

**Suspend the Rules and Pass the Bill, H. R. 2779, with An
Amendment**

**(The amendment strikes all after the enacting clause and inserts a
new text)**

112TH CONGRESS
2^D SESSION

H. R. 2779

To exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2011

Mr. STIVERS (for himself and Ms. FUDGE) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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. TREATMENT OF AFFILIATE TRANSACTIONS.**

4 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—

5 Section 1a(47) of the Commodity Exchange Act (7 U.S.C.

1 1a(47)), as added by section 721(a)(21) of the Dodd-
2 Frank Wall Street Reform and Consumer Protection Act,
3 is amended by adding at the end the following:

4 “(G) TREATMENT OF AFFILIATE TRANS-
5 ACTIONS.—

6 “(i) IN GENERAL.—For the purposes
7 of any clearing and execution requirements
8 under section 2(h) and any applicable mar-
9 gin and capital requirements of section
10 4s(e) and for purposes of defining ‘swap
11 dealer’ or ‘major swap participant’, and re-
12 porting requirements other than those set
13 forth in clause (ii), the term ‘swap’ does
14 not include any agreement, contract, or
15 transaction that—

16 “(I) would otherwise be included
17 as a ‘swap’ under subparagraph (A);
18 and

19 “(II) is entered into by parties
20 that report information or prepare fi-
21 nancial statements on a consolidated
22 basis, or for which a company affili-
23 ated with both parties reports infor-
24 mation or prepares financial state-
25 ments on a consolidated basis.

1 “(ii) REPORTING.—All agreements,
2 contracts, or transactions described in
3 clause (i) shall be reported to either a
4 swap data repository, or, if there is no
5 swap data repository that would accept
6 such agreements, contracts, or trans-
7 actions, to the Commission pursuant to
8 section 4r, or to a swap data repository or
9 to the Commission pursuant to section
10 2(h)(5), within such time period as the
11 Commission may by rule or regulation pre-
12 scribe. Nothing in this subparagraph shall
13 prohibit the Commission from establishing
14 public reporting requirements for covered
15 transactions between affiliates as described
16 in sections 23A and 23B of the Federal
17 Reserve Act in a manner consistent with
18 rules governing the treatment of such cov-
19 ered transactions pursuant to section
20 2(a)(13) of this Act.

21 “(iii) PROTECTION OF INSURANCE
22 FUNDS.—Nothing in this subparagraph
23 shall be construed to prevent the regulator
24 of a Federal or State insurance fund or
25 guaranty fund from exercising its other ex-

1 isting authority to protect the integrity of
2 such a fund, except that such regulator
3 shall not subject agreements, contracts, or
4 transactions described in clause (i) to
5 clearing and execution requirements under
6 section 2 of this Act, to any applicable
7 margin and capital requirements of section
8 4s(e) of this Act, or to reporting require-
9 ments of title VII of Public Law 111-203
10 other than those set forth in clause (ii) of
11 this subparagraph.

12 “(iv) PRESERVATION OF FEDERAL RE-
13 SERVE ACT AUTHORITY.—Nothing in this
14 subparagraph shall exempt a transaction
15 described in this subparagraph from sec-
16 tions 23A or 23B of the Federal Reserve
17 Act or implementing regulations there-
18 under.

19 “(v) PRESERVATION OF FEDERAL
20 AND STATE REGULATORY AUTHORITIES.—
21 Nothing in this subparagraph shall affect
22 the Federal banking agencies’ safety-and-
23 soundness authorities over banks estab-
24 lished in law other than title VII of Public
25 Law 111-203 or the authorities of State

1 insurance regulators over insurers, includ-
2 ing the authority to impose capital require-
3 ments with regard to swaps. For purposes
4 of this clause, the term ‘bank’ shall be de-
5 fined pursuant to section 3(a)(6) of the Se-
6 curities Exchange Act of 1934, ‘insurer’
7 shall be defined pursuant to title V of Pub-
8 lic Law 111-203, and ‘swap’ shall be de-
9 fined pursuant to title VII of Public Law
10 111-203.

11 “(vi) PREVENTION OF EVASION.—The
12 Commission may prescribe rules under this
13 subparagraph (and issue interpretations of
14 such rules) as determined by the Commis-
15 sion to be necessary to include in the defi-
16 nition of swaps under this paragraph any
17 agreement, contract, or transaction that
18 has been structured to evade the require-
19 ments of this Act applicable to swaps.”.

