5(g) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(g)).".

(b) LIQUIDATION AUTHORITY.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(1) in section 203(e)(3) (12 U.S.C. 5383(e)(3)), by inserting "or rehabilitation" after "orderly liquidation" each place that term appears; and

(2) in section 204(d)(4) (12 U.S.C. 5384(d)(4)), by inserting before the semicolon at the end the following: ", except that, if the covered financial company or covered subsidiary is an insurance company or a subsidiary of an insurance company, the Corporation—

"(A) shall promptly notify the State insurance authority for the insurance company of the intention to take such lien; and

"(B) may only take such lien—

"(i) to secure repayment of funds made available to such covered financial company or covered subsidiary; and

"(ii) if the Corporation determines, after consultation with the State insurance authority, that such lien will not unduly impede or delay the liquidation or rehabilitation of the insurance company, or the recovery by its policyholders".

SEC. 707. LIMITATION ON SEC FUNDS.

None of the funds made available by any division of this Act shall be used by the Securities and Exchange Commission to finalize, issue, or implement any rule, regulation, or order regarding

the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations.

SEC. 708. ELIMINATION OF REPORTING REQUIREMENT.

Paragraph (6) of section 21(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(h)) is repealed.

SEC. 709. EXTENSION OF HARDEST HIT FUND; TERMINATION OF MAKING HOME AFFORDABLE INITIATIVE.

(a) EXTENSION OF HARDEST HIT FUND.—Section 120(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5230(b)) is amended by inserting after the period at the end the following: "Notwithstanding the foregoing, the Secretary may further extend the authority provided under this Act to expire on December 31, 2017, provided that (1) any such extension shall apply only with respect to current program participants in the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, and (2) funds obligated following such extension shall not exceed $2,000,000,000.".

(b) TERMINATION.—

(1) IN GENERAL.—The Making Home Affordable initiative of the Secretary of the Treasury, as authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), shall terminate on December 31, 2016.

(2) APPLICABILITY.—Paragraph (1) shall not apply to any loan modification application made under the Home Affordable Modification Program under the Making Home Affordable initiative of the Secretary of the Treasury, as authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), before December 31, 2016.

TITLE VIII—LAND AND WATER CONSERVATION FUND

SEC. 801. LAND AND WATER CONSERVATION FUND.

(a) REAUTHORIZATION.—Section 200302 of title 54, United States Code, is amended—

(1) in subsection (b), in the language preceding paragraph (1), by striking "September 30, 2015" and inserting "September 30, 2018"; and

(2) in subsection (c)(1), by striking "September 30, 2015" and inserting "September 30, 2018".

(b) PROHIBITION ON USE OF CONDEMNATION OR EMINENT DOMAIN.—Except as provided by subsection (c), for fiscal years 2016, 2017, and 2018, unless otherwise provided by division G of this Act or an Act enacted after this Act making appropriations for the Department of the Interior, Environment, and Related Agencies, no funds appropriated by such division or Act for the acquisition of lands or interests in lands may be expended for the filing of declarations of taking or complaints in condemnation without the approval of the House and Senate Committees on Appropriations.

(c) EXCEPTION FOR EVERGLADES.—Hereafter, subsection (b) shall not apply to funds appropriated to implement the Everglades National Park Protection and Expansion Act of 1989, or to funds