

113TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 113-

SWAP JURISDICTION CERTAINTY ACT

~~JUNE~~
MAY --, 2013.—Ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

~~MINORITY~~ VIEWS

[To accompany H.R. 1256]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Service, to whom was referred the bill (H.R. 1256) 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, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers to the introduced bill) are as follows:

Page 2, line 6, strike “180 days” and insert “270 days”.

Page 2, line 12, insert “cross-border” after “relating to”.

Page 2, line 13, strike “transacted between” and insert “transactions involving”.

Page 2, line 14, strike “and” and insert “or”.

Page 2, beginning on line 15, strike “Commission shall jointly issue the”.

Page 2, line 16, after “paragraph (1)” insert “shall be identical,”.

Page 2, line 18, strike “sections 30(c) and 36(c)” and insert “section 30(c)”.

Page 2, line 20, strike “; 78mm(c)”.

Page 2, line 21, before the period at the end insert “, except to the extent necessary to accommodate differences in other underlying statutory requirements under such Acts, and the rules thereunder”.

Page 3, line 1, insert “major” before “security-based”.

Page 3, beginning on line 19, strike “G20 MEMBER NATIONS” and insert “COUNTRIES OR ADMINISTRATIVE REGIONS HAVING NINE LARGEST MARKETS”.

Page 3, line 24, strike “G20 member nation” and insert “country or administrative region that has one of the nine largest combined swap and security-based swap markets by notional amount in the calendar year preceding issuance of such rules”.

Page 4, line 5, strike “the G20 member nation” and insert “such country or administrative region”.

Page 4, line 12, strike “G20 member nations” and insert “countries or administrative regions described in such paragraph”.

Page 4, line 18, add “and” after the semicolon.

Page 4, strike line 19 and all that follows through page 5, line 6, and insert the following:

(B) the remaining countries or administrative regions described in such paragraph, and any other foreign jurisdiction as jointly determined by the Commissions, 1 year after the date on which such rules are issued.

Page 5, line 10, strike “G20 member nation” and insert “country or administrative region described in paragraph (1)”.

Page 5, line 15, strike “that G20 member nation” and insert “such country or administrative region”.

Page 5, beginning on line 17, strike “G20 member nation” and insert “country or administrative region described in paragraph (1)”.

Page 5, line 21, strike “G20 member nation” and insert “country or administrative region”.

Page 6, line 2, strike “after”.

Page 6, beginning on line 4, strike “G20 member nations” and insert “countries or administrative regions described in paragraph (1)”.

Page 6, line 7, strike “paragraph (3)” and insert “this subsection”.

Page 6, beginning on line 8, strike “a G20 member nation” and insert “such a country or administrative region”.

Page 6, line 11, insert a period at the end.

Page 6, beginning on line 14, strike “the G20 member nation” and insert “a country or administrative region described in such subsection”.

Page 7, strike lines 4 through 7 (and redesignate subsequent provisions accordingly).

Page 7, strike lines 8 through 14 and insert the following:

(2) The term "U.S. person"—

(A) means—

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

(ii) any partnership, corporation, trust, or other legal person organized or incorporated under the laws of the United States or having its principal place of business in the United States;

(iii) any account (whether discretionary or non-discretionary) of a U.S. person; and

(iv) any other person as the Commissions may further jointly define to more effectively carry out the purposes of this Act; and

(B) does not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, their agencies and pension plans, and any other similar international organizations and their agencies and pension plans.

PURPOSE AND SUMMARY

H.R. 1256, the Swap Jurisdiction Certainty Act requires the Securities and Exchange Commission (SEC) and Commodity Futures Tradition Commission (CFTC) (collectively, the “Commissions”) to jointly issue rules relating to swaps transacted between U.S. persons and non-U.S. persons. The bill exempts from U.S. swaps requirements a non-U.S. person that is in compliance with the swaps regulatory requirements of a country or administrative region that has one of the nine largest combined swap and security-based swap markets by notional amount in the calendar year preceding issuance of such rules, or other foreign jurisdiction as jointly determined by the Commissions, unless the Commissions jointly determine that the regulatory requirements of such country or administrative region or other foreign jurisdiction are not broadly equivalent to United States swaps requirements.

