SEC. 4. RELATIONSHIP TO STATE LAW.

Section 203A(b)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(b)(1)) is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) that is not registered under section 203 because that person is exempt from registration as provided in subsection (b)(7) of such section, or is a supervised person of such person.''.

The SPEAKER pro tempore (Mr. HULTGREN). Pursuant to the rule, the gentleman from Missouri (Mr. LUETKEMEYER) and the gentlewoman from Wisconsin (Ms. MOORE) each will control 20 minutes.

The Chair recognizes the gentleman from Missouri.

GENERAL LEAVE

Mr. LUETKEMEYER. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and submit extraneous materials for the RECORD on H.R. 4200, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. LUETKEMEYER. Mr. Speaker, I yield myself such time as I may consume.

The legislation we consider today is a bipartisan, noncontroversial, and commonsense change that will ultimately allow for greater small business capital formation and job creation.

H.R. 4200, the SBIC Advisers Relief Act, streamlines reporting requirements for advisers to small business investment companies, or SBICs. These are advisers to investment funds who make long-term investments in U.S. small businesses and who have to the tune of more than $63 billion since 1958.

Under current law and for more than 55 years, SBICs have been regulated and closely supervised by the Small Business Administration. The existing regulatory regime surrounding SBICs includes an in-depth examination of management, strong investment rules, operational requirements, recordkeeping, examination and reporting mandates, and conflict of interest rules. These entities and the management of these entities are anything but unregulated.

The need for exemptions for SBICs and their advisers has been well-recognized by Congress. Congress' intent by including some of these exemptions in previous legislation was to reduce the regulatory burdens facing smaller funds and SBICs. This bill fixes some unintended consequences that have arisen and need to be addressed.

The SBIC Advisers Relief Act does so by doing three things: number one, it allows advisers who jointly advise SBICs and venture funds to be exempt from registration, combining two separate exemptions that already exist; number two, it excludes SBIC assets from the SEC's assets under management threshold calculation; number three, it allows SBIC funds with less than $90 million in assets under management to be regulated solely by the SBA, as they are today.

The Financial Services Committee has thoroughly examined the bipartisan legislation in both a legislative hearing and a markup. H.R. 4200 garnered praise from members on both sides of the aisle and from witnesses who testified on the bill in an April hearing. This noncontroversial legislation passed the committee by a vote of 56–0 in May.

It is also important to note that the legislation includes suggestions made by the SEC. Most importantly, this legislation includes sensible provisions that prevent redundant regulatory mandates and allow for a greater investment in America's small businesses.

I want to thank Congresswoman MALONEY for her help on this bill, and I ask my colleagues for their support.

Mr. Speaker, I reserve the balance of my time.

Ms. MOORE. Mr. Speaker, I yield myself such time as I may consume.

This bill, as has been indicated, is a bipartisan bill. We support the bill. I have no requests for time; therefore, I would urge my colleagues to support the bill.

I yield back the balance of my time.

Mr. LUETKEMEYER. Mr. Speaker, I have no other speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. LUETKEMEYER) that the House suspend the rules and pass the bill, H.R. 4200.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

COMMODITY EXCHANGE ACT AND SECURITIES EXCHANGE ACT AMENDMENTS

Mr. LUETKEMEYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5471) to amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to specify how clearing requirements apply to certain affiliate transactions, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5471

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF AFFILIATE TRANSACTIONS.

(a) IN GENERAL.—

(1) COMMODITY EXCHANGE ACT AMENDMENT.—Section 2(h)(7)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(D)(i)) is amended to read as follows:

''(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, provided that if the hedge or mitigation of such commercial risk is addressed by entering into a swap with a swap dealer or major swap participant, an appropriate credit support measure or other mechanism must be utilized.''.

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 3C(g)(4)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)(A)) is amended to read as follows:

''(A) IN GENERAL.—An affiliate of a person that qualifies for an exception under paragraph (1) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, provided that if the hedge or mitigation such commercial risk is addressed by entering into a security-based swap with a security-based swap dealer or major security-based swap participant, an appropriate credit support measure or other mechanism must be utilized.''.

(b) APPLICABILITY OF CREDIT SUPPORT MEASURE REQUIREMENT.—The requirements in section 2(h)(7)(D)(i) of the Commodity Exchange Act and section 3C(g)(4)(A) of the Securities Exchange Act of 1934, as amended by subsection (a), requiring that a credit support measure or other mechanism be utilized if the transfer of commercial risk referred to in such sections is addressed by entering into a swap with a swap dealer or major swap participant or a security-based swap with a security-based swap dealer or major security-based swap participant, as appropriate, shall not apply with respect to swaps or security-based swaps, as appropriate, entered into before the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Missouri (Mr. LUETKEMEYER) and the gentlewoman from Wisconsin (Ms. MOORE) each will control 20 minutes.

