

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1256

[Report No. 113-]

To direct the Securities and Exchange Commission and the Commodity Futures Trading Commission to jointly adopt rules setting forth the application to cross-border swaps transactions of certain provisions relating to swaps that were enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2013

Mr. GARRETT (for himself, Mr. CONAWAY, Mr. CARNEY, and Mr. DAVID SCOTT of Georgia) 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

MAY --, 2013

Reported from the Committee on Financial Services with an amendment

[Showing the text as amended by the Committee on Financial Services]

[For text of introduced bill, see copy of bill as introduced on March 19, 2013]

## **A BILL**

To direct the Securities and Exchange Commission and the Commodity Futures Trading Commission to jointly adopt rules setting forth the application to cross-border swaps transactions of certain provisions relating to swaps that were enacted as part of 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. SHORT TITLE.**

4 This Act may be cited as the “Swap Jurisdiction Cer-  
5 tainty Act”.

6 **SEC. 2. JOINT RULEMAKING ON CROSS-BORDER SWAPS.**

7 (a) JOINT RULEMAKING REQUIRED.—

8 (1) IN GENERAL.—Not later than 270 days  
9 after the date of enactment of this Act, the Securi-  
10 ties and Exchange Commission and the Commodity  
11 Futures Trading Commission shall jointly issue rules  
12 setting forth the application of United States swaps  
13 requirements of the Securities Exchange Act of  
14 1934 and the Commodity Exchange Act relating to  
15 cross-border swaps and security-based swaps trans-  
16 actions involving U.S. persons or non-U.S. persons.

17 (2) CONSTRUCTION.—The rules required under  
18 paragraph (1) shall be identical, notwithstanding  
19 any difference in the authorities granted the Com-  
20 missions in section 30(c) of the Securities Exchange  
21 Act of 1934 (15 U.S.C. 78dd(c)) and section 2(i) of  
22 the Commodity Exchange Act (7 U.S.C. 2(i)), re-  
23 spectively, except to the extent necessary to accom-  
24 modate differences in other underlying statutory re-

1 requirements under such Acts, and the rules there-  
2 under.

3 (b) CONSIDERATIONS.—The Commissions shall joint-  
4 ly issue rules that address—

5 (1) the nature of the connections to the United  
6 States that require a non-U.S. person to register as  
7 a swap dealer, major swap participant, security-  
8 based swap dealer, or major security-based swap  
9 participant under each Commission’s respective Acts  
10 and the regulations issued under such Acts;

11 (2) which of the United States swaps require-  
12 ments shall apply to the swap and security-based  
13 swap activities of non-U.S. persons, U.S. persons,  
14 and their branches, agencies, subsidiaries, and affili-  
15 ates outside of the United States and the extent to  
16 which such requirements shall apply; and

17 (3) the circumstances under which a non-U.S.  
18 person in compliance with the regulatory require-  
19 ments of a foreign jurisdiction shall be exempt from  
20 United States swaps requirements.

21 (c) RULE IN ACCORDANCE WITH APA REQUIRED.—  
22 No guidance, memorandum of understanding, or any such  
23 other agreement may satisfy the requirement to issue a  
24 joint rule from the Commissions in accordance with sec-  
25 tion 553 of title 5, United States Code.

1 (d) GENERAL APPLICATION TO COUNTRIES OR AD-  
2 MINISTRATIVE REGIONS HAVING NINE LARGEST MAR-  
3 KETS.—

4 (1) GENERAL APPLICATION.—In issuing rules  
5 under this section, the Commissions shall provide  
6 that a non-U.S. person in compliance with the swaps  
7 regulatory requirements of a country or administra-  
8 tive region that has one of the nine largest combined  
9 swap and security-based swap markets by notional  
10 amount in the calendar year preceding issuance of  
11 such rules, or other foreign jurisdiction as jointly de-  
12 termined by the Commissions, shall be exempt from  
13 United States swaps requirements in accordance  
14 with the schedule set forth in paragraph (2), unless  
15 the Commissions jointly determine that the regu-  
16 latory requirements of such country or administra-  
17 tive region or other foreign jurisdiction are not  
18 broadly equivalent to United States swaps require-  
19 ments.

20 (2) EFFECTIVE DATE SCHEDULE.—The exemp-  
21 tion described in paragraph (1) and set forth under  
22 the rules required by this section shall apply to per-  
23 sons or transactions relating to or involving—

24 (A) countries or administrative regions de-  
25 scribed in such paragraph, or any other foreign

1 jurisdiction as jointly determined by the Com-  
2 missions, accounting for the five largest com-  
3 bined swap and security-based swap markets by  
4 notional amount in the calendar year preceding  
5 issuance of such rules, on the date on which  
6 final rules are issued under this section; and

7 (B) the remaining countries or administra-  
8 tive regions described in such paragraph, and  
9 any other foreign jurisdiction as jointly deter-  
10 mined by the Commissions, 1 year after the  
11 date on which such rules are issued.

