

Union Calendar No. 270

112TH CONGRESS
2^D SESSION

H. R. 3527

[Report No. 112-391]

To amend the Commodity Exchange Act to clarify the definition of swap dealer.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2011

Mr. HULTGREN (for himself, Mr. BOREN, Mrs. BIGGERT, Mr. DOLD, Mr. JOHNSON of Illinois, Mr. LANCE, Mr. KINZINGER of Illinois, Mr. MANZULLO, and Mr. SCHOCK) introduced the following bill; which was referred to the Committee on Agriculture

FEBRUARY 8, 2012

Additional sponsors: Mr. BARROW, Mr. KING of New York, Mr. MATHESON, and Mr. ROSS of Arkansas

FEBRUARY 8, 2012

Reported 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 *italic*]

A BILL

To amend the Commodity Exchange Act to clarify the definition of swap dealer.

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 “Protecting Main Street
5 End-Users From Excessive Regulation”.

6 **SEC. 2. CLARIFICATION OF THE DEFINITION OF SWAP**
7 **DEALER.**

8 Section 1a(49) of the Commodity Exchange Act (7
9 U.S.C. 1a(49)) is amended to read as follows:

10 “(49) SWAP DEALER.—

11 “(A) IN GENERAL.—The term ‘swap deal-
12 er’ means any person who is engaged in the
13 business of entering into swaps, and—

14 “(i) holds itself out as a dealer in
15 swaps;

16 “(ii) makes a market in swaps; or

17 “(iii) engages in any activity causing
18 the person to be commonly known as a
19 dealer or market maker in swaps;

20 provided however, in no event shall an insured
21 depository institution be considered to be a
22 swap dealer to the extent it offers to enter into
23 a swap with a customer in connection with origi-
24 nating a loan to the customer.

1 “(B) INCLUSION.—A person may be des-
2 ignated as a swap dealer for a single type or
3 single class or category of swap or activities and
4 considered not to be a swap dealer for other
5 types, classes, or categories of swaps or activi-
6 ties.

7 “(C) EXCEPTION.—In determining wheth-
8 er a person is a ‘swap dealer’ within the mean-
9 ing of subparagraph (A), no consideration shall
10 be given to any transaction entered into for the
11 person’s own account for the purpose of—

12 “(i) hedging or mitigating commercial
13 risk; or

14 “(ii) achieving the person’s own trad-
15 ing or investment objectives.

16 “(D) DE MINIMIS EXCEPTION.—The Com-
17 mission shall exempt from designation as a
18 swap dealer an entity that enters into swap
19 dealing transactions with or on behalf of the
20 person’s customers if the aggregate gross no-
21 tional amount of the outstanding swap dealing
22 transactions entered into over the course of the
23 preceding calendar year does not exceed
24 \$3,000,000,000 (or such greater amount as the
25 Commission may establish as market conditions

1 warrant), multiplied by the sum of 1 and the
2 percentage (if any) by which the Consumer
3 Price Index for all Urban Customers published
4 by the Bureau of Labor Statistics of the De-
5 partment of Labor changed for the 12-month
6 period ending the preceding April 30.”.

7 **SECTION 1. SHORT TITLE.**

8 *This Act may be cited as the “Protecting Main Street*
9 *End-Users From Excessive Regulation”.*

10 **SEC. 2. CLARIFICATION OF THE DEFINITION OF SWAP**
11 **DEALER.**

12 *Section 1a(49) of the Commodity Exchange Act (7*
13 *U.S.C. 1a(49)) is amended to read as follows:*

14 *“(49) SWAP DEALER.—*

15 *“(A) IN GENERAL.—The term ‘swap dealer’*
16 *means any person who—*

17 *“(i) holds itself out as a dealer in*
18 *swaps;*

19 *“(ii) makes a market in swaps;*

20 *“(iii) regularly enters into swaps with*
21 *counterparties as an ordinary course of*
22 *business for its own account; or*

23 *“(iv) engages in any activity causing*
24 *the person to be commonly known as a deal-*
25 *er or market maker in swaps,*

1 *provided however, in no event shall an insured*
2 *depository institution be considered to be a swap*
3 *dealer to the extent it offers to enter into a swap*
4 *with a customer in connection with originating*
5 *a loan to the customer.*

6 “(B) *INCLUSION.*—*A person may be des-*
7 *ignated as a swap dealer for a single type or sin-*
8 *gle class or category of swap or activities and*
9 *considered not to be a swap dealer for other*
10 *types, classes, or categories of swaps or activities.*

11 “(C) *EXCEPTIONS.*—

12 “(i) *The term ‘swap dealer’ does not*
13 *include a person that enters into swaps for*
14 *such person’s own account, either individ-*
15 *ually or in a fiduciary capacity, but not as*
16 *part of regular business activities as de-*
17 *scribed in subparagraph (A).*

18 “(ii) *In determining whether a person*
19 *is a ‘swap dealer’ within the meaning of*
20 *subparagraph (A), any transaction entered*
21 *into for a person’s own account for the pur-*
22 *pose of hedging or mitigating commercial*
23 *risk shall not be considered as part of that*
24 *determination.*

1 “(iii) The Commission shall by rule
2 adopt standards distinguishing the activi-
3 ties described in subparagraph (A) and en-
4 tering into swaps for a person’s own ac-
5 count for the purpose of achieving one’s own
6 trading objectives as determined by the
7 Commission.

8 “(D) *DE MINIMIS EXCEPTION.*—The Com-
9 mission shall exempt from designation as a swap
10 dealer an entity that enters into swap dealing
11 transactions with or on behalf of the person’s
12 customers if the aggregate gross notional amount
13 of the outstanding swap dealing transactions en-
14 tered into over the course of the preceding cal-
15 endar year does not exceed \$3,000,000,000 (or
16 such greater amount as the Commission may es-
17 tablish as market conditions warrant), multi-
18 plied by the sum of 1 and the percentage (if any)
19 by which the Consumer Price Index for all
20 Urban Customers published by the Bureau of
21 Labor Statistics of the Department of Labor
22 changed for the 12-month period ending the pre-
23 ceding April 30.”.

1 **SEC. 3. IMPLEMENTATION.**

2 *The amendments made by this Act shall be imple-*
3 *mented—*

4 (1) *without regard to—*

5 (A) *chapter 35 of title 44, United States*
6 *Code; and*

7 (B) *the notice and comment provisions of*
8 *section 553 of title 5, United States Code; and*

9 (2) *through the promulgation of an interim final*
10 *rule.*

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