

Union Calendar No. 268

112TH CONGRESS
2^D SESSION

H. R. 2779

[Report No. 112-344, Parts I and II]

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

DECEMBER 23, 2011

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

DECEMBER 23, 2011

Referral to the Committee on Agriculture extended for a period not ending later than February 1, 2012

FEBRUARY 1, 2012

Referral to the Committee on Agriculture extended for a period not ending later than February 8, 2012

FEBRUARY 8, 2012

Additional sponsors: Ms. MOORE, Mr. DOLD, and Mr. GIBSON

FEBRUARY 8, 2012

Reported from the Committee on Agriculture with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

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.
6 1(a)(47)), as added by section 721(a)(21) of the Dodd-
7 Frank Wall Street Reform and Consumer Protection Act,
8 is amended by adding at the end the following:

9 “(G) **TREATMENT OF AFFILIATE TRANS-**
10 **ACTIONS.**—

11 “(i) **IN GENERAL.**—The term ‘swap’
12 does not include any agreement, contract,
13 or transaction that—

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

17 “(II) is entered into by a party
18 that is controlling, controlled by, or
19 under common control with its
20 counterparty.

21 “(ii) **REPORTING.**—All agreements,
22 contracts, or transactions described in
23 clause (i) shall be reported to either a
24 swap data repository, or, if there is no
25 swap data repository that would accept

1 such swaps, to the Commission pursuant
2 to section 4^r within such time period as
3 the Commission may by rule or regulation
4 prescribe.”.

5 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
6 MENTS.—Section 3(a)(68) of the Securities Exchange Act
7 of 1934 (15 U.S.C. 78c(3)(a)(68)), as added by section
8 761(a)(6) of the Dodd-Frank Wall Street Reform and
9 Consumer Protection Act, is amended by adding at the
10 end the following:

11 “(F) TREATMENT OF AFFILIATE TRANS-
12 ACTIONS.—

13 “(i) IN GENERAL.—The term ‘secu-
14 rity-based swap’ does not include any
15 agreement, contract, or transaction that—

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

19 “(II) is entered into by a party
20 that is controlling, controlled by, or
21 under common control with its
22 counterparty.

23 “(ii) REPORTING.—All agreements,
24 contracts, or transactions described in
25 clause (i) shall be reported to either a se-

1 security-based swap data repository, or, if
 2 there is no security-based swap data repos-
 3 itory that would accept such security-based
 4 swaps, to the Commission pursuant to sec-
 5 tion 13A within such time period as the
 6 Commission may by rule or regulation pre-
 7 scribe.”.

8 **SECTION 1. TREATMENT OF AFFILIATE TRANSACTIONS.**

9 (a) *COMMODITY EXCHANGE ACT AMENDMENTS.*—*Sec-*
 10 *tion 1a(47) of the Commodity Exchange Act (7 U.S.C.*
 11 *1(a)(47)), as added by section 721(a)(21) of the Dodd-*
 12 *Frank Wall Street Reform and Consumer Protection Act,*
 13 *is amended by adding at the end the following:*

14 “(G) *TREATMENT OF AFFILIATE TRANS-*
 15 *ACTIONS.*—

16 “(i) *IN GENERAL.*—*The term ‘swap’*
 17 *does not include any agreement, contract, or*
 18 *transaction that—*

19 “(I) *would otherwise be included*
 20 *as a ‘swap’ under subparagraph (A);*
 21 *and*

22 “(II) *is entered into by a party*
 23 *that is controlling, controlled by, or*
 24 *under common control with its*
 25 *counterparty.*

1 “(ii) *REPORTING.*—All agreements,
2 contracts, or transactions described in
3 clause (i) shall be reported to either a swap
4 data repository, or, if there is no swap data
5 repository that would accept such swaps, to
6 the Commission pursuant to section 4r
7 within such time period as the Commission
8 may by rule or regulation prescribe.”.