12 (3) CRITERIA.—In such rules, the Commissions  
13 shall jointly establish criteria for determining that  
14 one or more categories of regulatory requirements of  
15 a country or administrative region described in para-  
16 graph (1) or other foreign jurisdiction is not broadly  
17 equivalent to United States swaps requirements and  
18 shall jointly determine the appropriate application of  
19 certain United States swap requirements to persons  
20 or transactions relating to or involving such country  
21 or administrative region or other foreign jurisdiction.  
22 Such criteria shall include the scope and objectives  
23 of the regulatory requirements of a country or ad-  
24 ministrative region described in paragraph (1) or  
25 other foreign jurisdiction as well as the effectiveness

1 of the supervisory compliance program administered,  
2 and the enforcement authority exercised, by such  
3 country or administrative region or other foreign ju-  
4 risdiction, and such other factors as the Commis-  
5 sions, by rule, jointly determine to be necessary or  
6 appropriate in the public interest.

7 (4) REQUIRED ASSESSMENT.—Beginning on the  
8 date on which final rules are issued under this sec-  
9 tion, the Commissions shall begin to jointly assess  
10 the regulatory requirements of countries or adminis-  
11 trative regions described in paragraph (1), as the  
12 Commissions jointly determine appropriate, in ac-  
13 cordance with the criteria established pursuant to  
14 this subsection, to determine if one or more cat-  
15 egories of regulatory requirements of such a country  
16 or administrative region or other foreign jurisdiction  
17 is not broadly equivalent to United States swaps re-  
18 quirements.

19 (e) REPORT TO CONGRESS.—If the Commissions  
20 make the joint determination described in subsection  
21 (d)(1) that the regulatory requirements of a country or  
22 administrative region described in such subsection or other  
23 foreign jurisdiction are not broadly equivalent to United  
24 States swaps requirements, the Commissions shall articu-  
25 late the basis for such a determination in a written report

1 transmitted to the Committee on Financial Services and  
2 the Committee on Agriculture of the House of Representa-  
3 tives and the Committee on Banking, Housing, and Urban  
4 Affairs and the Committee on Agriculture, Nutrition, and  
5 Forestry of the Senate within 30 days of the determina-  
6 tion. The determination shall not be effective until the  
7 transmission of such report.

8 (f) DEFINITIONS.—As used in this Act and for pur-  
9 poses of the rules issued pursuant to this Act, the fol-  
10 lowing definitions apply:

11 (1) The term “U.S. person”—

12 (A) means—

13 (i) any natural person resident in the  
14 United States;

15 (ii) any partnership, corporation,  
16 trust, or other legal person organized or  
17 incorporated under the laws of the United  
18 States or having its principal place of busi-  
19 ness in the United States;

20 (iii) any account (whether discre-  
21 tionary or non-discretionary) of a U.S. per-  
22 son; and

23 (iv) any other person as the Commis-  
24 sions may further jointly define to more ef-



1                   fectively carry out the purposes of this Act;

2                   and

3                   (B) does not include the International  
4                   Monetary Fund, the International Bank for Re-  
5                   construction and Development, the Inter-Amer-  
6                   ican Development Bank, the Asian Development  
7                   Bank, the African Development Bank, the  
8                   United Nations, their agencies and pension  
9                   plans, and any other similar international orga-  
10                  nizations and their agencies and pension plans.

11                 (2) The term “United States swaps require-  
12                 ments” means the provisions relating to swaps and  
13                 security-based swaps contained in the Commodity  
14                 Exchange Act (7 U.S.C. 1a et seq.) and the Securi-  
15                 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.)  
16                 that were added by title VII of the Dodd-Frank Wall  
17                 Street Reform and Consumer Protection Act (15  
18                 U.S.C. 8301 et seq.) and any rules or regulations  
19                 prescribed by the Securities and Exchange Commis-  
20                 sion and the Commodity Futures Trading Commis-  
21                 sion pursuant to such provisions.

22                 (g) CONFORMING AMENDMENTS.—

23                 (1) SECURITIES EXCHANGE ACT OF 1934.—  
24                 Section 36(c) of the Securities Exchange Act of  
25                 1934 (15 U.S.C. 78mm(c)) is amended by inserting

1 “or except as necessary to effectuate the purposes of  
2 the Swap Jurisdiction Certainty Act,” after “to  
3 grant exemptions,”.

4 (2) COMMODITY EXCHANGE ACT.—Section  
5 4(c)(1)(A) of the Commodity Exchange Act (7  
6 U.S.C. 6(c)(1)(A)) is amended by inserting “or ex-  
7 cept as necessary to effectuate the purposes of the  
8 Swap Jurisdiction Certainty Act,” after “to grant  
9 exemptions,”.