The Chair recognizes the gentleman from Missouri.

GENERAL LEAVE

Mr. LUETKEMEYER. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and submit extraneous materials for the RECORD on H.R. 5471, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. LUETKEMEYER. Mr. Speaker, I yield myself such time as I may consume.

Hundreds of American businesses, large and small—from manufacturers, to utilities, to agricultural businesses, to airlines—use derivatives every day to manage their business risks and to reduce their exposure to price fluctuations.

Without derivatives, businesses and their customers would face increased prices for the goods and services these businesses provide. The derivatives these businesses use are not risky. They played no role in the financial crisis. Nevertheless, they were targeted in the Dodd-Frank Act, which increased their price and decreased their availability.

Since the beginning of the 112th Congress in 2011, the Financial Services Committee and the Agriculture Committee have worked together to clarify that title VII of the Dodd-Frank Act should not burden Main Street businesses with a costly compliance regime that would stifle growth and job creation.

These efforts have produced bipartisan bills, including many sponsored by Democrats, that have passed the House with large majorities. The bill under consideration is yet another.

H.R. 5471 is sponsored by my Democratic colleague on the Financial Services Committee, Representative GWEN MOORE, and is cosponsored by another colleague, Representative STEVE STIVERS. The bill amends the Securities Exchange Act of 1934 and the Commodity Exchange Act, and it extends the Dodd-Frank Act, title VII, clearing exemption to nonfinancial entities that use a central treasury unit to reduce risk and net the hedging needs of affiliated businesses.

Mr. Speaker, that may sound technical, but the bill is a commonsense measure to give regulatory certainty to Main Street businesses in Missouri and beyond. I encourage my colleagues to support H.R. 5471.

I reserve the balance of my time.

Ms. MOORE. Mr. Speaker, I yield myself such time as I may consume.

I join my colleague, the gentleman from Missouri, in urging my colleagues to support H.R. 5471; however, before I get into why we should support the bill, I need to thank all of my partners in this effort.

As has been mentioned, Mr. STIVERS has been fantastic throughout this entire process. I knew going into this that I had a great Republican partner. I can't say enough about Representative STIVERS, but time will not allow me to do it.

I had another great bipartisan partner in Representative GIBSON on the Agriculture Committee. Of course, it is always a joy to work with a good friend and colleague on the Ag Committee, Representative MARCIA FUDGE.

Mr. Speaker, H.R. 5471 is a true ''end users'' bill. The bill is targeted as it applies to centralized treasury centers, or CTUs, of nonfinancial end user companies.

The CTU model enables an end user corporation to efficiently centralize hedging risks for the entire consolidated corporate group, and it is, in fact, a corporate best practice. It permits companies to more efficiently hedge commercial business risk, which was always the intent of Dodd-Frank.

The CFTC agrees with the underlying policy of the bill as they have provided no-action relief on this point; however, H.R. 5471 is still needed because, as a practical matter, no-action relief is no substitute for statutory fixes as it creates legal uncertainty when deciding how to organize your global business structure.

Corporate boards may be hesitant to approve a decision, as they are required to do, that violates the law based only on an assurance that CFTC staff will not recommend enforcement. H.R. 5471 fixes the quirky result of treating companies that use a CTU model differently than companies that do not accomplish the same result.

The bill also solves another far more technical issue with the no-action relief that relates to CTUs issuing swaps as a principal, as opposed to as an agent.

There is simply no good reason to not address these issues. In fact, CTUs are considered a corporate best practice. I can offer you, Mr. Speaker, an example of one company in my district, MillerCoors. They summarized it best in written testimony before the House Financial Services Committee:

Though it may be tempting to view all derivatives as risky financial products that were central to the credit crisis, we must remember that these are important tools upon which thousands of companies depend to manage risks in the real economy.

Just remember that we all have companies in our districts that use swaps legitimately to mitigate risk. I urge all of my colleagues to support this important legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. LUETKEMEYER. Mr. Speaker, I yield 3 minutes to the gentleman from Oklahoma (Mr. LUCAS), the distinguished chairman of the Agriculture Committee.

Mr. LUCAS. Mr. Speaker, I would like to thank the gentleman from Missouri for yielding.

