

113TH CONGRESS
1ST SESSION

H. R. 1256

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2013

Received; read twice and referred to the Committee on Agriculture, Nutrition,
and Forestry

AN ACT

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,”.

Passed the House of Representatives June 12, 2013.

Attest:

KAREN L. HAAS,

Clerk.