20 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
21 MENTS.—Section 3(a)(68) of the Securities Exchange Act
22 of 1934 (15 U.S.C. 78c(a)(68)), as added by section
23 761(a)(6) of the Dodd-Frank Wall Street Reform and
24 Consumer Protection Act, is amended by adding at the
25 end the following:

1 “(F) TREATMENT OF AFFILIATE TRANS-
2 ACTIONS.—

3 “(i) IN GENERAL.—For the purposes
4 of any clearing and execution requirements
5 under section 3C and any applicable mar-
6 gin and capital requirements of section
7 15F(e), and for purposes of defining ‘secu-
8 rity-based swap dealer’ or a ‘major secu-
9 rity-based swap participant’, and reporting
10 requirements other than those set forth in
11 clause (ii), the term ‘security-based swap’
12 does not include any agreement, contract,
13 or transaction that—

14 “(I) would otherwise be included
15 as a ‘security-based swap’ under sub-
16 paragraph (A); and

17 “(II) is entered into by parties
18 that report information or prepare fi-
19 nancial statements on a consolidated
20 basis, or for which a company affili-
21 ated with both parties reports infor-
22 mation or prepares financial state-
23 ments on a consolidated basis.

24 “(ii) REPORTING.—All agreements,
25 contracts, or transactions described in

1 clause (i) shall be reported to either a se-
2 curity-based swap data repository, or, if
3 there is no security-based swap data repos-
4 itory that would accept such agreements,
5 contracts, or transactions, to the Commis-
6 sion pursuant to section 13A, within such
7 time period as the Commission may by rule
8 or regulation prescribe.

9 “(iii) PRESERVATION OF FEDERAL
10 RESERVE ACT AUTHORITY.—Nothing in
11 this subparagraph shall exempt a trans-
12 action described in this subparagraph from
13 sections 23A or 23B of the Federal Re-
14 serve Act or implementing regulations
15 thereunder.

16 “(iv) PROTECTION OF INSURANCE
17 FUNDS.—Nothing in this subparagraph
18 shall be construed to prevent the regulator
19 of a Federal or State insurance fund or
20 guaranty fund from exercising its other ex-
21 isting authority to protect the integrity of
22 such a fund, except that such regulator
23 shall not subject security-based swap
24 transactions between affiliated companies
25 to clearing and execution requirements

1 under section 3C, to any applicable margin
2 and capital requirements of section 15F(e),
3 or to reporting requirements of title VII of
4 Public Law 111-203 other than those set
5 forth in clause (ii).

6 “(v) PRESERVATION OF FEDERAL
7 AND STATE REGULATORY AUTHORITIES.—
8 Nothing in this subparagraph shall affect
9 the Federal banking agencies’ safety-and-
10 soundness authorities over banks estab-
11 lished in law other than title VII of Public
12 Law 111-203 or the authorities of State
13 insurance regulators over insurers, includ-
14 ing the authority to impose capital require-
15 ments with regard to security-based swaps.
16 For purposes of this clause, the term
17 ‘bank’ shall be defined pursuant to section
18 3(a)(6) of the Securities Exchange Act of
19 1934, ‘insurer’ shall be defined pursuant
20 to title V of Public Law 111-203, and ‘se-
21 curity-based swap’ shall be defined pursu-
22 ant to title VII of Public Law 111-203.

23 “(vi) PREVENTION OF EVASION.—The
24 Commission may prescribe rules under this
25 subparagraph (and issue interpretations of

1 such rules) as determined by the Commis-
2 sion to be necessary to include in the defi-
3 nition of security-based swap under this
4 paragraph any agreement, contract, or
5 transaction that has been structured to
6 evade the requirements of this Act applica-
7 ble to security-based swaps.”.

8 **SEC. 2. IMPLEMENTATION.**

9 The amendments made by this Act to the Commodity
10 Exchange Act shall be implemented—

11 (1) without regard to—

12 (A) chapter 35 of title 44, United States
13 Code; and

14 (B) the notice and comment provisions of
15 section 553 of title 5, United States Code;

16 (2) through the promulgation of an interim
17 final rule, pursuant to which public comment will be
18 sought before a final rule is issued, and

19 (3) such that paragraph (1) shall apply solely
20 to changes to rules and regulations, or proposed
21 rules and regulations, that are limited to and di-
22 rectly a consequence of such amendments.