



# HOUSE COMMITTEE ON AGRICULTURE — DEMOCRATS

June 2015

## THE COMMODITY END USER RELIEF ACT (H.R. 2289)

The Commodity End User Relief Act, H.R. 2289, reauthorizes the Commodity Futures Trading Commission (CFTC) until October 1, 2019. The bill rolls back important financial regulations and interfere with the CFTC's ability to do its work.

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### BILL SUMMARY

Ranking Member Peterson is opposed to H.R. 2289.

The CFTC should be allowed to complete its work without Congress impeding progress on negotiations between the United States and European financial regulators.

The changes mandated by H.R. 2289 would make it more difficult for the CFTC to function and stifle its ability to respond quickly to the rapidly changing markets it regulates.

H.R. 2289 will lead to a less efficient financial marketplace by adding a new layer of government overreach and bureaucracy.

Implementing H.R. 2289's misguided ideas requires an extra 30 full time employees at a cost of \$45 million over five years, according to CBO. The bill provides no additional funding to meet this need.

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### CROSS-BORDER PROVISION

The "cross-border" provision undercuts the CFTC Chairman's current negotiations with foreign regulators. The three-step process makes it almost impossible to harmonize international rules. (*Section 314*)

- Step One mandates the CFTC, within a year of enactment of the act, issue a rule that "shall exempt" both non-U.S. persons and transactions between non-U.S. persons from U.S. swaps rules. This would "set out the circumstances" in which a U.S. person, or a transaction between a U.S. person and a non-U.S. person, shall be exempt from U.S. rules if the Commission determines the foreign jurisdiction's rules are "comparable to and as comprehensive as" U.S. rules.
- Step Two states that "the Commission shall begin to assess" the swaps rules in foreign jurisdictions, once step one is complete. The CFTC has six months to make its decision in an order, rather than a rulemaking. This determination is dependent on cooperation from foreign regulators in supplying data and information about their own rules.
- Step Three goes into effect 18 months after the bill is enacted. It would automatically grant substituted compliance to the eight largest foreign swaps jurisdictions, as well as transactions between Non-U.S. persons using those markets and transactions between one U.S. person and one Non-U.S. person in those markets.

### **COST-BENEFIT ANALYSIS**

Creates a new cost-benefit analysis requirement for CFTC rulemakings. (*Section 202*)

- This is modeled on an executive order intended to improve internal operations of executive branch agencies but would open the door to industry lawsuits that would delay or completely derail CFTC rulemakings.
- This would add an unneeded layer of government bureaucracy and slow down the process of providing regulatory relief to market participants.

### **ADDITIONAL AREAS OF CONCERN**

Requires all division directors and unit heads – including political appointees – “serve at the pleasure” of the full CFTC, rather than just the Chairman. (*Section 203*)

- The staff is already responsive to the full CFTC. This is unnecessary and only serves to address a parochial disagreement between a former Chairman and former Commissioner.

Requires that each Commissioner receive the chance to review staff actions on exemptive, no action or interpretive relief. (*Section 205*)

- This is unnecessary and costly because Commissioners already review staff actions before they are issued.

Requires notice and comment for guidance issued by the CFTC. (*Section 209*)

- This would add an additional layer of bureaucracy to a flexible tool used to respond to market participant needs.

Subsection (b)(4) would address the so-called location test.

- This provision is so sweeping that the CFTC can never take location into account when making its determination on the applicability of U.S. swaps requirements, both to U.S. persons and to non-U.S. persons. This is particularly troublesome in light of the requirement for the CFTC to harmonize its rules with the SEC, which uses a territorial-based method of defining its jurisdiction.

Provides a right to petition the CFTC for a rulemaking that must receive a “final action” within 180 days or 90 days in case the petitioner requests an order rather than a rule.

- This section fails to define a “final action” which is generally understood to mean a final decision on a rule or order. The timeline is extremely fast and also presents the problem of requiring cooperation from a foreign regulator.

Weakens the “Core Principles” for Swap Execution Facilities (SEFs) put in place by Dodd Frank and narrows a SEF’s monitoring responsibilities to only trading on its own facilities. Also requires SEFs to hold funds to conduct an orderly wind-down of operations, rather than covering its operating costs for a year; collapses some of the duties of a SEF’s chief compliance officer; and allows SEFs wide discretion to establish their own surveillance, market monitoring and audit trails. (*Section 317*)

- This negatively impacts pre-trade price transparency by allowing voice brokerage services to continue providing opaque pricing to consumers. Pre-trade price transparency is one of the central pillars of the original SEF Core Principles.