

113TH CONGRESS
1ST SESSION

H. R. 3009

To protect investors in futures contracts.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2013

Mr. CAPUANO introduced the following bill; which was referred to the
Committee on Agriculture

A BILL

To protect investors in futures contracts.

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 “Futures Investor Pro-
5 tection Act”.

6 **SEC. 2. FUTURES INVESTORS PROTECTION FUND.**

7 (a) FUTURES INVESTOR PROTECTION CORPORA-
8 TION.—

9 (1) CREATION AND MEMBERSHIP.—

10 (A) CREATION.—There is established a
11 nonprofit corporation to be known as the “Fu-
12 tures Investor Protection Corporation” (in this

1 Act referred to as the “FIPC”), which shall not
2 be an agency or establishment of the United
3 States Government.

4 (B) MEMBERSHIP.—

5 (i) MEMBERS OF FIPC.—The FIPC
6 shall be a membership corporation the
7 members of which shall be all persons reg-
8 istered under the Commodity Exchange
9 Act with the Commission as a futures com-
10 mission merchant, other than persons
11 whose principal business, in the determina-
12 tion of the FIPC, taking into account busi-
13 ness of affiliated entities, is conducted out-
14 side the United States and its territories
15 and possessions.

16 (ii) COMMISSION REVIEW; ADDITIONAL
17 MEMBERS.—Subparagraphs (B) and (C) of
18 section 3(a)(2) of SIPA shall apply with
19 respect to determinations of the FIPC in
20 the same way the subparagraphs apply
21 with respect to determinations of the SIPC
22 and to brokers and dealers referred to in
23 such subparagraph (D).

24 (iii) DISCLOSURE.—Section
25 3(a)(2)(D) of SIPA shall apply to futures

1 commission merchants in the same way the
2 section applies to brokers and dealers re-
3 ferred to in such section.

4 (2) POWERS.—The FIPC shall have all the
5 powers conferred on the SIPC.

6 (3) BOARD OF DIRECTORS.—

7 (A) FUNCTIONS.—The FIPC shall have a
8 Board of Directors which, subject to the provi-
9 sions of this Act, shall determine the policies
10 which shall govern the operations of FIPC.

11 (B) NUMBER AND APPOINTMENT.—The
12 Board of Directors shall consist of 7 persons as
13 follows:

14 (i) 1 director shall be appointed by
15 the Secretary of the Treasury from among
16 the officers and employees of the Depart-
17 ment of the Treasury.

18 (ii) 1 director shall be appointed by
19 the Board of Governors of the Federal Re-
20 serve System from among the officers and
21 employees of that Board.

22 (iii) 5 directors shall be appointed by
23 the President, by and with the advice and
24 consent of the Senate, as follows:

1 (I) 3 directors shall be selected
2 from among persons who are associ-
3 ated with, and representative of dif-
4 ferent aspects of, the futures industry,
5 not all of whom shall be from the
6 same geographical area of the United
7 States.

8 (II) 2 directors shall be selected
9 from the general public from among
10 persons who are not associated with a
11 futures commission merchant or a
12 contract market, or similarly associ-
13 ated with any self-regulatory organi-
14 zation or other futures industry
15 group, and who have not had any
16 such association during the 2 years
17 preceding appointment.

18 (C) CHAIRMAN AND VICE CHAIRMAN.—The
19 President shall designate a Chairman and Vice
20 Chairman from among those directors ap-
21 pointed under subparagraph (B)(iii)(II).

22 (D) TERMS.—

23 (i) IN GENERAL.—Except as provided
24 in clauses (ii) and (iii), each director shall
25 be appointed for a term of 3 years.

1 (ii) INITIALLY APPOINTED MEM-
2 BERS.—Of the directors first appointed
3 under subparagraph (B)—

4 (I) 2 shall hold office for a term
5 expiring on December 31, 2014;

6 (II) 2 shall hold office for a term
7 expiring on December 31, 2015; and

8 (III) 3 shall hold office for a
9 term expiring on December 31, 2016,
10 as designated by the President at the time
11 they take office. The designation shall be
12 made in a manner which will assure that
13 no 2 persons appointed under the author-
14 ity of the same subclause of subparagraph
15 (B)(iii) shall have terms which expire si-
16 multaneously.

