

AMENDMENT TO RULES COMMITTEE PRINT 113-

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OFFERED BY MS. DELAURO OF CONNECTICUT

Page 24, after line 21, insert the following:

1 **SEC. ____ . REQUIREMENT THAT THE COMMODITY FU-**
2 **TURES TRADING COMMISSION IMPOSE FEES**
3 **AND ASSESSMENTS TO RECOVER THE COST**
4 **OF APPROPRIATIONS TO THE COMMISSION;**
5 **COMMODITY FUTURES TRADING COMMIS-**
6 **SION RESERVE FUND AND ADDITIONAL FEE**
7 **REQUIREMENT.**

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

10 “(i) RECOVERY OF COSTS OF ANNUAL APPROPRIA-
11 TIONS.—

12 “(1) IMPOSITION OF FEES.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (C), the Commission shall, by
15 order, impose a fee on each agreement, con-
16 tract, or transaction that is a contract of sale
17 of a commodity for future delivery, an option,
18 or a swap, including an agreement, contract, or
19 transaction transacted through the use of a for-

1 eign terminal, so that the total of the fees so
2 imposed during each fiscal year is sufficient to
3 recover the costs to the Government of the an-
4 nual appropriation to the Commission by Con-
5 gress for the fiscal year.

6 “(B) FOREIGN TERMINAL.—In subpara-
7 graph (A), the term ‘foreign terminal’ means a
8 technology, software, or device, which is located
9 in the United States and used to execute an
10 agreement, contract, or transaction on a foreign
11 board of trade, or which is located outside of
12 the United States and used to execute an agree-
13 ment, contract, or transaction within the
14 United States on a domestic board of trade.

15 “(C) EXEMPTIONS.—The Commission, by
16 rule, may exempt any such agreement, contract,
17 or transaction from any fee imposed under this
18 paragraph, if the Commission finds that the ex-
19 emption is consistent with—

20 “(i) the public interest;

21 “(ii) the equal treatment of contract
22 markets, derivatives clearing organizations,
23 and market participants; and

24 “(iii) the operation of a nationwide
25 market system.

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

5 “(E) MID-YEAR ADJUSTMENT.—By March
6 1 of each fiscal year, the Commission shall de-
7 termine whether, based on the fees collected
8 under this subsection during the first 5 months
9 of the fiscal year, the total of the amounts col-
10 lected and to be collected under this subsection
11 for the fiscal year is reasonably likely to be 10
12 percent (or more) greater or less than the costs
13 described in subparagraph (A) for the fiscal
14 year. If the Commission so determines, the
15 Commission shall by order, no later than March
16 1 of the fiscal year, adjust the fee rates other-
17 wise applicable under this paragraph for the fis-
18 cal year so that the total of the amounts so col-
19 lected and to be collected is reasonably likely to
20 equal to the costs so described.

21 “(F) EFFECTIVE DATE.—Subject to para-
22 graphs (2)(C) and (4), a fee rate prescribed (or
23 adjusted) under this paragraph for a fiscal year
24 shall take effect on the later of—

25 “(i) the 1st day of the fiscal year; or

1 “(ii) 60 days after the date on which
2 a regular appropriation to the Commission
3 for the fiscal year is enacted.

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

12 “(H) INAPPLICABILITY OF RULE MAKING
13 REQUIREMENTS.—In exercising its authority
14 under this paragraph, the Commission shall not
15 be required to comply with section 553 of title
16 5, United States Code.

17 “(I) NO JUDICIAL REVIEW.—A fee rate
18 prescribed under this paragraph and published
19 in accordance with subparagraph (G) shall not
20 be subject to judicial review.

21 “(2) PAYMENT AND COLLECTION OF FEES.—

22 “(A) CLEARED TRANSACTIONS;
23 UNCLEARED SWAPS REPORTED TO SWAP DATA
24 REPOSITORIES.—

25 “(i) PAYMENT OF FEES.—

1 “(I) CLEARED TRANSACTIONS.—
2 In the case of a contract of sale of a
3 commodity for future delivery, an op-
4 tion, or a swap that is cleared by a
5 derivatives clearing organization reg-
6 istered or exempt from registration
7 under this Act, each party to the
8 agreement, contract, or transaction
9 shall pay the fee determined under
10 paragraph (1) to the derivatives clear-
11 ing organization.

