AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

113TH CONGRESS
2D SESSION

H. R. 5490

To require the Commodity Futures Trading Commission to impose fees and assessments to recover the cost of appropriations to the Commission.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2014

Ms. DELAURO (for herself, Mr. WELCH, and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Agriculture

---

A BILL

To require the Commodity Futures Trading Commission to impose fees and assessments to recover the cost of appropriations to the Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Wall Street Accountability through Sustainable Funding Act''.

SEC. 2. REQUIREMENT THAT THE COMMODITY FUTURES TRADING COMMISSION IMPOSE FEES AND ASSESSMENTS TO RECOVER THE COST OF APPROPRIATIONS TO THE COMMISSION.

Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

"(i) RECOVERY OF COSTS OF ANNUAL APPROPRIATIONS.—

"(1) IMPOSITION OF FEES.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the Commission shall, by order, impose a fee on each agreement, contract, or transaction that is a contract of sale of a commodity for future delivery, an option, or a swap, including an agreement, contract, or transaction transacted through the use of a foreign terminal, so that the total of the fees so imposed during each fiscal year is sufficient to recover the costs to the Government of the annual appropriation to the Commission by Congress for the fiscal year.

"(B) FOREIGN TERMINAL.—In subparagraph (A), the term 'foreign terminal' means a technology, software, or device, which is located in the United States and used to execute an agreement, contract, or transaction on a foreign

board of trade, or which is located outside of the United States and used to execute an agreement, contract, or transaction within the United States on a domestic board of trade.

"(C) EXEMPTIONS.—The Commission, by rule, may exempt any such agreement, contract, or transaction from any fee imposed under this paragraph, if the Commission finds that the exemption is consistent with—

"(i) the public interest;

"(ii) the equal treatment of contract markets, derivatives clearing organizations, and market participants; and

"(iii) the operation of a nationwide market system.

"(D) LIMITATION.—The fees imposed under this paragraph on all transactions of the same kind shall be determined in a uniform manner.

"(E) MID-YEAR ADJUSTMENT.—

"(i) IN GENERAL.—By March 1 of each fiscal year, the Commission shall determine whether, based on the fees collected under this subsection during the first 5 months of the fiscal year, the total

of the amounts collected and to be collected under this subsection for the fiscal year is reasonably likely to be 10 percent (or more) greater or less than the costs described in subparagraph (A) for the fiscal year. If the Commission so determines, the Commission shall by order, no later than March 1 of the fiscal year, adjust the fee rates otherwise applicable under this paragraph for the fiscal year so that the total of the amounts so collected and to be collected is reasonably likely to equal to the costs so described.

"(ii) EFFECTIVE DATE.—Subject to paragraphs (2)(C) and (4), an adjusted rate prescribed under clause (i) of this subparagraph in a fiscal year shall take effect on the later of—

"(I) the 1st day of the fiscal year to which the rate applies; or

"(II) 60 days after the date on which a regular appropriation to the Commission for the fiscal year is enacted.

"(F) PUBLICATION.—The Commission shall publish in the Federal Register notices of the fee rates applicable under this paragraph for a fiscal year not later than 30 days after the date on which a regular appropriation to the Commission for the fiscal year is enacted, together with any estimates or projections on which the fee rates are based.

"(G) INAPPLICABILITY OF RULEMAKING REQUIREMENTS.—In exercising its authority under this paragraph, the Commission shall not be required to comply with section 553 of title 5, United States Code.

"(H) NO JUDICIAL REVIEW.—A fee rate prescribed under this paragraph and published in accordance with subparagraph (F) shall not be subject to judicial review.

"(2) PAYMENT AND COLLECTION OF FEES.—

"(A) CLEARED TRANSACTIONS; UNCLEARED SWAPS REPORTED TO SWAP DATA REPOSITORIES.—

"(i) PAYMENT OF FEES.—

"(I) CLEARED TRANSACTIONS.—In the case of a contract of sale of a commodity for future delivery, an op-

tion, or a swap that is cleared by a derivatives clearing organization registered or exempt from registration under this Act, each party to the agreement, contract, or transaction shall pay the fee determined under paragraph (1) to the derivatives clearing organization.

"(II) UNCLEARED SWAPS REPORTED TO SWAP DATA REPOSITORIES.—In the case of a swap that is not cleared by a derivatives clearing organization registered or exempt from registration under this Act and that is accepted by a swap data repository registered under section 21, each party to the swap shall pay the transaction fee determined under paragraph (1) to the swap data repository.

"(ii) COLLECTION OF FEES.—The Commission shall collect the fees paid in accordance with clause (i) in such manner and within such time as the Commission deems appropriate, except that if the Commission has not collected a fee paid in ac-

cordance with clause (i) within 30 days after receipt by the derivatives clearing organization or swap data repository, as the case may be, the organization or repository, as the case may be, shall transmit the fee to the Commission.

"(B) UNCLEARED SWAPS REPORTED TO COMMISSION.—In the case of a swap that is not cleared by a derivatives clearing organization registered or exempt from registration under this Act and that is reported to the Commission pursuant to section 4r, each party to the swap shall pay the fee determined under paragraph (1) to the Commission in a manner and within such time as the Commission deems appropriate.

"(C) SUBJECT TO APPROPRIATIONS.—Except as provided in paragraph (4), a fee shall not be collected under this subsection for a fiscal year, except to the extent provided in advance in appropriation Acts.

"(3) DEPOSIT OF FEES.—

"(A) OFFSETTING COLLECTIONS.—A fee collected under paragraph (2) for a fiscal year shall be deposited and credited as offsetting col-

lections to the account providing appropriations to the Commission.

"(B) GENERAL REVENUES PROHIBITED.—A fee collected under paragraph (2) for a fiscal year shall not be deposited and credited as general revenue of the Treasury.

"(4) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees imposed under paragraph (1) at the rate in effect during the preceding fiscal year, until 60 days after the date such a regular appropriation is enacted.

"(j) COMMODITY FUTURES TRADING COMMISSION RESERVE FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund, to be known as the 'Commodity Futures Trading Commission Reserve Fund' (referred to in this subsection as the 'Reserve Fund').

"(2) IMPOSITION OF FEES.—The Commission shall impose and collect an additional fee, as provided in subsection (i), except that the total amount of the fees imposed and collected in each fiscal year

shall not exceed an amount equal to the amount (if any) by which $50,000,000 exceeds the balance in the Reserve Fund as of the end of the preceding fiscal year, and paragraphs (2)(C) and (4) of subsection (i) shall not apply with respect to this subsection.

"(3) DEPOSITS INTO RESERVE FUND.—

"(A) IN GENERAL.—Except as provided in this paragraph, all fees collected under this paragraph shall be deposited into the Reserve Fund.

"(B) LIMITATION.—The balance in the Reserve Fund shall not exceed $50,000,000.

"(4) USE OF FUNDS.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of $50,000,000 in any 1 fiscal year, as the Commission determines is necessary to make long-term investments in information technology for use by the Commission and to cover unexpected expenses of the Commission (as determined by the Commission). Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify the Congress of the date, amount, and purpose of the obligation.

"(5) AVAILABILITY OF FUNDS.—Amounts in the Reserve Fund shall remain available until expended.

"(6) RULE OF CONSTRUCTION.—Amounts in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.".

○