

[DISCUSSION DRAFT]

113TH CONGRESS
1ST SESSION

H. R. _____

To amend the Commodity Exchange Act to increase customer protections in the event of futures commission merchant insolvencies, to create separate account classifications to better protect retail foreign exchange customers, and to foster the creation of alternative segregation arrangements.

IN THE HOUSE OF REPRESENTATIVES

Mr. GRIMM introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Commodity Exchange Act to increase customer protections in the event of futures commission merchant insolvencies, to create separate account classifications to better protect retail foreign exchange customers, and to foster the creation of alternative segregation arrangements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commodity Customer
5 Protection Act”.

1 **SEC. 2. PROTECTION OF CUSTOMER PROPERTY.**

2 (a) IN GENERAL.—Section 20 of the Commodity Ex-
3 change Act (7 U.S.C. 24) is amended by adding at the
4 end the following:

5 “(d) FUTURES COMMISSION MERCHANTS REQUIRED
6 TO HAVE SEGREGATION SUBORDINATION AGREEMENTS
7 WITH CERTAIN CREDITORS.—A futures commission mer-
8 chant shall not engage in an activity described in section
9 1a(28)(B) unless a segregation subordination agreement
10 is in effect between the futures commission merchant and
11 each of the following entities with which it does business:

12 “(1) Each affiliate of the futures commission
13 merchant.

14 “(2) Each financial institution.

15 “(3) Any other entity from which the futures
16 commission merchant obtains financing.”.

17 (b) DEFINITIONS.—

18 (1) FUTURES COMMISSION MERCHANT AFFIL-
19 IATE.—Section 1a(28) of such Act (7 U.S.C.
20 1a(28)) is amended by adding at the end the fol-
21 lowing:

22 “(C) AFFILIATE.—The term ‘affiliate’
23 means, with respect to a futures commission
24 merchant, any person or company which di-
25 rectly or indirectly controls, is controlled by, or

1 is under common control with, the futures com-
2 mission merchant.”.

3 (2) SEGREGATION SUBORDINATION AGREE-
4 MENT.—Section 1a of such Act (7 U.S.C. 1a) is
5 amended by adding at the end the following:

6 “(52) SEGREGATION SUBORDINATION AGREE-
7 MENT.—

8 “(A) IN GENERAL.—The term ‘segregation
9 subordination agreement’ means an agreement
10 in which a creditor agrees to subordinate all
11 claims on or against a futures commission mer-
12 chant or its assets, including customer property
13 and general assets of the futures commission
14 merchant, to the net equity claims of customers
15 until the net equity claims are fully satisfied.

16 “(B) REGULATIONS.—The Commission
17 may, by regulation, establish specific require-
18 ments for segregation subordination agree-
19 ments.”.

20 **SEC. 3. SAFEKEEPING AND RETAIL FOREIGN EXCHANGE**
21 **ACCOUNTS TREATED AS SEPARATE ACCOUNT**
22 **CLASSES.**

23 (a) IN GENERAL.—Section 20 of the Commodity Ex-
24 change Act (U.S.C. 24) is further amended by adding at
25 the end the following:

1 “(e) SAFEKEEPING ACCOUNTS AS SEPARATE AC-
2 COUNT CLASS.—In addition to the account classes pre-
3 scribed by the Commission, the trustee in bankruptcy of
4 an insolvent futures commission merchant shall recognize
5 safekeeping accounts as a separate class of account.

6 “(f) RETAIL FOREIGN EXCHANGE ACCOUNTS AS
7 SEPARATE ACCOUNT CLASS.—In addition to the account
8 classes prescribed by the Commission, the trustee in bank-
9 ruptcy of an insolvent futures commission merchant shall
10 recognize retail foreign exchange accounts as a separate
11 class of account.”.

12 (b) DEFINITIONS.—Section 1a of such Act (7 U.S.C.
13 1a), as amended by section 2(b)(2) of this Act, is amended
14 by adding at the end the following:

15 “(53) SAFEKEEPING ACCOUNT.—The term
16 ‘safekeeping account’ means an account, consisting
17 of property of, or which has accrued to, a customer
18 in connection with a multi-party collateral agreement
19 in which the financial institution holding the account
20 holds the property as collateral to margin, guar-
21 antee, or secure the trades of the customer.

22 “(54) RETAIL FOREX CUSTOMER.—The term
23 ‘retail forex customer’ means a person, other than
24 an eligible contract participant, acting on its own be-
25 half and trading in any account, agreement, con-

1 tract, or transaction described in subparagraph (B)
2 or (C) of section 2(e)(2).”.

3 **SEC. 4. SEGREGATION OF FOREIGN EXCHANGE CUSTOMER**
4 **PROPERTY.**

5 Section 4d of the Commodity Exchange Act (7 U.S.C.
6 6d) is amended by adding at the end the following:

7 “(i) **RETAIL FOREX SEGREGATION.**—A retail foreign
8 exchange dealer shall treat and deal with all property of,
9 or accruing to, a retail forex customer, received to margin,
10 guarantee, or secure a retail foreign exchange transaction
11 cleared by or through a retail foreign exchange dealer, as
12 belonging to the retail forex customer.”.

13 **SEC. 5. EFFECTIVE DATE.**

14 The amendments made by this Act shall take effect
15 180 days after the date of the enactment of this Act.