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(Original Signature of Member)

113TH CONGRESS
2^D SESSION

H. R.

To clarify the application of certain leverage and risk-based requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

for himself and MR. GARY G. MILLER of CALIFORNIA

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

A BILL

To clarify the application of certain leverage and risk-based requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes.

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. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—INSURANCE CAPITAL STANDARDS

Sec. 101. Short title.

Sec. 102. Clarification of application of leverage and risk-based capital requirements.

TITLE II—COLLATERALIZED LOAN OBLIGATIONS

Sec. 201. Short title.

Sec. 202. Rules of construction relating to collateralized loan obligations.

TITLE III—SMALL BUSINESS MERGERS, ACQUISITIONS, SALES,
AND BROKERAGE SIMPLIFICATION

Sec. 301. Short title.

Sec. 302. Registration exemption for merger and acquisition brokers.

Sec. 303. Effective date.

TITLE IV—BUSINESS RISK MITIGATION AND PRICE
STABILIZATION

Sec. 401. Short title.

Sec. 402. Margin requirements.

Sec. 403. Implementation.

1 **TITLE I—INSURANCE CAPITAL**
2 **STANDARDS**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Insurance Capital
5 Standards Clarification Act of 2014”.

6 **SEC. 102. CLARIFICATION OF APPLICATION OF LEVERAGE**
7 **AND RISK-BASED CAPITAL REQUIREMENTS.**

8 Section 171 of the Dodd-Frank Wall Street Reform
9 and Consumer Protection Act (12 U.S.C. 5371) is amend-
10 ed—

11 (1) in subsection (a), by adding at the end the
12 following:

13 “(4) BUSINESS OF INSURANCE.—The term
14 ‘business of insurance’ has the same meaning as in
15 section 1002(3).

16 “(5) PERSON REGULATED BY A STATE INSUR-
17 ANCE REGULATOR.—The term ‘person regulated by

1 a State insurance regulator' has the same meaning
2 as in section 1002(22).

3 “(6) REGULATED FOREIGN SUBSIDIARY AND
4 REGULATED FOREIGN AFFILIATE.—The terms ‘regu-
5 lated foreign subsidiary’ and ‘regulated foreign affil-
6 iate’ mean a person engaged in the business of in-
7 surance in a foreign country that is regulated by a
8 foreign insurance regulatory authority that is a
9 member of the International Association of Insur-
10 ance Supervisors or other comparable foreign insur-
11 ance regulatory authority as determined by the
12 Board of Governors following consultation with the
13 State insurance regulators, including the lead State
14 insurance commissioner (or similar State official) of
15 the insurance holding company system as deter-
16 mined by the procedures within the Financial Anal-
17 ysis Handbook adopted by the National Association
18 of Insurance Commissioners, where the person, or
19 its principal United States insurance affiliate, has
20 its principal place of business or is domiciled, but
21 only to the extent that—

22 “(A) such person acts in its capacity as a
23 regulated insurance entity; and

1 “(B) the Board of Governors does not de-
2 termine that the capital requirements in a spe-
3 cific foreign jurisdiction are inadequate.

4 “(7) CAPACITY AS A REGULATED INSURANCE
5 ENTITY.—The term ‘capacity as a regulated insur-
6 ance entity’—

7 “(A) includes any action or activity under-
8 taken by a person regulated by a State insur-
9 ance regulator or a regulated foreign subsidiary
10 or regulated foreign affiliate of such person, as
11 those actions relate to the provision of insur-
12 ance, or other activities necessary to engage in
13 the business of insurance; and

14 “(B) does not include any action or activ-
15 ity, including any financial activity, that is not
16 regulated by a State insurance regulator or a
17 foreign agency or authority and subject to State
18 insurance capital requirements or, in the case of
19 a regulated foreign subsidiary or regulated for-
20 eign affiliate, capital requirements imposed by a
21 foreign insurance regulatory authority.”; and

22 (2) by adding at the end the following new sub-
23 section:

24 “(c) CLARIFICATION.—

1 “(1) IN GENERAL.—In establishing the min-
2 imum leverage capital requirements and minimum
3 risk-based capital requirements on a consolidated
4 basis for a depository institution holding company or
5 a nonbank financial company supervised by the
6 Board of Governors as required under paragraphs
7 (1) and (2) of subsection (b), the appropriate Fed-
8 eral banking agencies shall not be required to in-
9 clude, for any purpose of this section (including in
10 any determination of consolidation), a person regu-
11 lated by a State insurance regulator or a regulated
12 foreign subsidiary or a regulated foreign affiliate of
13 such person engaged in the business of insurance, to
14 the extent that such person acts in its capacity as
15 a regulated insurance entity.