BACKGROUND AND NEED FOR LEGISLATION

Title VII of the Dodd-Frank Act seeks to regulate the over-the-counter derivatives (OTC) market in much the same way that equities and futures exchanges are regulated. Because the OTC market is global, Title VII raises questions about the extent to which U.S. regulations will apply to swap and security-based swap transactions that take place outside the U.S. Title VII’s plain language makes clear that Congress intended it to apply outside the U.S. only in certain limited circumstances. Section 722 directs that provisions relating to swaps will not apply to activities outside the U.S. unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene anti-evasion rules promulgated by the CFTC.

The comments and actions of U.S. regulators indicate that they are considering regulations that would result in Title VII being applied more broadly than Congress intended. Further, the Dodd-Frank Act requires both the CFTC and the SEC to issue rules on the extraterritorial scope of Title VII, creating the possibility of two different, potentially conflicting, regulatory regimes. To ensure that one rule is issued to govern the extraterritorial application of Title VII of the Dodd-Frank Act and to ensure that the CFTC and SEC focus their resources and regulatory efforts on jurisdictions that are not broadly equivalent with the U.S. swaps regime, Representatives Scott Garrett, David Scott, John Carney and Mike Conaway introduced H.R. 1256, the Swap Jurisdiction Certainty Act.

H.R. 1256 harmonizes the cross-border approaches by requiring the CFTC and SEC to jointly issue the same rule related to the cross-border application of the Dodd Frank Act within 270 days of the bill’s enactment. This joint rule would have to be promulgated in accordance with the Administrative Procedures Act. H.R. 1256 measure ensures that operating entities in foreign countries or administrative regions with broadly equivalent regimes for swaps will not be subject to U.S. rules. Finally, H.R. 1256 requires that the SEC and CFTC jointly provide a report to Congress if they determine that a foreign regulatory regime is not broadly equivalent to United States swap requirements.

HEARINGS

The Committee on Financial Services's Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on H.R. 1256 on April 11, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 7, 2013, and ordered H.R. 1256 to be reported favorably to the House by a recorded vote of 48 yeas to 11 nays (Record vote no. FC-16), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

1. An amendment offered by Ranking Member Waters to strike the bill's presumption that the regulatory requirements of a foreign nation satisfy the corresponding categories of United States swaps requirements unless the SEC and CFTC jointly determine they do not, and to insert the reverse presumption, as amended, was not agreed to by a recorded vote of 28 yeas to 32 nays (Record vote no. FC-15).

Record vote no. FC-15

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Waters	X		
Mr. Gary G. Miller (CA)		X		Mrs. Maloney (NY)	X		
Mr. Bachus		X		Ms. Velázquez	X		
Mr. King (NY)		X		Mr. Watt	X		
Mr. Royce		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mrs. Capito		X		Mr. Capuano	X		
Mr. Garrett		X		Mr. Hinojosa	X		
Mr. Neugebauer		X		Mr. Clay	X		
Mr. McHenry		X		Mrs. McCarthy (NY)	X		
Mr. Campbell		X		Mr. Lynch	X		
Mrs. Bachmann		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland				Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Himes	X		
Mr. Huizenga (MI)		X		Mr. Peters (MI)	X		
Mr. Duffy		X		Mr. Carney	X		
Mr. Hurt		X		Ms. Sewell (AL)	X		
Mr. Grimm		X		Mr. Foster	X		
Mr. Stivers		X		Mr. Kildee	X		
Mr. Fincher		X		Mr. Murphy (FL)	X		
Mr. Stutzman		X		Mr. Delaney	X		
Mr. Mulvaney		X		Ms. Sinema	X		
Mr. Hultgren		X		Mrs. Beatty	X		
Mr. Ross		X		Mr. Heck (WA)	X		
Mr. Pittenger		X					

Record vote no. FC-15

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mrs. Wagner	-----	X	-----				
Mr. Barr	-----	X	-----				
Mr. Cotton	-----	X	-----				
Mr. Rothfus	-----	X	-----				

2. A motion by Chairman Hensarling to report the bill to the House with a favorable recommendation was agreed to by a record vote of 48 yeas and 11 nays (Record vote no. FC-16).