I would like to thank my colleagues from the House Agriculture Committee, Mr. GIBSON and Ms. FUDGE, for their continued leadership on this issue; also, I would like to thank Ms. MOORE and Mr. STIVERS for working with my committee to introduce this compromise language as a stand-alone bill for the House's consideration.

Almost identical language was included in the Agriculture Committee's CFTC reauthorization bill, H.R. 4413. I am proud to say that we moved that legislation through the Ag Committee by a voice vote and then passed it here on the House floor with overwhelming bipartisan support this summer. I am hopeful that this bill can receive the same strong bipartisan support.

H.R. 5471 will provide American businesses the certainty they need to continue managing their risk in the most efficient manner possible. Today, businesses all over America rely on the ability to centralize their hedging activities to reduce their counterparty credit risk, to lower costs, and to simplify their financial dealings.

It is important to remember that these transactions between affiliated corporate entities pose no systemic risk, and they should not be regulated as if they do. These transactions are used to reduce an individual firm's risk by consolidating a hedging portfolio spread across a corporate group.

By doing this, firms can find savings with offsetting positions between affiliates and can reduce the need for the group to seek hedges in the wider market.

H.R. 5471 will prevent the redundant regulation of these harmless interaffiliate transactions that would tie up the working capital companies with no added protections for the market or benefits for the consumers. I strongly support this bipartisan, commonsense legislation, and I urge all of my colleagues to vote ''yes.''

Ms. MOORE. Mr. Speaker, I yield such time as she may consume to the gentlewoman from California, Ms. MAXINE WATERS, the ranking member of the committee.

Ms. WATERS. Mr. Speaker, I would first like to thank Congresswoman MOORE, as well as Congresswoman FUDGE, for their efforts to craft the text of this bill which represents a dramatic improvement from a similar bill that was considered in the Financial Services Committee 18 months ago.

At that time, Commodity Futures Trading Commission—that is, the CFTC—Chairman Gary Gensler warned that providing such a broad interaffiliate exemption from the requirement to clear derivatives could harm its efforts to regulate the market.

Since that time, however, the authors of this legislation have significantly tailored the language, incorporating several technical edits provided by the CFTC, and the measure now only extends the interaffiliate exemption to instances when the commercial risk of an exempt end user is being hedged or mitigated.

Last week, the CFTC provided the same tailored relief that this bill would provide. I submit for the RECORD the CFTC's no-action letter.

U.S. COMMODITY FUTURES TRADING COMMISSION,
Washington, DC, November 26, 2014.

Re No-Action Relief from the Clearing Requirement for Swaps Entered into by Eligible Treasury Affiliates

The purpose of this letter is to amend the no-action relief previously granted by the Division of Clearing and Risk (''Division'') of the Commodity Futures Trading Commission (''Commission'') under No-Action Letter 13–22 to address certain challenges faced by treasury affiliates in undertaking hedging activities on behalf of non-financial affiliates within a corporate group. Those challenges pertained to certain conditions in the prior relief. The Division in this letter is altering some of those conditions to enable additional market participants to avail themselves of the treasury affiliate relief originally set forth in No Action Letter 13–22.

TREASURY AFFILIATE EXEMPTION FROM CLEARING

On June 4, 2013, the Division granted no-action relief from the clearing requirement under section 2(h)(1) of the Commodity Exchange Act (''CEA'') and part 50 of the Commission's regulations, for swaps entered into by certain affiliates acting on behalf of non-financial affiliates within a corporate group for the purpose of hedging or mitigating commercial risk (hereinafter referred to as ''treasury affiliates'').

No-Action Letter 13–22 was issued based on the Division's understanding that treasury affiliates were undertaking hedging activities on behalf of non-financial affiliates that were eligible to elect the end-user exception from clearing, but were themselves ineligible to elect the exception. As discussed further below, because treasury affiliates can act in a wider capacity as treasury centers that provide financial services for all or most of the affiliates within a corporate group, including daily cash management, debt administration, and risk hedging and mitigation, treasury affiliates met the definition of ''financial entity'' under section 2(h)(7)(C)(i)(VIII) of the CEA and thus could not elect the end-user exception. As a result, the Division granted treasury affiliates relief to continue entering into non-cleared swaps on behalf of the non-financial affiliates, subject to specific conditions and requirements.

The Division has since learned that there are treasury affiliates precluded from electing the relief in No-Action Letter 13–22 because they do not meet certain conditions contained in the letter. As discussed below, based on input from market participants, the Division is hereby issuing this letter to amend some of the conditions and requirements contained in No-Action Letter 13–22 to allow additional treasury affiliates to rely on the relief from clearing.