16 “(2) RULE OF CONSTRUCTION ON BOARD’S AU-
17 THORITY.—This subsection shall not be construed to
18 prohibit, modify, limit, or otherwise supersede any
19 other provision of Federal law that provides the
20 Board of Governors authority to issue regulations
21 and orders relating to capital requirements for de-
22 pository institution holding companies or nonbank fi-
23 nancial companies supervised by the Board of Gov-
24 ernors.

1 “(3) RULE OF CONSTRUCTION ON ACCOUNTING
2 PRINCIPLES.—

3 “(A) IN GENERAL.—A depository institu-
4 tion holding company or nonbank financial com-
5 pany supervised by the Board of Governors of
6 the Federal Reserve that is also a person regu-
7 lated by a State insurance regulator that is en-
8 gaged in the business of insurance that files fi-
9 nancial statements with a State insurance regu-
10 lator or the National Association of Insurance
11 Commissioners utilizing only Statutory Ac-
12 counting Principles in accordance with State
13 law, shall not be required by the Board under
14 the authority of this section or the authority of
15 the Home Owners’ Loan Act to prepare such fi-
16 nancial statements in accordance with Generally
17 Accepted Accounting Principles.

18 “(B) PRESERVATION OF AUTHORITY.—
19 Nothing in subparagraph (A) shall limit the au-
20 thority of the Board under any other applicable
21 provision of law to conduct any regulatory or
22 supervisory activity of a depository institution
23 holding company or non-bank financial com-
24 pany supervised by the Board of Governors, in-
25 cluding the collection or reporting of any infor-

1 mation on an entity or group-wide basis. Noth-
2 ing in this paragraph shall excuse the Board
3 from its obligations to comply with section
4 161(a) of the Dodd-Frank Wall Street Reform
5 and Consumer Protection Act (12 U.S.C.
6 5361(a)) and section 10(b)(2) of the Home
7 Owners' Loan Act (12 U.S.C. 1467a(b)(2)), as
8 appropriate.”.

9 **TITLE II—COLLATERALIZED** 10 **LOAN OBLIGATIONS**

11 **SEC. 201. SHORT TITLE.**

12 This title may be cited as the “Restoring Proven Fi-
13 nancing for American Employers Act”.

14 **SEC. 202. RULES OF CONSTRUCTION RELATING TO** 15 **COLLATERALIZED LOAN OBLIGATIONS.**

16 Section 13(g) of the Bank Holding Company Act of
17 1956 (12 U.S.C. 1851(g)) is amended by adding at the
18 end the following new paragraphs:

19 “(4) COLLATERALIZED LOAN OBLIGATIONS.—

20 “(A) INAPPLICABILITY TO CERTAIN
21 COLLATERALIZED LOAN OBLIGATIONS.—Noth-
22 ing in this section shall be construed to require
23 the divestiture, prior to July 21, 2017, of any
24 debt securities of collateralized loan obligations,

1 if such debt securities were issued before Janu-
2 ary 31, 2014.

3 “(B) OWNERSHIP INTEREST WITH RE-
4 SPECT TO COLLATERALIZED LOAN OBLIGA-
5 TIONS.—A banking entity shall not be consid-
6 ered to have an ownership interest in a
7 collateralized loan obligation because it ac-
8 quires, has acquired, or retains a debt security
9 in such collateralized loan obligation if the debt
10 security has no indicia of ownership other than
11 the right of the banking entity to participate in
12 the removal for cause, or in the selection of a
13 replacement after removal for cause or resigna-
14 tion, of an investment manager or investment
15 adviser of the collateralized loan obligation.

16 “(C) DEFINITIONS.—For purposes of this
17 paragraph:

18 “(i) COLLATERALIZED LOAN OBLIGA-
19 TION.—The term ‘collateralized loan obli-
20 gation’ means any issuing entity of an
21 asset-backed security, as defined in section
22 3(a)(77) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78c(a)(77)), that is com-
24 prised primarily of commercial loans.

1 “(ii) REMOVAL FOR CAUSE.—An in-
2 vestment manager or investment adviser
3 shall be deemed to be removed ‘for cause’
4 if the investment manager or investment
5 adviser is removed as a result of—

6 “(I) a breach of a material term
7 of the applicable management or advi-
8 sory agreement or the agreement gov-
9 erning the collateralized loan obliga-
10 tion;

11 “(II) the inability of the invest-
12 ment manager or investment adviser
13 to continue to perform its obligations
14 under any such agreement;

15 “(III) any other action or inac-
16 tion by the investment manager or in-
17 vestment adviser that has or could
18 reasonably be expected to have a ma-
19 terially adverse effect on the
20 collateralized loan obligation, if the in-
21 vestment manager or investment ad-
22 viser fails to cure or take reasonable
23 steps to cure such effect within a rea-
24 sonable time; or

1 “(IV) a comparable event or cir-
2 cumstance that threatens, or could
3 reasonably be expected to threaten,
4 the interests of holders of the debt se-
5 curities.”.

