

Section-by-Section Summary of H.R. 4038
The Market Oversight Consolidation and OTC Derivatives Regulation Act
Introduced by Representative Peter DeFazio (D-OR)

Section 1. Short Title; Table of Contents.

This Act may be cited as the “Market Oversight Consolidation and OTC Derivatives Regulation Act.”

Section 2. Purposes

This section outlines the purpose of merging the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) into a single regulatory entity.

Section 3. Definitions

This section defines the term “Commission” as the Securities and Derivatives Oversight Commission that is established by section 101 of the bill. The term “function” is also defined to include any duty, obligation, power, authority, responsibility, right, privilege, activity or program of the Commission.

Section 4. Effect on congressional jurisdiction

This section clarifies that this legislation shall not be construed to affect the jurisdiction of any committee or subcommittee of Congress.

Title I - ESTABLISHMENT OF COMMISSION

Section 101. Establishment

This section establishes an independent regulatory commission known as the Securities and Derivatives Oversight Commission (SDOC).

Section 102. Members: Appointment; Terms.

The Commission will be composed of five commissioners appointed by the President with the advice and consent of the Senate. One of the commissioners is designated by the President as chairman. Not more than three members of the commission shall be from the same political party. Commissioners shall be chosen solely on the basis of their integrity and knowledge of the markets under the jurisdiction of the commission. Each commissioner shall have a five year term. This section also includes a provision to prevent conflicts of interest.

Section 103. Organization of Commission.

This section allows the commission itself to establish the principle divisions and subdivisions

within the commission. The only requirement is that the commission establish a separate division with jurisdiction over markets in physical commodities.

Section 104. General Counsel.

This section provides for the establishment of a general counsel's office for the commission.

Title II - TRANSFER OF FUNCTIONS

Section 201. Commodity Futures Trading Commission Functions.

This section transfers the functions of the CFTC to the SDOC.

Section 202. Securities and Exchange Commission.

This section transfers the functions of the SEC to the SDOC.

Section 203. Jurisdiction of Margin Authority.

This section transfer to the SDOC the functions of the Board of Governors of the Federal Reserve System under section 7 of the Securities and Exchange Act of 1934 with respect to establishing margin requirements for trades. The SDOC is also granted margin authority with respect to futures contracts.

Title II - FEDERAL FINANCIAL MARKETS COORDINATING COUNCIL

Section 301. Establishment; Membership.

This section establishes the Federal Financial Markets Coordinating Council (FFMCC) composed of: The Board of Governors of the Federal Reserve, the Comptroller of the Currency, the Department of Treasury, the Securities and Derivatives Oversight Commission, the National Credit Union Administration, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation. The Council elects one of its members as chairman.

Section 302. Functions of the Council.

This section outlines the functions of the FFMCC, including: coordinating the regulatory operations of the agencies on the council, meeting bimonthly to discuss issues relating to the safety and soundness of financial markets, establishing an advisory committee of outside parties, and reporting to congress on its activities and any legislative recommendations.

Section 303. Staff; Administrative Support; Expenses.

This section provides for staff and money to carry out the functions of the FFMCC.

Title IV - ADMINISTRATIVE PROVISIONS

Part A - Personnel Provisions

Section 401. Officers and Employees.

This section outlines the appointment process and compensation for employees of the SDOC.

Section 402. Experts and Consultants.

This section provides the SDOC with the authority to obtain the services of experts and consultants when necessary in accordance with section 3109 of title 5 of the U.S. Code.

Part B - General Administrative Provisions

Section 411. General Authority.

This section provides that the SDOC may exercise any authority available under law to the agencies and officials from whom functions are transferred to the SDOC. The actions taken by SDOC shall have the same force and effect as if exercised by one of the agencies or officials transferred to the jurisdiction of the SDOC.

Section 412. Delegation.

This section provides for the delegation of authority from the commission to other officers and employees of the commission.

Section 413. Reorganization.

This section provides additional authority to organize the divisions and subdivisions of the SDOC as necessary.

Section 414. Rules.

This section authorizes the SDOC to prescribe such rules and regulations as necessary to administer and manage the functions of the commission.