APPLICABLE REGULATORY REQUIREMENTS

Under section 2(h)(1)(A) of the CEA, it is unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization (''DCO'') that is registered under the CEA or exempt from registration if the swap is required to be cleared. On November 29, 2012, the Commission adopted its first clearing requirement determination, requiring that swaps meeting certain specifications within four classes of interest rate swaps and two classes of credit default swaps be cleared.

Pursuant to section 2(h)(7) of the CEA and §50.50 of the Commission's regulations, a counterparty to a swap that is subject to the clearing requirement may elect the end-user exception from required clearing provided that such counterparty is not a financial entity, as defined in section 2(h)(7)(C) of the CEA, and otherwise meets the requirements of §50.50 of the Commission's regulations. Thus, the end-user exception from required clearing may be elected for swaps that are entered into between two non-financial entities, or between a non-financial entity and a financial entity, for swaps that hedge or mitigate commercial risk.

As noted above, the Division granted relief from required clearing for treasury affiliates of non-financial companies that fall within the definition of ''financial entity'' under section 2(h)(7)(C)(i)(VIII) of the CEA when acting on behalf of affiliates that otherwise would be eligible to elect the end-user exception from required clearing.''As such, No-Action Letter 13–22 effectively allowed treasury affiliates, subject to certain additional requirements and conditions, to take advantage of the end-user exception from clearing that its non-financial affiliates in the corporate group would otherwise have been eligible to elect had they entered into the transactions directly.

SUMMARY OF RELIEF

Since the Division issued No-Action Letter 13–22, market participants have highlighted several requirements and conditions that make use of the relief granted thereunder impractical for many treasury affiliates. As discussed below, the Division is therefore amending the following requirements and conditions.

i. The requirement that the ultimate parent of a treasury affiliate identify all wholly- and majority-owned affiliates and ensure a majority qualify for the end-user exception.

Market participants have expressed concerns about the second condition for eligible treasury affiliate status in No-Action Letter 13–22. The second condition requires that the ultimate parent of a treasury affiliate identify all wholly- and majority-owned affiliates within the corporate group and ensure that a majority qualify for the end-user exception.

Market participants have noted the ratio of the absolute number of financial entities to nonfinancial entities does not necessarily provide meaning-fill information about the corporate family as a whole, and adds ongoing surveillance responsibilities and expenses for the corporate family. The Division agrees and has removed the requirement accordingly in the revised relief set forth herein.

ii. The requirement that the treasury affiliate is not itself or is not affiliated with a systemically important nonbank financial company.

Market participants have also expressed concerns about the fourth condition for eligible treasury affiliate status in No-Action Letter 13–22. The fourth condition prohibits the treasury affiliate from being, or being affiliated with, a nonbank financial company that has been designated as systemically important by the Financial Stability Oversight Council. As explained above, section 2(h)(7)(D) of the CEA permits affiliates acting as an agent and on behalf of entities eligible for the end-user exception to elect the end-user exception themselves, unless the affiliate is one of seven enumerated types of entities listed in section 2(h)(7)(D)(ii). Among others, these prohibited entities include swap dealers, commodity pools, and bank holding companies with over $50 billion in consolidated assets.

Market participants have pointed out that the fourth condition for eligible treasury affiliate status provides a list of entities that generally tracks the list in section 2(h)(7)(D)(ii), except for the addition of systemically important nonbank financial companies. The Division believes that additional restrictions relating to systemically important nonbank financial companies are appropriate. As a result, the Division is maintaining the requirement that the treasury affiliate itself cannot be a systemically important nonbank financial company. However, the Division also recognizes that certain corporate families with significant non-financial operations are precluded from using the existing relief because of the affiliation with a systemically important nonbank financial company, regardless of the degree to which the operations of the financial and non-financial entities are conducted separately.

The Division believes restricting the treasury affiliate from (i) entering into transactions with, or on behalf of, a systemically important nonbank financial company and (ii) providing any services, financial or otherwise, to such a designated entity, provides sufficient protection from the risks of systemically important affiliate, while allowing the treasury affiliate to provide the necessary support to its related operating entities. The Division is amending the conditions relating to systemically important nonbank financial companies accordingly.

iii. The requirement that treasury affiliates act only on behalf of certain types of related affiliates.