12 “(II) UNCLEARED SWAPS RE-
13 PORTED TO SWAP DATA REPOSI-
14 TORIES.—In the case of a swap that
15 is not cleared by a derivatives clearing
16 organization registered or exempt
17 from registration under this Act and
18 that is accepted by a swap data repos-
19 itory registered under section 21, each
20 party to the swap shall pay the trans-
21 action fee determined under para-
22 graph (1) to the swap data repository.

23 “(ii) COLLECTION OF FEES.—The
24 Commission shall collect the fees paid in
25 accordance with clause (i) in such manner

1 and within such time as the Commission
2 deems appropriate, except that if the Com-
3 mission has not collected a fee paid in ac-
4 cordance with clause (i) within 30 days
5 after receipt by the derivatives clearing or-
6 ganization or swap data repository, as the
7 case may be, the organization or reposi-
8 tory, as the case may be, shall transmit the
9 fee to the Commission.

10 “(B) UNCLEARED SWAPS REPORTED TO
11 COMMISSION.—In the case of a swap that is not
12 cleared by a derivatives clearing organization
13 registered or exempt from registration under
14 this Act and that is reported to the Commission
15 pursuant to section 4r, each party to the swap
16 shall pay the fee determined under paragraph
17 (1) to the Commission in a manner and within
18 such time as the Commission deems appro-
19 priate.

20 “(C) SUBJECT TO APPROPRIATIONS.—Ex-
21 cept as provided in paragraph (4), a fee shall
22 not be collected under this subsection for a fis-
23 cal year, except to the extent provided in ad-
24 vance in appropriation Acts.

25 “(3) DEPOSIT OF FEES.—

1 “(A) OFFSETTING COLLECTIONS.—A fee
2 collected under paragraph (2) for a fiscal year
3 shall be deposited and credited as offsetting col-
4 lections to the account providing appropriations
5 to the Commission.

6 “(B) GENERAL REVENUES PROHIBITED.—
7 A fee collected under paragraph (2) for a fiscal
8 year shall not be deposited and credited as gen-
9 eral revenue of the Treasury.

10 “(4) LAPSE OF APPROPRIATION.—If on the
11 first day of a fiscal year a regular appropriation to
12 the Commission has not been enacted, the Commis-
13 sion shall continue to collect (as offsetting collec-
14 tions) the fees imposed under paragraph (1) at the
15 rate in effect during the preceding fiscal year, until
16 60 days after the date such a regular appropriation
17 is enacted.

18 “(j) COMMODITY FUTURES TRADING COMMISSION
19 RESERVE FUND.—

20 “(1) ESTABLISHMENT.— There is established
21 in the Treasury of the United States a separate
22 fund, to be known as the ‘Commodity Futures Trad-
23 ing Commission Reserve Fund’ (referred to in this
24 subsection as the ‘Reserve Fund’).

1 “(2) IMPOSITION OF FEES.—The Commission
2 shall impose and collect an additional fee, as pro-
3 vided in subsection (i), except that the total amount
4 of the fees imposed and collected in each fiscal year
5 shall not exceed an amount equal to the amount (if
6 any) by which \$50,000,000 exceeds the balance in
7 the Reserve Fund as of the end of the preceding fis-
8 cal year, multiplied by 1.355, and paragraphs (2)(C)
9 and (4) of subsection (i) shall not apply with respect
10 to this subsection.

11 “(3) DEPOSITS INTO RESERVE FUND.—

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

16 “(B) LIMITATION.—The balance in the Re-
17 serve Fund shall not exceed \$50,000,000.

18 “(C) SPECIAL RULE.—Of the amounts col-
19 lected under this subsection, 26.2 percent shall
20 be deposited in the Treasury of the United
21 States, and shall not be available for obligation.

22 “(4) USE OF FUNDS.—The Commission may
23 obligate amounts in the Reserve Fund, not to exceed
24 a total of \$50,000,000 in any 1 fiscal year, as the
25 Commission determines is necessary to make long-

1 term investments in information technology for use
2 by the Commission and to cover unexpected expenses
3 of the Commission (as determined by the Commis-
4 sion). Not later than 10 days after the date on
5 which the Commission obligates amounts under this
6 paragraph, the Commission shall notify the Congress
7 of the date, amount, and purpose of the obligation.

8 “(5) AVAILABILITY OF FUNDS.—Amounts in
9 the Reserve Fund shall remain available until ex-
10 pended.

11 “(6) RULE OF CONSTRUCTION.—Amounts in
12 the Reserve Fund shall not be construed to be Gov-
13 ernment funds or appropriated monies and shall not
14 be subject to apportionment for the purpose of chap-
15 ter 15 of title 31, United States Code, or under any
16 other authority.”.