Section 415. Contracts.

This section grants the commission the authority to enter into contracts with private entities as deemed necessary to carry out the functions of the commission.

Section 416. Regional and Field Offices.

This section grants the commission the authority to establish, alter, or discontinue regional and field offices to perform the functions of the commission.

Section 417. Use of Facilities.

This section authorizes the commission to use the facilities of other federal entities, as well as allowing private entities to use the commission facilities, in carrying out the functions of the commission.

Section 418. Working Capital Fund.

This section establishes a working capital fund to cover maintenance and common administrative services.

Section 419. Funds Transfer.

This section authorizes the SDOC to transfer from one appropriation to another within the commission in order to better carry out the functions of the commission. Such transfers shall not result in an increase or decrease of more than 5 percent and no such transfer shall result in increasing any appropriation above the amount authorized by Congress.

Section 420. Seal of Commission.

This section provides for the establishment of a seal for the SDOC.

Section 421. Annual Report.

This section provides for an annual report to Congress on the activities, goals, priorities, and plans for the commission.

Title V - TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

Section 501. Transfer and Allocation of Appropriations and Personnel.

This section provides for the transfer of personnel, contracts, property and related holdings of the SEC and CFTC to the SDOC.

Section 502. Effect on Personnel.

This section provides that the number of full-time personnel and part-time personnel holding full-time positions shall not be reduced in grade or compensation for one year after the date of transfer to the SDOC.

Section 503. Agency Terminations.

This section provides for the termination of the SEC and the CFTC.

Section 504. Incidental Transfers.

This section provides for the transfer of incidental property, assets, and other holdings to the SDOC.

Section 505. Savings Provisions.

This section provides that this bill shall not impact proceedings underway at the SEC or CFTC prior to the merger into the SDOC.

Section 506. Separability.

This provision provides that if any section of the act is found to be legally invalid, the rest of the act would still hold the force of law.

Section 507. Reference.

This section provides that the SDOC will become the responsible federal entity when the SEC and CFTC are mentioned in other federal laws.

Section 508. Amendments.

This section makes technical adjustments to the Securities and Exchange Act and the Commodity Exchange Act.

Section 509. Transition.

This section provides that the SDOC may utilize the services of the SEC and the CFTC for such time as may be reasonably needed to facilitate the orderly implementation of this act.

Title VI - REGULATION OF OTC DERIVATIVES

Section 601. Regulation of Over-the-Counter Derivatives.

This section authorizes the SDOC to regulate OTC derivatives transactions “as may be necessary and appropriate in the public interest and for the protection of investors to ensure the safety and soundness of financial markets and the nation’s economy as a whole.”

This section requires that the SDOC issue rules and regulations for the trading of OTC derivatives with respect to:

The eligibility of traders, including registration requirements for OTC derivatives dealers, institutions employing OTC derivatives dealers, and facilities on which OTC derivatives transactions are executed. These requirements shall be similar to those prescribed under the Securities and Exchange Act for securities trading.

Adequate capital requirements for OTC derivatives dealers that are similar to those applicable to securities dealers under section 15(c)(3) of the Securities and Exchange Act.

Adequate collateral or margin for OTC derivatives transactions. The SDOC shall consult with the Federal Reserve when setting collateral or margin requirements.

Registration and approval of facilities for the execution of OTC derivatives transactions.

Sales practices, including sales licensing and trading.

Self-regulation

Internal risk control

Disciplinary procedures

Violations and Enforcement

Standardized reporting and record keeping requirements, which shall include daily and quarterly reports on exposure to the OTC derivatives markets.

This section also defines “OTC derivatives dealer” and “OTC derivative.”

Finally, this section establishes criminal penalties for violations of the act, including regulations promulgated pursuant to the act. The criminal provisions are similar to those in the Commodity Exchange Act. This section also establishes a private right of action for individuals harmed by the actions of someone who violates the act.

Section VII - EFFECTIVE DATE

Section 701. Effective Date.

The act takes effect 180 days after the first commissioner takes office, or on any later date on or before October 1, 2003 .