Market participants have indicated that the definition of ''related affiliates'' under No-Action Letter 13–22 unnecessarily excludes certain entities that perform a cash pooling function for a corporate family that includes a financial entity. The definition of related affiliate currently includes either: (i) a non-financial entity that is, or is directly or indirectly wholly- or majority-owned by, the ultimate parent; or (ii) a person that is another eligible treasury affiliate for an entity described in (i).

Market participants claim that the limitation is unnecessary, highlighting that the third General Condition to the Swap Activity already precludes an eligible treasury affiliate from entering into swaps with, and on behalf of, its financial affiliates. The Division agrees the definition is problematic because the collection and disbursement of cash within the corporate family is a core function of a treasury affiliate. Given the existing restrictions on swap activity by the eligible treasury affiliate with or on behalf of a financial affiliate, the Division has amended the related affiliate definition to allow entities that provide financial services on behalf of a financial entity to nonetheless qualify as an eligible treasury affiliate.

iv. The requirement that treasury affiliates transfer the risk of related affiliates through the use of swaps.

Market participants have expressed concern with the first General Condition to Swap Activity in No-Action Letter 13–22. The condition requires the eligible treasury affiliate enter into the exempted swap for the sole purpose of hedging or mitigating the commercial risk of one or more related affiliates that was transferred to the eligible treasury affiliate by operation of one or more swaps with such related affiliates.

According to market participants, there are a number of ways for commercial risk to be transferred between affiliates, and that the risk that a treasury affiliate may have been seeking to hedge or mitigate would not necessarily be transferred from the operating affiliate to the treasury affiliate by way of a swap transaction as required by No-Action Letter 13–22. The method by which the risk is transferred can be dependent on the type of risk being hedged. For example, it may be more common for foreign exchange risk to be transferred between affiliates through the use of book-entry transfers, as opposed to interest rate risk, where the use of back-to-back swaps may be more prevalent. The Division agrees that this limitation is unnecessarily strict and is revising the condition accordingly. However, as the transfer of risk from the related affiliate to the treasury affiliate will no longer be evinced by back-to-back swaps, the Division will require that the treasury affiliate be able to identify the related affiliate or affiliates on whose behalf the swap was entered into by the treasury affiliate.

v. The requirement that treasury affiliates do not enter into swaps other than for hedging or mitigating the commercial risk of one or more related affiliates.

Market participants have questioned whether an eligible treasury affiliate would lose its status if the entity entered into hedging transactions that were mitigating a commercial risk of the treasury affiliate itself. The second General Condition to the Swap Activity states that the eligible treasury affiliate cannot enter into swaps with related affiliates or unaffiliated counterparties other than for the purposes of hedging or mitigating the commercial risk of one or more related affiliates.

The Division agrees that a treasury affiliate should not lose its status as an eligible treasury affiliate simply because it entered into a hedging transaction on its own behalf.

The Division is therefore amending the language in the second condition to allow an eligible treasury affiliate to enter into its own hedging transactions. However, the Division notes that such transactions entered into by the eligible treasury affiliate on its own behalf would not be ''exempted swaps'' as defined below, and may be required to be cleared if subject to the Commission's clearing requirement and no other exception or exemption to clearing applied. Further, the Division notes that treasury affiliates entering into any speculative transaction, on its own behalf or otherwise, would not be consistent with this condition.

vi. The requirement that related affiliates entering into swaps with the treasury affiliate, or the treasury affiliate itself, may not enter into swaps with or on behalf of any affiliate that is a financial entity.

Market participants have expressed confusion as to whether a related affiliate can enter into transactions with multiple eligible treasury affiliates under the third General Condition to the Swap Activity in No-Action Letter 13–22. The third condition states that neither any related affiliate that enters into swaps with the eligible treasury affiliate nor the eligible treasury affiliate, may enter into swaps with or on behalf of any affiliate that is a financial entity (a ''financial affiliate''), or otherwise assumes, nets, combines, or consolidates the risk of swaps entered into by any financial affiliate.

Ms. WATERS. After conversations with CFTC Chairman Massad and following this action by the regulator, I felt comfortable having H.R. 5471 be considered under a suspension of the House rules.

Now, I have heard from several companies that, while the CFTC's actions are welcome, they still need the legal certainty that only H.R. 5471 could provide.

On the other side, of course, I have heard concerns that if we pass this bill we may be binding the CFTC's hands to deal with a problem that could arise in the future.

I believe that people on both sides of this issue are working in good faith and want to help rebuild our economy. Again, I applaud Congresswoman MOORE's efforts to improve this bill.