Record vote no. FC-16

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X	-----	-----	Ms. Waters	-----	X	-----
Mr. Gary G. Miller (CA)	X	-----	-----	Mrs. Maloney (NY)	-----	X	-----
Mr. Bachus	X	-----	-----	Ms. Velázquez	-----	X	-----
Mr. King (NY)	X	-----	-----	Mr. Watt	-----	X	-----
Mr. Royce	X	-----	-----	Mr. Sherman	X	-----	-----
Mr. Lucas	X	-----	-----	Mr. Meeks	X	-----	-----
Mrs. Capito	X	-----	-----	Mr. Capuano	-----	X	-----
Mr. Garrett	X	-----	-----	Mr. Hinojosa	-----	X	-----
Mr. Neugebauer	X	-----	-----	Mr. Clay	X	-----	-----
Mr. McHenry	X	-----	-----	Mrs. McCarthy (NY)	X	-----	-----
Mr. Campbell	X	-----	-----	Mr. Lynch	-----	X	-----
Mrs. Bachmann	X	-----	-----	Mr. David Scott (GA)	X	-----	-----
Mr. McCarthy (CA)	X	-----	-----	Mr. Al Green (TX)	-----	X	-----
Mr. Pearce	-----	-----	-----	Mr. Cleaver	-----	X	-----
Mr. Posey	X	-----	-----	Ms. Moore	X	-----	-----
Mr. Fitzpatrick	X	-----	-----	Mr. Ellison	-----	X	-----
Mr. Westmoreland	-----	-----	-----	Mr. Perlmutter	X	-----	-----
Mr. Luetkemeyer	X	-----	-----	Mr. Himes	X	-----	-----
Mr. Huizenga (MI)	X	-----	-----	Mr. Peters (MI)	X	-----	-----
Mr. Duffy	X	-----	-----	Mr. Carney	X	-----	-----
Mr. Hurt	X	-----	-----	Ms. Sewell (AL)	X	-----	-----
Mr. Grimm	X	-----	-----	Mr. Foster	X	-----	-----
Mr. Stivers	X	-----	-----	Mr. Kildee	X	-----	-----
Mr. Fincher	X	-----	-----	Mr. Murphy (FL)	X	-----	-----
Mr. Stutzman	X	-----	-----	Mr. Delaney	X	-----	-----
Mr. Mulvaney	X	-----	-----	Ms. Sinema	X	-----	-----
Mr. Hultgren	X	-----	-----	Mrs. Beatty	-----	X	-----
Mr. Ross	X	-----	-----	Mr. Heck (WA)	X	-----	-----
Mr. Pittenger	X	-----	-----				
Mrs. Wagner	X	-----	-----				
Mr. Barr	X	-----	-----				
Mr. Cotton	X	-----	-----				
Mr. Rothfus	X	-----	-----				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1256 will improve consideration by the SEC of the costs and benefits of its regulations and orders.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

[Please see attached CBO Estimate]



CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Douglas W. Elmendorf, Director

May 30, 2013

Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1256, the Swap Jurisdiction Certainty Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie, who can be reached at 226-2860.

Sincerely,

A handwritten signature in cursive script that reads "Douglas W. Elmendorf".