9 (b) *SECURITIES EXCHANGE ACT OF 1934 AMEND-*
10 *MENTS.*—Section 3(a)(68) of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78c(3)(a)(68)), as added by section
12 761(a)(6) of the Dodd-Frank Wall Street Reform and Con-
13 sumer Protection Act, is amended by adding at the end the
14 following:

15 “(F) *TREATMENT OF AFFILIATE TRANS-*
16 *ACTIONS.*—

17 “(i) *IN GENERAL.*—For the purposes of
18 any clearing and execution requirements
19 under sections 3C and any applicable mar-
20 gin and capital requirements of section
21 15F(e), and for purposes of defining a secu-
22 rity-based swap dealer or a major security-
23 based swap participant, and reporting re-
24 quirements other than those set forth in
25 clause (ii), the term ‘security-based swap’

1 *does not include any agreement, contract, or*
2 *transaction that—*

3 *“(I) would otherwise be included*
4 *as a ‘security-based swap’ under sub-*
5 *paragraph (A); and*

6 *“(II) is entered into by parties*
7 *that report information or prepare fi-*
8 *nancial statements on a consolidated*
9 *basis, or for which an affiliated com-*
10 *pany reports information or prepares*
11 *financial statements on a consolidated*
12 *basis for both parties.*

13 *“(ii) REPORTING.—All agreements,*
14 *contracts, or transactions described in*
15 *clause (i) shall be reported to either a secu-*
16 *rity-based swap data repository, or, if there*
17 *is no security-based swap data repository*
18 *that would accept such security-based*
19 *swaps, to the Commission pursuant to sec-*
20 *tion 13A within such time period as the*
21 *Commission may by rule or regulation pre-*
22 *scribe.*

23 *“(iii) PRESERVATION OF FEDERAL RE-*
24 *SERVE ACT AUTHORITY.—Nothing in this*
25 *subparagraph shall exempt a transaction*

1 *described in this subparagraph from sec-*
2 *tions 23A or 23B of the Federal Reserve Act*
3 *or implementing regulations thereunder.*

4 “(iv) *PROTECTION OF INSURANCE*
5 *FUNDS.—Nothing in this subparagraph*
6 *shall be construed to prevent the regulator of*
7 *a Federal or State insurance fund or guar-*
8 *anty fund from exercising its other existing*
9 *authority to protect the integrity of such a*
10 *fund, except that such regulator shall not*
11 *subject security-based swap transactions be-*
12 *tween affiliated companies to clearing and*
13 *execution requirements under section 3C, to*
14 *any applicable margin and capital require-*
15 *ments of section 15F(e), or to reporting re-*
16 *quirements other than those set forth in*
17 *clause (ii).*

18 “(v) *PREVENTION OF EVASION.—The*
19 *Commission may prescribe rules under this*
20 *subparagraph (and issue interpretations of*
21 *rules prescribed under this subparagraph)*
22 *as determined by the Commission to be nec-*
23 *essary to include in the definition of secu-*
24 *rity-based swap under this paragraph any*
25 *agreement, contract, or transaction that has*

1 *been structured as an affiliate transaction*
2 *to evade the requirements of this Act appli-*
3 *cable to security-based swaps.”.*

4 **SECTION 1. TREATMENT OF AFFILIATE TRANSACTIONS.**

5 **(a) COMMODITY EXCHANGE ACT AMEND-**
6 **MENTS.—Section 1a(47) of the Commodity Ex-**
7 **change Act (7 U.S.C. 1a(47)), as added by sec-**
8 **tion 721(a)(21) of the Dodd-Frank Wall Street**
9 **Reform and Consumer Protection Act, is**
10 **amended by adding at the end the following:**

11 **“(G) TREATMENT OF AFFILIATE**
12 **TRANSACTIONS.—**

13 **“(i) IN GENERAL.—For the pur-**
14 **poses of any clearing and execu-**
15 **tion requirements under section**
16 **2(h) and any applicable margin**
17 **and capital requirements of sec-**
18 **tion 4s(e) and for purposes of de-**
19 **fining a swap dealer or a major**
20 **swap participant, and reporting**
21 **requirements other than those set**
22 **forth in clause (ii), the term**
23 **‘swap’ does not include any agree-**
24 **ment, contract, or transaction**
25 **that—**

1 “(I) would otherwise be in-
2 cluded as a ‘swap’ under sub-
3 paragraph (A); and

4 “(II) is entered into by
5 parties that report informa-
6 tion or prepare financial
7 statements on a consolidated
8 basis, or for which an affili-
9 ated company reports infor-
10 mation or prepares financial
11 statements on a consolidated
12 basis.

