

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LYNCH, STEPHEN OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Revised 135
2nd

AMENDMENT TO H.R. 4173
OFFERED BY MR. LYNCH OF MASSACHUSETTS

At the end of title III, insert the following new section:

1 **SEC. ____ . CONFLICTS OF INTEREST IN CLEARING ORGA-**
2 **NIZATIONS.**

3 (a) **COMMODITY EXCHANGE ACT.—**

4 (1) **DEFINITION OF RESTRICTED OWNER.—**Sec-
5 tion 1a of the Commodity Exchange Act (7 U.S.C.
6 1a) (as amended by the preceding provisions of this
7 Act) is further amended by adding at the end the
8 following:

9 “(51) **RESTRICTED OWNER.—**The term ‘re-
10 stricted owner’ means any swap dealer, security-
11 based swap dealer, major swap participant, or major
12 security-based swap participant, that is an identified
13 financial holding company as defined in Section
14 1000(b)(5) of the Financial Stability Improvement
15 Act of 2009, or a person associated with a swap
16 dealer or a major swap participant that is an identi-
17 fied financial holding company, or a person associ-
18 ated with a security-based swap dealer or major se-

1 security-based swap participant that is an identified fi-
2 nancial holding company.”.

3 (2) CONFLICTS OF INTEREST.—

4 (A) Subparagraph (P) of section 5b(c)(2)
5 of the Commodity Exchange Act (as added by
6 the preceding provisions of this Act) is amended
7 by adding at the end of such subparagraph the
8 following: “The rules of the derivatives clearing
9 organization that clears swaps shall provide
10 that a restricted owner shall not be permitted
11 directly or indirectly to acquire beneficial own-
12 ership of interests in the organization or in per-
13 sons with a controlling interest in the organiza-
14 tion, to the extent that such an acquisition
15 would result in restricted owners being entitled
16 to vote, cause the voting of, or cause the with-
17 holding of votes of, more than 20 percent of the
18 votes entitled to be cast on any matter by the
19 holders of the ownership interests. The rules of
20 the derivatives clearing organization shall pro-
21 vide that a majority of the directors of the or-
22 ganization shall not be associated with a re-
23 stricted owner. This subparagraph shall not be
24 construed to require divestiture of any interest
25 of a restricted owner in an established and

1 operational derivatives clearing organization ac-
2 quired prior to January 1, 2010, provided that
3 acquisitions by such restricted owner after such
4 date shall be subject to this subparagraph. The
5 Commission may determine whether any acqui-
6 sition by a restricted owner during any interim
7 period prior to the date of the enactment of this
8 Act has been made for the purpose of avoiding
9 the effect of this subparagraph.”.

10 (B) Section 4s(g)(1) of the Commodity Ex-
11 change Act (as added by the preceding provi-
12 sions of this Act) is amended—

13 (i) by striking “and” at the end of
14 subparagraph (C); and

15 (ii) by redesignating subparagraph
16 (D) as subparagraph (E) and insert after
17 subparagraph (C) the following:

18 “(D) the prevention of self-dealing, by lim-
19 iting the extent to which such a swap dealer or
20 major swap participant may conduct business
21 with a derivatives clearing organization, a board
22 of trade, or an alternative swap execution facil-
23 ity that clears or trades swaps and in which
24 such a swap dealer or major swap participant
25 has a material debt or equity investment; and”.

1 (C) Paragraph (12) of section 5h(d) of the
2 Commodity Exchange Act (as added by the pre-
3 ceding provisions of this Act) is amended by
4 adding at the end the following new subpara-
5 graph:

6 “(C) The rules of the swap execution facil-
7 ity shall provide that a restricted owner shall
8 not be permitted directly or indirectly to ac-
9 quire beneficial ownership of interests in the fa-
10 cility or in persons with a controlling interest in
11 the facility, to the extent that such an acquisi-
12 tion would result in restricted owners being en-
13 titled to vote, cause the voting of, or cause the
14 withholding of votes of, more than 20 percent
15 of the votes entitled to be cast on any matter
16 by the holders of the ownership interests. This
17 subparagraph shall not be construed to require
18 divestiture of any interest of a restricted owner
19 in an established and operational swap execu-
20 tion facility acquired prior to January 1, 2010,
21 provided that acquisitions by such restricted
22 owner after such date shall be subject to this
23 subparagraph. The Commission may determine
24 whether any acquisition by a restricted owner
25 during any interim period prior to the date of

1 the enactment of this Act has been made for
2 the purpose of avoiding the effect of this sub-
3 paragraph.

4 “(D) The rules of the swap execution facil-
5 ity shall provide that a majority of the directors
6 of the facility shall not be associated with a re-
7 stricted owner.”.

8 (D) Section 5(d) of the Commodity Ex-
9 change Act (as amended by the preceding provi-
10 sions of this Act) is further amended by strik-
11 ing paragraph (15) and inserting the following:

12 “(15) CONFLICTS OF INTEREST.—

13 “(A) The board of trade shall establish
14 and enforce rules to minimize conflicts of inter-
15 est in the decisionmaking process of the con-
16 tract market, and establish a process for resolv-
17 ing any such conflicts of interest.

18 “(B) The rules of a board of trade that
19 trades swaps shall provide that a restricted
20 owner shall not be permitted directly or indi-
21 rectly to acquire beneficial ownership of inter-
22 ests in the board of trade or in persons with a
23 controlling interest in the board of trade, to the
24 extent that such an acquisition would result in
25 restricted owners being entitled to vote, cause

1 the voting of, or cause the withholding of votes
2 of, more than 20 percent of the votes entitled
3 to be cast on any matter by the holders of the
4 ownership interests. This paragraph shall not
5 be construed to require divestiture of any inter-
6 est of a restricted owner in an established and
7 operational board of trade acquired prior to
8 January 1, 2010, provided that acquisitions by
9 such restricted owner after such date shall be
10 subject to this paragraph. The Commission may
11 determine whether any acquisition by a re-
12 stricted owner during any interim period prior
13 to the date of the enactment of this Act has
14 been made for the purpose of avoiding the ef-
15 fect of this paragraph.