Douglas W. Elmendorf

Enclosure

cc: Honorable Maxine Waters
Ranking Member



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 30, 2013

H.R. 1256

Swap Jurisdiction Certainty Act

As ordered reported by the House Committee on Financial Services on May 7, 2013

H.R. 1256 would require the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) to jointly issue rules that define the application of United States regulations to swap transactions undertaken between a U.S. entity and a foreign entity. (A swap is a contract that calls for the exchange of cash between two participants based on an underlying rate or index or the performance of an asset.) Foreign participants in such transactions that are in compliance with the swap requirements of a country or region that has one of the nine largest swap markets, as determined by the agencies, would be exempt from the new requirements under certain conditions.

Based on information from the agencies, CBO expects that implementing H.R. 1256 would require the CFTC and the SEC to develop new rules and to review the regulations of large swap markets to determine whether exemptions would apply. CBO estimates that the costs to both agencies would be roughly equal—about \$4 million each. Under current law, the SEC is authorized to collect fees sufficient to offset the cost of its annual appropriation each year. Therefore, we estimate that the net cost to the SEC would be negligible, assuming appropriation actions consistent with that authority. CBO estimates that implementing H.R. 1256 would cost, on net, \$4 million for the CFTC's portion of the total cost, assuming appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) required both the CFTC and the SEC to develop numerous regulations that affect participants in swap transactions, including margin, clearing, and reporting requirements as well as standards of business conduct. The law did not, however, direct the agencies to develop regulations specifying when those requirements apply to swap transactions occurring between a U.S. entity and a foreign entity. Both agencies have published proposals to provide guidance for swap participants to determine whether U.S. regulations would apply to such transactions.

CBO estimates that implementing H.R. 1256 would increase the workload of both agencies to undertake a new rulemaking effort and an assessment of the regulations of the large swap markets. In addition, CBO expects that the agencies would incur costs to translate the regulations and supporting laws and reports for the large swap markets where English versions are not available.

H.R. 1256 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Assuming that the SEC increases fees to offset the costs of implementing the additional regulatory activities required by the bill, H.R. 1256 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the SEC, CBO estimates that the aggregate cost of the mandate would fall well below the annual threshold for private-sector mandates established in UMRA (\$150 million in 2013, adjusted annually for inflation).

On May 3, 2013, CBO published an estimate for H.R. 1256, the Swap Jurisdiction Certainty Act, as ordered reported by the House Committee on Agriculture on March 20, 2013. The two versions of the bill are similar, and the CBO cost estimates are the same.

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1256 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 1256 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 1256 requires the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) to jointly issue identical rules pursuant to the Administrative Procedure Act setting forth the application of United States swaps requirements of the Securities Exchange Act of 1934 and the Commodity Exchange Act relating to cross-border swaps and security-based swaps transactions involving U.S. persons or non-U.S. persons, not later than 270 days after the date of enactment of this Act.

This bill requires that SEC and CFTC to jointly issue identical rules, notwithstanding any difference in the authorities granted the Commissions in section 30(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd(c)) and section 2(i) of the Commodity Exchange Act (7 U.S.C.

2(i)), respectively, except to the extent necessary to accommodate differences in other underlying statutory requirements under such Acts, and the rules thereunder.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title

This section states that the Act may be cited as the Swap Jurisdiction Certainty Act.

Section 2. Joint Rulemaking on Cross-Border Swaps.

This section requires the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) (collectively, the “Commissions”) to jointly issue identical rules pursuant to the Administrative Procedure Act setting forth the application of United States swaps requirements of the Securities Exchange Act of 1934 and the Commodity Exchange Act relating to cross-border swaps and security-based swaps transactions involving U.S. persons or non-U.S. persons, not later than 270 days after the date of enactment of this Act.

This section requires that SEC and CFTC to jointly issue identical rules, notwithstanding any difference in the authorities granted the Commissions in section 30(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd(c)) and section 2(i) of the Commodity Exchange Act (7 U.S.C. 2(i)), respectively, except to the extent necessary to accommodate differences in other underlying statutory requirements under such Acts, and the rules thereunder.

