

113TH CONGRESS
1ST SESSION

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.

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Swap Jurisdiction Cer-
3 tainty Act”.

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

5 (a) JOINT RULEMAKING REQUIRED.—

6 (1) IN GENERAL.—Not later than 180 days
7 after the date of enactment of this Act, the Securi-
8 ties and Exchange Commission and the Commodity
9 Futures Trading Commission shall jointly issue rules
10 setting forth the application of United States swaps
11 requirements of the Securities Exchange Act of
12 1934 and the Commodity Exchange Act relating to
13 swaps and security-based swaps transacted between
14 U.S. persons and non-U.S. persons.

15 (2) CONSTRUCTION.—The Commissions shall
16 jointly issue the rules required under paragraph (1)
17 notwithstanding any difference in the authorities
18 granted the Commissions in sections 30(c) and 36(c)
19 of the Securities Exchange Act of 1934 (15 U.S.C.
20 78dd(c); 78mm(c)) and section 2(i) of the Com-
21modity Exchange Act (7 U.S.C. 2(i)), respectively.

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

24 (1) the nature of the connections to the United
25 States that require a non-U.S. person to register as
26 a swap dealer, major swap participant, security-

1 based swap dealer, or security-based swap partici-
2 pant under each Commission's respective Acts and
3 the regulations issued under such Acts;

4 (2) which of the United States swaps require-
5 ments shall apply to the swap and security-based
6 swap activities of non-U.S. persons, U.S. persons,
7 and their branches, agencies, subsidiaries, and affili-
8 ates outside of the United States and the extent to
9 which such requirements shall apply; and

10 (3) the circumstances under which a non-U.S.
11 person in compliance with the regulatory require-
12 ments of a foreign jurisdiction shall be exempt from
13 United States swaps requirements.

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

19 (d) GENERAL APPLICATION TO G20 MEMBER NA-
20 TIONS.—

21 (1) GENERAL APPLICATION.—In issuing rules
22 under this section, the Commissions shall provide
23 that a non-U.S. person in compliance with the swaps
24 regulatory requirements of a G20 member nation, or
25 other foreign jurisdiction as jointly determined by

1 the Commissions, shall be exempt from United
2 States swaps requirements in accordance with the
3 schedule set forth in paragraph (2), unless the Com-
4 missions jointly determine that the regulatory re-
5 quirements of the G20 member nation or other for-
6 eign jurisdiction are not broadly equivalent to
7 United States swaps requirements.

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

12 (A) G20 member nations, or any other for-
13 eign jurisdiction as jointly determined by the
14 Commissions, accounting for the five largest
15 combined swap and security-based swap mar-
16 kets by notional amount in the calendar year
17 preceding issuance of such rules, on the date on
18 which final rules are issued under this section;

19 (B) G20 member nations, or any other for-
20 eign jurisdiction as jointly determined by the
21 Commissions, accounting for the next five larg-
22 est combined swap and security-based swap
23 markets by notional amount in the calendar
24 year preceding issuance of such rules, 1 year

1 after the date on which such rules are issued;
2 and

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

7 (3) CRITERIA.—In such rules, the Commissions
8 shall jointly establish criteria for determining that
9 one or more categories of regulatory requirements of
10 a G20 member nation or other foreign jurisdiction
11 is not broadly equivalent to United States swaps re-
12 quirements and shall jointly determine the appro-
13 priate application of certain United States swap re-
14 quirements to persons or transactions relating to or
15 involving that G20 member nation or other foreign
16 jurisdiction. Such criteria shall include the scope and
17 objectives of the regulatory requirements of a G20
18 member nation or other foreign jurisdiction as well
19 as the effectiveness of the supervisory compliance
20 program administered, and the enforcement author-
21 ity exercised, by such G20 member nation or other
22 foreign jurisdiction, and such other factors as the
23 Commissions, by rule, jointly determine to be nec-
24 essary or 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, as the Commissions jointly determine ap-
6 propriate, in accordance with the criteria established
7 pursuant to paragraph (3), to determine if one or
8 more categories of regulatory requirements of a G20
9 member nation or other foreign jurisdiction is not
10 broadly equivalent to United States swaps require-
11 ments

12 (e) REPORT TO CONGRESS.—If the Commissions
13 make the joint determination described in subsection
14 (d)(1) that the regulatory requirements of the G20 mem-
15 ber nation or other foreign jurisdiction are not broadly
16 equivalent to United States swaps requirements, the Com-
17 missions shall articulate the basis for such a determination
18 in a written report transmitted to the Committee on Fi-
19 nancial Services and the Committee on Agriculture of the
20 House of Representatives and the Committee on Banking,
21 Housing, and Urban Affairs and the Committee on Agri-
22 culture, Nutrition, and Forestry of the Senate within 30
23 days of the determination. The determination shall not be
24 effective until the transmission of such report.

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

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

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

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

1 (g) CONFORMING AMENDMENTS.—

2 (1) SECURITIES EXCHANGE ACT OF 1934.—

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

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

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