16 “(C) The rules of a board of trade that
17 trades swaps shall provide that a majority of
18 the directors of the board of trade shall not be
19 associated with a restricted owner.”.

20 (b) SECURITIES EXCHANGE ACT OF 1934.—

21 (1) DEFINITION OF RESTRICTED OWNER.—Sec-
22 tion 3(a) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78c(a)) (as amended by the preceding
24 provisions of this Act) is further amended by adding
25 at the end the following:

1 “(78) RESTRICTED OWNER.—The term ‘re-
2 stricted owner’ has the same meaning as in section
3 1a(51) of the Commodity Exchange Act.”.

4 (2) CONFLICTS OF INTEREST.—

5 (A) Paragraph (10) of section 3C(d) of the
6 Securities Exchange Act of 1934 (as added by
7 the preceding provisions of this Act) is amended
8 by adding after subparagraph (B) the following:
9 “The rules of the swap execution facility shall provide that
10 a restricted owner shall not be permitted directly or indi-
11 rectly to acquire beneficial ownership of interests in the
12 facility or in persons with a controlling interest in the fa-
13 cility, to the extent that such an acquisition would result
14 in restricted owners being entitled to vote, cause the voting
15 of, or cause the withholding of votes of, more than 20 per-
16 cent of the votes entitled to be cast on any matter by the
17 holders of the ownership interests. The rules of the swap
18 execution facility shall provide that a majority of the direc-
19 tors of the facility shall not be associated with a restricted
20 owner. This paragraph shall not be construed to require
21 divestiture of any interest of a restricted owner in an es-
22 tablished and operational swap execution facility acquired
23 prior to January 1, 2010, provided that acquisitions by
24 such restricted owner after such date shall be subject to
25 this paragraph. The Commission may determine whether

1 any acquisition by a restricted owner during any interim
2 period prior to the date of the enactment of this Act has
3 been made for the purpose of avoiding the effect of this
4 paragraph.”.

5 (B) Section 15F(g)(1) of the Securities
6 Exchange Act of 1934 (as added by the pre-
7 ceding provisions of this Act) is amended—

8 (i) in subparagraph (C), strike “and”;

9 and

10 (ii) insert after subparagraph (C) the
11 following (and redesignate the succeeding
12 subparagraph accordingly):

13 “(D) the prevention of self-dealing by lim-
14 iting the extent to which a security-based swap
15 dealer or major security-based swap participant
16 may conduct business with a clearing agency,
17 an exchange, or an alternative swap execution
18 facility that clears or trades security-based
19 swaps and in which such a dealer or participant
20 has a material debt or equity investment; and”.

21 (C) Section 6(b) of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78f(b)) is
23 amended by adding at the end the following
24 new paragraphs:

1 “(10) The rules of the exchange minimize con-
2 flicts of interest in its decision-making process and
3 establish a process for resolving such conflicts of in-
4 terest.

5 “(11) The rules of an exchange that trades se-
6 curity-based swaps provide that a majority of the di-
7 rectors of the exchange shall not be associated with
8 a restricted owner.

9 “(12) The rules of an exchange that trades se-
10 curity-based swaps provide that a restricted owner
11 shall not be permitted directly or indirectly to ac-
12 quire beneficial ownership of interests in the ex-
13 change or in persons with a controlling interest in
14 the exchange, to the extent that such an acquisition
15 would result in restricted owners being entitled to
16 vote, cause the voting of, or cause the withholding
17 of votes of, more than 20 percent of the votes enti-
18 tled to be cast on any matter by the holders of the
19 ownership interests. This paragraph shall not be
20 construed to require divestiture of any interest of a
21 restricted owner in an established and operational
22 exchange acquired prior to January 1, 2010, pro-
23 vided that acquisitions by such restricted owner
24 after such date shall be subject to this paragraph.
25 The Commission may determine whether any acqui-

1 sition by a restricted owner during any interim pe-
2 riod prior to the date of the enactment of this Act
3 has been made for the purpose of avoiding the effect
4 of this paragraph.”.

5 (D) Section 17A(b)(3) of the Securities
6 Exchange Act of 1934 (15 U.S.C. 78f(b)) is
7 amended by adding at the end the following
8 new subparagraphs:

9 “(J) The rules of a clearing agency that
10 clears security-based swaps shall provide that a
11 restricted owner shall not be permitted directly
12 or indirectly to acquire beneficial ownership of
13 interests in the agency or in persons with a con-
14 trolling interest in the agency, to the extent
15 that such an acquisition would result in re-
16 stricted owners being entitled to vote, cause the
17 voting of, or cause the withholding of votes of,
18 more than 20 percent of the votes entitled to be
19 cast on any matter by the holders of the owner-
20 ship interests. This subparagraph shall not be
21 construed to require divestiture of any interest
22 of a restricted owner in an established and
23 operational clearing agency acquired prior to
24 January 1, 2010, provided that acquisitions by
25 such restricted owner after such date shall be

1 subject to this subparagraph. The Commission
2 may determine whether any acquisition by a re-
3 stricted owner during any interim period prior
4 to the date of the enactment of this Act has
5 been made for the purpose of avoiding the ef-
6 fect of this subparagraph.

7 “(K) The rules of the clearing agency shall
8 provide that a majority of the directors of the
9 agency shall not be associated with a restricted
10 owner.”.