The section prohibits the Commissions from issuing guidance, memorandum of understanding, or any such other agreement to satisfy the requirement to issue a joint rule.

The section requires the two Commissions shall jointly issue rules that address the nature of the connections to the United States that require a non-U.S. person to register as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant under each Commission’s respective Acts and the regulations issued under such Acts; which of the United States swaps requirements shall apply to the swap and security-based swap activities of non-U.S. persons, U.S. persons, and their branches, agencies, subsidiaries, and affiliates outside of the United States and the extent to which such requirements shall apply; and the circumstances under which a non-U.S. person in compliance with the regulatory requirements of a foreign jurisdiction shall be exempt from United States swaps requirements.

This section requires the Commissions shall provide that a non-U.S. person in compliance with the swaps regulatory requirements of a country or administrative region that has one of the nine largest combined swap and security-based swap markets by notional amount in the calendar year preceding issuance of such rules, or other foreign jurisdiction as jointly determined by the Commissions, shall be exempt from United States swaps requirements in accordance unless the Commissions jointly determine that the regulatory requirements of such country or administrative region or other foreign jurisdiction are not broadly equivalent to United States swaps requirements.

This section requires that the exemptions that are to be issued by the Commissions.

shall apply to persons or transactions relating to or involving countries or administrative regions described, or any other foreign jurisdiction as jointly determined by the Commissions, accounting for the five largest combined swap and security-based swap markets by notional amount in the calendar year preceding issuance of such rules, on the date on which final rules are issued under this section; and the remaining countries or administrative regions, and any other foreign jurisdiction as jointly determined by the Commissions, 1 year after the date on which such rules are issued.

This section requires that in issuing such rules, the Commissions shall jointly establish criteria for determining that one or more categories of regulatory requirements of a country or administrative region or other foreign jurisdiction is not broadly equivalent to United States swaps requirements and shall jointly determine the appropriate application of certain United States swap requirements to persons or transactions relating to or involving such country or administrative region or other foreign jurisdiction.

Such criteria shall include the scope and objectives of the regulatory requirements of a country or administrative region described or other foreign jurisdiction as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by such country or administrative region or other foreign jurisdiction, and such other factors as the Commissions, by rule, jointly determine to be necessary or appropriate in the public interest.

This section requires the Commissions to jointly assess the regulatory requirements of countries or administrative regions described, as the Commissions jointly determine appropriate, in accordance with the criteria established pursuant to this section, to determine if one or more categories of regulatory requirements of such a country or administrative region or other foreign jurisdiction is not broadly equivalent to United States swaps requirements.

This section requires that if the Commissions make the joint determination that the regulatory requirements of a country or administrative region described in such subsection or other foreign jurisdiction are not broadly equivalent to United States swaps requirements, the Commissions shall articulate the basis for such a determination in a written report to be transmitted to the Committee on Financial Services and the Committee on Agriculture of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 30 days of the determination. The determination shall not be effective until the transmission of such report.

This section defines the term “U.S. person” and the term “United States swaps requirements.”

This section also makes conforming to the Securities Exchange Act of 1934 and to the Commodity Exchange Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED
[Please see attached Ramseyer file]

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * *

SEC. 36. GENERAL EXEMPTIVE AUTHORITY.

(a) * * *

* * * * *

(c) DERIVATIVES.—Unless the Commission is expressly authorized by any provision described in this subsection to grant exemptions, or *except as necessary to effectuate the purposes of the Swap Jurisdiction Certainty Act*, the Commission shall not grant exemptions, with respect to amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to paragraphs (65), (66), (68), (69), (70), (71), (72), (73), (74), (75), (76), and (79) of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), and 17A(l); provided that the Commission shall have exemptive authority under this title with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under the Wall Street Transparency and Accountability Act of 2010 with respect to swaps, including under section 4(c) of the Commodity Exchange Act.