13 “(ii) REPORTING.—All agree-
14 ments, contracts, or transactions
15 described in clause (i) shall be re-
16 ported to either a swap data re-
17 pository, or, if there is no swap
18 data repository that would accept
19 such agreements, contracts or
20 transactions, to the Commission
21 pursuant to section 4r, or to a
22 swap data repository or to the
23 Commission pursuant to section
24 2(h)(5) within such time period as
25 the Commission may by rule or

1 regulation prescribe. Nothing in
2 this subparagraph shall prohibit
3 a swap data repository from pub-
4 lically reporting the information
5 submitted pursuant to this clause.

6 “(iii) PROTECTION OF INSUR-
7 ANCE FUNDS.—Nothing in this sub-
8 paragraph shall be construed to
9 prevent the regulator of a Federal
10 or State insurance fund or guar-
11 anty fund from exercising its
12 other existing authority to pro-
13 tect the integrity of such a fund,
14 except that such regulator shall
15 not subject agreements, contracts,
16 or transactions between affiliated
17 companies to clearing and execu-
18 tion requirements under section
19 2, to any applicable margin and
20 capital requirements of section
21 4s(e), or to reporting require-
22 ments of the Wall Street Trans-
23 parency and Accountability Act of
24 2010 other than those set forth in
25 clause (ii).

1 “(iv) **PRESERVATION OF FED-**
2 **ERAL BANKING AGENCIES’ AUTHOR-**
3 **ITY.—Nothing in this section shall**
4 **affect the Federal banking agen-**
5 **cies’ safety-and-soundness au-**
6 **thorities established in law other**
7 **than title VII of P.L. 111-203, in-**
8 **cluding with respect to the au-**
9 **thority of the agencies to impose**
10 **capital requirements on a bank**
11 **with regard to swaps. For pur-**
12 **poses of this clause, the term**
13 **‘bank’ shall be defined pursuant**
14 **to section 3(6) of the Securities**
15 **Exchange Act of 1934, and the**
16 **term ‘swap’ shall be defined pur-**
17 **suant to title VII of P.L. 111-203.”.**

18 **(b) SECURITIES EXCHANGE ACT OF 1934**
19 **AMENDMENTS.—Section 3(a)(68) of the Securi-**
20 **ties Exchange Act of 1934 (15 U.S.C.**
21 **78c(a)(68)), as added by section 761(a)(6) of**
22 **the Dodd-Frank Wall Street Reform and Con-**
23 **sumer Protection Act, is amended by adding**
24 **at the end the following:**

1 **“(F) TREATMENT OF AFFILIATE**
2 **TRANSACTIONS.—**

3 **“(i) IN GENERAL.—The term ‘se-**
4 **curity-based swap’ does not in-**
5 **clude any agreement, contract, or**
6 **transaction that—**

7 **“(I) would otherwise be in-**
8 **cluded as a ‘security-based**
9 **swap’ under subparagraph**
10 **(A); and**

11 **“(II) is entered into by a**
12 **party that is controlling, con-**
13 **trolled by, or under common**
14 **control with its counterparty.**

15 **“(ii) REPORTING.—All agree-**
16 **ments, contracts, or transactions**
17 **described in clause (i) shall be re-**
18 **ported to either a security-based**
19 **swap data repository, or, if there**
20 **is no security-based swap data re-**
21 **pository that would accept such**
22 **security-based swaps, to the Com-**
23 **mission pursuant to section 13A**
24 **within such time period as the**

1 **Commission may by rule or regu-**
2 **lation prescribe.”.**

3 **SEC. 2. IMPLEMENTATION.**

4 **The amendments made by this Act shall**
5 **be implemented—**

6 **(1) without regard to—**

7 **(A) chapter 35 of title 44, United**
8 **States Code; and**

9 **(B) the notice and comment provi-**
10 **sions of section 553 of title 5, United**
11 **States Code; and**

12 **(2) through the promulgation of an**
13 **interim final rule.**

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