6 **TITLE III—SMALL BUSINESS**
7 **MERGERS, ACQUISITIONS,**
8 **SALES, AND BROKERAGE SIM-**
9 **PLIFICATION**

10 **SEC. 301. SHORT TITLE.**

11 This title may be cited as the “Small Business Merg-
12 ers, Acquisitions, Sales, and Brokerage Simplification Act
13 of 2014”.

14 **SEC. 302. REGISTRATION EXEMPTION FOR MERGER AND**
15 **ACQUISITION BROKERS.**

16 Section 15(b) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78o(b)) is amended by adding at the end the
18 following:

19 “(13) REGISTRATION EXEMPTION FOR MERGER
20 AND ACQUISITION BROKERS.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), an M&A broker shall be ex-
23 empt from registration under this section.

24 “(B) EXCLUDED ACTIVITIES.—An M&A
25 broker is not exempt from registration under

1 this paragraph if such broker does any of the
2 following:

3 “(i) Directly or indirectly, in connec-
4 tion with the transfer of ownership of an
5 eligible privately held company, receives,
6 holds, transmits, or has custody of the
7 funds or securities to be exchanged by the
8 parties to the transaction.

9 “(ii) Engages on behalf of an issuer in
10 a public offering of any class of securities
11 that is registered, or is required to be reg-
12 istered, with the Commission under section
13 12 or with respect to which the issuer files,
14 or is required to file, periodic information,
15 documents, and reports under subsection
16 (d).

17 “(C) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph shall be construed to limit
19 any other authority of the Commission to ex-
20 empt any person, or any class of persons, from
21 any provision of this title, or from any provision
22 of any rule or regulation thereunder.

23 “(D) DEFINITIONS.—In this paragraph:

24 “(i) CONTROL.—The term ‘control’
25 means the power, directly or indirectly, to

1 direct the management or policies of a
2 company, whether through ownership of
3 securities, by contract, or otherwise. There
4 is a presumption of control for any person
5 who—

6 “(I) is a director, general part-
7 ner, member or manager of a limited
8 liability company, or officer exercising
9 executive responsibility (or has similar
10 status or functions);

11 “(II) has the right to vote 20
12 percent or more of a class of voting
13 securities or the power to sell or direct
14 the sale of 20 percent or more of a
15 class of voting securities; or

16 “(III) in the case of a partner-
17 ship or limited liability company, has
18 the right to receive upon dissolution,
19 or has contributed, 20 percent or
20 more of the capital.

21 “(ii) ELIGIBLE PRIVATELY HELD
22 COMPANY.—The term ‘eligible privately
23 held company’ means a company that
24 meets both of the following conditions:

1 “(I) The company does not have
2 any class of securities registered, or
3 required to be registered, with the
4 Commission under section 12 or with
5 respect to which the company files, or
6 is required to file, periodic informa-
7 tion, documents, and reports under
8 subsection (d).

9 “(II) In the fiscal year ending
10 immediately before the fiscal year in
11 which the services of the M&A broker
12 are initially engaged with respect to
13 the securities transaction, the com-
14 pany meets either or both of the fol-
15 lowing conditions (determined in ac-
16 cordance with the historical financial
17 accounting records of the company):

18 “(aa) The earnings of the
19 company before interest, taxes,
20 depreciation, and amortization
21 are less than \$25,000,000.

22 “(bb) The gross revenues of
23 the company are less than
24 \$250,000,000.

1 “(iii) M&A BROKER.—The term ‘M&A
2 broker’ means a broker, and any person
3 associated with a broker, engaged in the
4 business of effecting securities transactions
5 solely in connection with the transfer of
6 ownership of an eligible privately held com-
7 pany, regardless of whether the broker acts
8 on behalf of a seller or buyer, through the
9 purchase, sale, exchange, issuance, repur-
10 chase, or redemption of, or a business com-
11 bination involving, securities or assets of
12 the eligible privately held company, if the
13 broker reasonably believes that—

14 “(I) upon consummation of the
15 transaction, any person acquiring se-
16 curities or assets of the eligible pri-
17 vately held company, acting alone or
18 in concert, will control and, directly or
19 indirectly, will be active in the man-
20 agement of the eligible privately held
21 company or the business conducted
22 with the assets of the eligible privately
23 held company; and