* * * * *

COMMODITY EXCHANGE ACT

* * * * *

SEC. 4. (a) * * *

* * * * *

(c)(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering,

entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that—

(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, *or except as necessary to effectuate the purposes of the Swap Jurisdiction Certainty Act*, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

(i) * * *

* * * * *

MINORITY VIEWS

[Please see attached Minority views]

Minority Views on H.R. 1256

The Swap Jurisdiction Certainty Act as introduced was an improvement over the bill introduced last year with the same title, recognizing the importance of providing the regulators with discretion to appropriately tailor US swaps rules to fit within the \$700 trillion global derivatives market. We continue to have concerns, however, about the presumption included in the bill that transactions involving some jurisdictions will be exempt, even if those jurisdictions will lack comparable rules for years to come.

The financial crisis of 2008 was exacerbated by the largely unregulated international market for over-the-counter derivatives, or swaps. Congress sought to prevent this market from ever threatening the US in the future by passing the Dodd-Frank Wall Street Reform and Consumer Protection Act. While the U.S. was not alone in those concerns, it is years ahead of other jurisdictions. The G-20, a group of the 20 largest national economies, agreed to a broad set of international principles to improve regulation of the financial sector, including imposing new requirements on swaps. We hope that those jurisdictions ultimately will adopt similar rules to effectively monitor and oversee swaps transactions, but that is far from certain at present. While Europe's framework for clearing is nearing completion, for example, its rules on trade execution are years away. Other jurisdictions like Singapore and Japan are also expected to lag the US by several years. As a result, many market observers are concerned that, our institutions and economy may be at risk from overseas swaps activity.

For these reasons, our regulators should continue to be empowered to appropriately apply US law overseas to protect the US economy, including in the interim period while other jurisdictions catch up to the US. HR 1256, however, presumes that G-20 countries will have swaps rules at the same time as the US, and that they will be comparable. This is a mistake.

At the same time, others have noted that if regulators overextend their reach, we may put US institutions at a competitive disadvantage without providing additional benefits for the US economy. For these reasons, we are supportive of the bill's goal to harmonize rules between our two derivatives regulators, but we have strong concerns with presuming that some jurisdictions are already comparable to the US. To make this presumption also would ease pressure on other jurisdictions to implement robust rules of their own.

We have made considerable progress towards promoting transparency, accountability and stability in the derivatives markets. We oppose HR 1256 to continue that progress.

Minority Views - H.R. 1256

Maxine Waters

Conor B. Maloney

Rubin Higginson

Michael E. Caputo

Melvin L. Watt

Keith Ellison

Emanuel Cleaver

Steph J. Lynch

113TH CONGRESS
1ST 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.

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

JUNE --, 2013

Reported from the Committee on Financial Services with amendments

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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 ~~180 days~~ ²⁷⁰
9 *days* after the date of enactment of this Act, the Se-
10 curities and Exchange Commission and the Com-
11 modity Futures Trading Commission shall jointly
12 issue rules setting forth the application of United
13 States swaps requirements of the Securities Ex-
14 change Act of 1934 and the Commodity Exchange
15 Act relating to *cross-border* swaps and security-based
16 swaps ~~transacted between~~ *transactions involving*
17 U.S. persons ~~and~~ *or* non-U.S. persons.

18 (2) CONSTRUCTION.—The ~~Commissions~~ shall
19 ~~jointly issue the~~ rules required under paragraph (1)
20 *shall be identical*, notwithstanding any difference in
21 the authorities granted the Commissions in ~~sections~~
22 ~~30(e) and 36(e)~~ *section 30(c)* of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78dd(e); ~~78mm(e)~~)
24 and section 2(i) of the Commodity Exchange Act (7
25 U.S.C. 2(i)), respectively, *except to the extent nec-*

1 *essary to accommodate differences in other underlying*
2 *statutory requirements under such Acts, and the rules*
3 *thereunder.*

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

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

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

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

22 (c) RULE IN ACCORDANCE WITH APA REQUIRED.—
23 No guidance, memorandum of understanding, or any such
24 other agreement may satisfy the requirement to issue a

1 joint rule from the Commissions in accordance with sec-
2 tion 553 of title 5, United States Code.