17 (iii) VACANCIES.—A vacancy in the
18 Board shall be filled in the same manner
19 as the original appointment was made. Any
20 director appointed to fill a vacancy occur-
21 ring prior to the expiration of the term for
22 which the predecessor of the director was
23 appointed shall be appointed only for the
24 remainder of the term. A director may
25 serve after the expiration of the term for

1 which appointed until the successor of the
2 director has taken office.

3 (E) COMPENSATION.—All matters relating
4 to compensation of directors shall be as pro-
5 vided in the bylaws of the FIPC.

6 (4) MEETINGS OF BOARD; BYLAWS AND
7 RULES.—Subsections (d) and (e) of section 3 of
8 SIPA shall apply with respect to the FIPC and the
9 Commission in the same way the subsections apply
10 with respect to the SIPC and the Securities and Ex-
11 change Commission.

12 (b) FIPC FUND.—

13 (1) IN GENERAL.—The FIPC shall establish,
14 and make deposits into and payments from, an
15 “FIPC fund” (in this Act referred to as the “fund”)
16 in the same manner in which the SIPC has estab-
17 lished, and is authorized to make deposits into and
18 payments from, the SIPC fund.

19 (2) ASSESSMENTS.—The FIPC shall impose on
20 its members assessments subject to the same rules
21 that apply to the imposition by the SIPC of assess-
22 ments on the members of the SIPC.

23 (c) OTHER PROVISIONS.—Sections 5 through 16 of
24 the SIPA shall apply with respect to the FIPC and the
25 members, directors, officers, and employees of the FIPC,

1 the Commission, the FIPC fund, futures commission mer-
2 chants and their affiliates, futures contracts, futures
3 transactions, customers, and debtors in the same way the
4 sections apply with respect to the SIPC and the members,
5 directors, officers, and employees of the SIPC, the Securi-
6 ties and Exchange Commission, the SIPC fund, persons
7 registered as brokers or dealers (as defined in section
8 16(12) of the SIPA) and their affiliates, securities, securi-
9 ties transactions, customers (as defined in section 16(2)
10 of the SIPA), and debtors (as defined in section 16(5) of
11 the SIPA), respectively.

12 (d) DEFINITIONS.—In this section:

13 (1) COMMISSION.—The term “Commission”
14 means the Commodity Futures Trading Commission.

15 (2) CONTRACT MARKET.—The term “contract
16 market” means a board of trade designated as a
17 contract market under the Commodity Exchange
18 Act.

19 (3) FUTURES CONTRACT.—The term “futures
20 contract” means a contract of sale of a commodity
21 for future delivery, within the meaning of the Com-
22modity Exchange Act.

23 (4) FUTURES COMMISSION MERCHANT.—The
24 term “futures commission merchant” has the mean-

1 ing given the term in section 1a(28) of the Com-
2 modity Exchange Act.

3 (5) SIPA.—The term “SIPA” means the Secu-
4 rity Investors Protection Act of 1970.

5 (6) SIPC.—The term “SIPC” means the Secu-
6 rity Investors Protection Corporation.

7 (7) SIPC FUND.—The term “SIPC fund”
8 means the fund established under section 4(a)(1) of
9 the SIPA.