24 “(II) if any person is offered se-
25 curities in exchange for securities or

1 assets of the eligible privately held
2 company, such person will, prior to
3 becoming legally bound to consum-
4 mate the transaction, receive or have
5 reasonable access to the most recent
6 year-end balance sheet, income state-
7 ment, statement of changes in finan-
8 cial position, and statement of owner's
9 equity of the issuer of the securities
10 offered in exchange, and, if the finan-
11 cial statements of the issuer are au-
12 dited, the related report of the inde-
13 pendent auditor, a balance sheet
14 dated not more than 120 days before
15 the date of the offer, and information
16 pertaining to the management, busi-
17 ness, results of operations for the pe-
18 riod covered by the foregoing financial
19 statements, and material loss contin-
20 gencies of the issuer.

21 “(E) INFLATION ADJUSTMENT.—

22 “(i) IN GENERAL.—On the date that
23 is 5 years after the date of the enactment
24 of the Small Business Mergers, Acquisi-
25 tions, Sales, and Brokerage Simplification

1 Act of 2014, and every 5 years thereafter,
2 each dollar amount in subparagraph
3 (D)(ii)(II) shall be adjusted by—

4 “(I) dividing the annual value of
5 the Employment Cost Index For
6 Wages and Salaries, Private Industry
7 Workers (or any successor index), as
8 published by the Bureau of Labor
9 Statistics, for the calendar year pre-
10 ceeding the calendar year in which the
11 adjustment is being made by the an-
12 nual value of such index (or suc-
13 cessor) for the calendar year ending
14 December 31, 2012; and

15 “(II) multiplying such dollar
16 amount by the quotient obtained
17 under subclause (I).

18 “(ii) ROUNDING.—Each dollar
19 amount determined under clause (i) shall
20 be rounded to the nearest multiple of
21 \$100,000.”.

22 **SEC. 303. EFFECTIVE DATE.**

23 This title and any amendment made by this title shall
24 take effect on the date that is 90 days after the date of
25 the enactment of this Act.

1 **TITLE IV—BUSINESS RISK MITI-**
2 **GATION AND PRICE STA-**
3 **BILIZATION**

4 **SEC. 401. SHORT TITLE.**

5 This title may be cited as the “Business Risk Mitiga-
6 tion and Price Stabilization Act of 2013”.

7 **SEC. 402. MARGIN REQUIREMENTS.**

8 (a) **COMMODITY EXCHANGE ACT AMENDMENT.**—
9 Section 4s(e) of the Commodity Exchange Act (7 U.S.C.
10 6s(e)), as added by section 731 of the Dodd-Frank Wall
11 Street Reform and Consumer Protection Act, is amended
12 by adding at the end the following new paragraph:

13 “(4) **APPLICABILITY WITH RESPECT TO**
14 **COUNTERPARTIES.**—The requirements of paragraphs
15 (2)(A)(ii) and (2)(B)(ii), including the initial and
16 variation margin requirements imposed by rules
17 adopted pursuant to paragraphs (2)(A)(ii) and
18 (2)(B)(ii), shall not apply to a swap in which a
19 counterparty qualifies for an exception under section
20 2(h)(7)(A), or an exemption issued under section
21 4(c)(1) from the requirements of section 2(h)(1)(A)
22 for cooperative entities as defined in such exemption,
23 or satisfies the criteria in section 2(h)(7)(D).”.

24 (b) **SECURITIES EXCHANGE ACT AMENDMENT.**—
25 Section 15F(e) of the Securities Exchange Act of 1934

1 (15 U.S.C. 78o–10(e)), as added by section 764(a) of the
2 Dodd-Frank Wall Street Reform and Consumer Protec-
3 tion Act, is amended by adding at the end the following
4 new paragraph:

5 “(4) APPLICABILITY WITH RESPECT TO
6 COUNTERPARTIES.—The requirements of paragraphs
7 (2)(A)(ii) and (2)(B)(ii) shall not apply to a secu-
8 rity-based swap in which a counterparty qualifies for
9 an exception under section 3C(g)(1) or satisfies the
10 criteria in section 3C(g)(4).”.

11 **SEC. 403. IMPLEMENTATION.**

12 The amendments made by this title to the Commodity
13 Exchange Act shall be implemented—

14 (1) without regard to—

15 (A) chapter 35 of title 44, United States
16 Code; and

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

19 (2) through the promulgation of an interim
20 final rule, pursuant to which public comment will be
21 sought before a final rule is issued; and

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