3 (d) GENERAL APPLICATION TO ~~G20 MEMBER NA-~~
4 ~~TIONS~~ *COUNTRIES OR ADMINISTRATIVE REGIONS HAVING*
5 *NINE LARGEST MARKETS.*—

6 (1) GENERAL APPLICATION.—In issuing rules
7 under this section, the Commissions shall provide
8 that a non-U.S. person in compliance with the swaps
9 regulatory requirements of a ~~G20 member nation~~
10 *country or administrative region that has one of the*
11 *nine largest combined swap and security-based swap*
12 *markets by notional amount in the calendar year pre-*
13 *ceding issuance of such rules, or other foreign juris-*
14 *isdiction as jointly determined by the Commissions,*
15 *shall be exempt from United States swaps require-*
16 *ments in accordance with the schedule set forth in*
17 *paragraph (2), unless the Commissions jointly deter-*
18 *mine that the regulatory requirements of ~~the G20~~*
19 *~~member nation~~ such country or administrative region*
20 *or other foreign jurisdiction are not broadly equiva-*
21 *lent to United States swaps requirements.*

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

1 (A) ~~G20 member nations~~ *countries or ad-*
2 *ministrative regions described in such para-*
3 *graph*, or any other foreign jurisdiction as joint-
4 ly determined by the Commissions, accounting
5 for the five largest combined swap and security-
6 based swap markets by notional amount in the
7 calendar year preceding issuance of such rules,
8 on the date on which final rules are issued
9 under this section; *and*

10 ~~(B) G20 member nations, or any other for-~~
11 ~~ign jurisdiction as jointly determined by the~~
12 ~~Commissions, accounting for the next five larg-~~
13 ~~est combined swap and security-based swap~~
14 ~~markets by notional amount in the calendar~~
15 ~~year preceding issuance of such rules, 1 year~~
16 ~~after the date on which such rules are issued;~~
17 ~~and~~

18 ~~(C) the remaining G20 member nations,~~
19 ~~and any other foreign jurisdiction as jointly de-~~
20 ~~termined by the Commissions, 18 months after~~
21 ~~the date on which such rules are issued.~~

22 *(B) the remaining countries or administra-*
23 *tive regions described in such paragraph, and*
24 *any other foreign jurisdiction as jointly deter-*

1 *mined by the Commissions, 1 year after the date*
2 *on which such rules are issued.*

3 (3) CRITERIA.—In such rules, the Commissions
4 shall jointly establish criteria for determining that
5 one or more categories of regulatory requirements of
6 a ~~G20 member nation~~ *country or administrative re-*
7 *gion described in paragraph (1)* or other foreign ju-
8 risdiction is not broadly equivalent to United States
9 swaps requirements and shall jointly determine the
10 appropriate application of certain United States
11 swap requirements to persons or transactions relat-
12 ing to or involving ~~that G20 member nation~~ *such*
13 *country or administrative region* or other foreign ju-
14 risdiction. Such criteria shall include the scope and
15 objectives of the regulatory requirements of a ~~G20~~
16 ~~member nation~~ *country or administrative region de-*
17 *scribed in paragraph (1)* or other foreign jurisdiction
18 as well as the effectiveness of the supervisory com-
19 pliance program administered, and the enforcement
20 authority exercised, by such ~~G20 member nation~~
21 *country or administrative region* or other foreign ju-
22 risdiction, and such other factors as the Commis-
23 sions, by rule, jointly determine to be necessary or
24 appropriate in the public interest.