10 **SEC. 3. SUITABILITY RULES.**

11 (a) IN GENERAL.—The Commodity Exchange Act (7
12 U.S.C. 1 et seq.) is amended by inserting after section
13 4t the following:

14 **“SEC. 4u. SUITABILITY RULES.**

15 “(a) IN GENERAL.—

16 “(1) RECOMMENDATIONS MUST BE SUITABLE
17 FOR THE CUSTOMER.—A futures commission mer-
18 chant shall not recommend a transaction or invest-
19 ment strategy involving a contract of sale of a com-
20 modity for future delivery, unless the futures com-
21 mission merchant has a reasonable basis to believe
22 that the transaction or investment strategy is suit-
23 able for the customer, based on the information ob-
24 tained through the reasonable diligence of the fu-
25 tures commission merchant to ascertain the cus-

1 tomer’s investment profile. A customer’s investment
2 profile includes, but is not limited to, the customer’s
3 age, other investments, financial situation and
4 needs, tax status, investment objectives, investment
5 experience, investment time horizon, liquidity needs,
6 risk tolerance, and any other information the cus-
7 tomer may disclose to the futures commission mer-
8 chant in connection with the recommendation.

9 “(2) SAFE HARBOR IN CERTAIN CASES.—A fu-
10 tures commission merchant is deemed to comply
11 with paragraph (1) in the case of a customer with
12 an institutional account, if—

13 “(A) the futures commission merchant has
14 a reasonable basis to believe that the customer
15 is capable of evaluating investment risks inde-
16 pendently, both in general and with regard to
17 particular transactions and investment strate-
18 gies involving a contract of sale of a commodity
19 for future delivery; and

20 “(B) the customer affirmatively indicates
21 that it is exercising independent judgment in
22 evaluating the recommendations of the futures
23 commission merchant.

24 “(b) APPLICABILITY WITH RESPECT TO CERTAIN
25 AGENTS.—If a customer with an institutional account has

1 delegated decisionmaking authority to an agent, sub-
2 section (a) shall be applied with respect to the agent.

3 “(c) INSTITUTIONAL ACCOUNT DEFINED.—In this
4 section, the term ‘institutional account’ means the account
5 of—

6 “(1) a bank, savings and loan association, in-
7 surance company or registered investment company;

8 “(2) an investment adviser registered with the
9 Securities and Exchange Commission under section
10 203 of the Investment Advisers Act or with a State
11 securities commission (or any agency or office per-
12 forming like functions); or

13 “(3) any other person (whether a natural per-
14 son, corporation, partnership, trust or otherwise)
15 with total assets of at least \$50,000,000.

16 “(d) PENALTIES.—The Commission may impose 1 or
17 more of the following sanctions on a person found by the
18 Commission to have violated this section or to have ne-
19 glected or refused to comply with an order issued by the
20 Commission under this section:

21 “(1) Censure.

22 “(2) A fine.

23 “(3) Expulsion of the person from, or revoca-
24 tion of the membership of the person in, a registered
25 entity.

1 “(4) Suspension for a definite period or a pe-
2 riod contingent on the performance of a particular
3 act, or revocation, of the registration of the person
4 under this Act with the Commission as a futures
5 commission merchant.

6 “(5) Suspension or bar of the person from asso-
7 ciation with any other futures commission merchant.

8 “(6) A temporary or permanent cease and de-
9 sist order against the person.

10 “(7) Any other fitting sanction.”.

11 (b) **EFFECTIVE DATE.**—Within 6 months after the
12 date of the enactment of this Act, the Commodity Futures
13 Trading Commission shall issue regulations for the imple-
14 mentation of the amendment made by subsection (a).

15 **SEC. 4. REVIEW OF PROOF OF CLAIMS RULES.**

16 (a) **IN GENERAL.**—The Commodity Futures Trading
17 Commission shall review the guidelines for establishing ac-
18 count classes and determining the basis for pro rata
19 shares under, and the sample claim form set forth in, part
20 190 of title 17, Code of Federal Regulations, and consider
21 the desirability of allowing use of a set date for valuation
22 purposes rather than the date of actual liquidation of posi-
23 tions.

24 (b) **REPORT TO THE CONGRESS.**—Within 1 year after
25 the date of the enactment of this Act, the Commodity Fu-

1 tures Trading Commission shall submit to the Congress
2 a written report that contains the findings of the Commis-
3 sion with respect to the matters referred to in subsection
4 (a), and includes such changes to the regulations in such
5 part as the Commission deems appropriate.

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