1 (4) REQUIRED ASSESSMENT.—Beginning on
2 ~~after~~ the date on which final rules are issued under
3 this section, the Commissions shall begin to jointly
4 assess the regulatory requirements of ~~G20 member~~
5 ~~nations~~ *countries or administrative regions described*
6 *in paragraph (1)*, as the Commissions jointly deter-
7 mine appropriate, in accordance with the criteria es-
8 tablished pursuant to ~~paragraph (3)~~ *this subsection*,
9 to determine if one or more categories of regulatory
10 requirements of a ~~G20 member nation~~ *such a coun-*
11 *try or administrative region* or other foreign jurisdic-
12 tion is not broadly equivalent to United States swaps
13 requirements.

14 (e) REPORT TO CONGRESS.—If the Commissions
15 make the joint determination described in subsection
16 (d)(1) that the regulatory requirements of ~~the G20 mem-~~
17 ~~ber nation~~ *a country or administrative region described in*
18 *such subsection* or other foreign jurisdiction are not broad-
19 ly equivalent to United States swaps requirements, the
20 Commissions shall articulate the basis for such a deter-
21 mination in a written report transmitted to the Committee
22 on Financial Services and the Committee on Agriculture
23 of the House of Representatives and the Committee on
24 Banking, Housing, and Urban Affairs and the Committee
25 on Agriculture, Nutrition, and Forestry of the Senate

1 within 30 days of the determination. The determination
2 shall not be effective until the transmission of such report.

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

6 (1) The term “G20 member nation” refers to a
7 nation that is a member nation of the Group of
8 Twenty Finance Ministers and Central Bank Gov-
9 ernors.

10 (2) The term “U.S. person” has the meaning
11 given such term in section 230.902(k) of title 17,
12 Code of Federal Regulations. The Commissions may,
13 by rule, jointly revise the definition of U.S. person
14 for purposes of the rules required under this section
15 as they determine appropriate to more effectively
16 carry out the purposes of this Act.

17 (1) The term “U.S. person”—

18 (A) means—

19 (i) any natural person resident in the
20 United States;

21 (ii) any partnership, corporation,
22 trust, or other legal person organized or in-
23 corporated under the laws of the United
24 States or having its principal place of busi-
25 ness in the United States;

1 (iii) any account (whether discre-
2 tionary or non-discretionary) of a U.S. per-
3 son; and

4 (iv) any other person as the Commis-
5 sions may further jointly define to more ef-
6 fectively carry out the purposes of this Act;
7 and

8 (B) does not include the International Mon-
9 etary Fund, the International Bank for Recon-
10 struction and Development, the Inter-American
11 Development Bank, the Asian Development
12 Bank, the African Development Bank, the United
13 Nations, their agencies and pension plans, and
14 any other similar international organizations
15 and their agencies and pension plans.

16 ~~(3)~~ (2) The term “United States swaps require-
17 ments” means the provisions relating to swaps and
18 security-based swaps contained in the Commodity
19 Exchange Act (7 U.S.C. 1a et seq.) and the Securi-
20 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.)
21 that were added by title VII of the Dodd-Frank Wall
22 Street Reform and Consumer Protection Act (15
23 U.S.C. 8301 et seq.) and any rules or regulations
24 prescribed by the Securities and Exchange Commis-

1 sion and the Commodity Futures Trading Commis-
2 sion pursuant to such provisions.

3 (g) CONFORMING AMENDMENTS.—

4 (1) SECURITIES EXCHANGE ACT OF 1934.—
5 Section 36(c) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78mm(c)) is amended by inserting
7 “or except as necessary to effectuate the purposes of
8 the Swap Jurisdiction Certainty Act,” after “to
9 grant exemptions,”.

10 (2) COMMODITY EXCHANGE ACT.—Section
11 4(c)(1)(A) of the Commodity Exchange Act (7
12 U.S.C. 6(c)(1)(A)) is amended by inserting “or ex-
13 cept as necessary to effectuate the purposes of the
14 Swap Jurisdiction Certainty Act,” after “to grant
15 exemptions,”.