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Mr. LUETKEMEYER. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. STIVERS), who is the lead cosponsor of this legislation.

Mr. STIVERS. Mr. Speaker, I would like to thank the gentleman from Missouri for yielding me time.

I also would like to thank the gentlelady from Wisconsin (Ms. MOORE) for all her work on this bill. She has been dedicated and engaged and hardworking and willing to compromise to move this effort forward to help a lot of Main Street businesses that are in my district, her district, and that dot the map of America.

I also want to thank Ms. FUDGE and Mr. GIBSON for their collaborative efforts and their work through the Agriculture Committee on this bill as well.

Mr. Speaker, this bill is the culmination of over 2½ years' work. In 2012, Ms. MOORE, Ms. FUDGE, Mr. GIBSON, and I joined together to introduce legislation that clarified rules under the Dodd-Frank Act with regard to margin clearing and reporting requirements of interaffiliate transactions. What that means is a lot of Main Street businesses in various industries, from agriculture to consumer products, that work across international boundaries use this central treasury unit structure to offset competing or offsetting risks, and that way they can decide what their total aggregate risk is and then make it much more affordable for a corporation.

Unfortunately, under the Dodd-Frank Act and the way the rules were interpreted by the Commodity Futures Trading Commission, these companies were being charged double or triple the cost by imposing these central clearing unit ways of managing risk. It just didn't make sense, and it actually cost them more money. These companies did not add systemic risk, and that is what the rules on swaps were all about is to make sure we reduce systemic risk. These companies are using these swaps to offset risk to their company and their operating risks, and so this is a commonsense piece of legislation. In fact, Barney Frank, the author of the Dodd-Frank legislation, spoke in favor of this when he was the ranking member in the last Congress.

Unfortunately, there was no activity on the bill in the last Congress, and over the last 2 years both the Securities and Exchange Commission and the CFTC have worked with us—with Ms. MOORE and me—on these rules. They have done a pretty good job in that regard, but there is more to be done because their rules left out the folks that use these centralized treasury units as a specific business model. Just last month, in fact, the CFTC published a no-action letter that Ms. MOORE referred to; but a no-action letter means that it is still part of the law, we are just not going to enforce the law.

What we need to do is fix the law. It is really common sense. So this bill that Ms. MOORE introduced fixes the law for that centralized treasury unit way of doing business. It makes sense. It does not add any risk to the system, and it allows these companies that are all over America to manage their risk in a smarter way without being charged two or three times as much and without risking that they are violating the law, even though it is not going to be enforced.

So I applaud the gentlelady from Wisconsin for changing the law, fixing the law, and making it work for a lot of small, medium, and even large businesses across America so they can use their cash to hire Americans in this tough time, and hire more Americans and not waste it on unneeded cost that does not provide any safety to anyone.

I want to thank the gentlelady from Wisconsin as well as the gentleman from New York and the gentlelady from Ohio for all their work, and I was proud to be a small part of this.

I would urge my colleagues to support this bill.

Ms. MOORE. Mr. Speaker, I am so delighted to yield 2 minutes to the gentleman from Minnesota (Mr. PETERSON), the ranking member of the Ag Committee.

Mr. PETERSON. Mr. Speaker, I thank the gentlewoman from Wisconsin and the others for their work on this legislation.

H.R. 5471 provides further clarity to those using the derivatives market to hedge against risk and builds upon language in H.R. 4413, legislation approved by the House last summer to reauthorize the CFTC. The bill before us today makes it clear that if an affiliate of a company already exempted from clearing engages in a swap with a swap dealer or major swap participant in order to hedge or mitigate commercial risk, those swaps would also be exempt from the clearing requirement as long as they use an appropriate credit support measure.

While it is my understanding that the CFTC would prefer to address this issue through agency action, I also believe that they are supportive of this language. Because H.R. 5471 improves the work already done by the House, I urge my colleagues to support this bill.

Mr. LUETKEMEYER. Mr. Speaker, I am prepared to close whenever the gentlewoman from Wisconsin is ready.

Ms. MOORE. Mr. Speaker, I would now like to place the second half of the CFTC letter into the RECORD.

No-Action Letter 13–22 contemplated the use of multiple eligible treasury affiliates within a corporate family, but the Division agrees with market participants that the third condition does not accurately reflect this. The Division is accordingly amending the third condition to clarify that the restriction on related affiliates and eligible treasury affiliates from entering into swap transactions with financial entity affiliates does not preclude the circumstance where the financial entity affiliate is an eligible treasury affiliate.

vii. The requirement for the payment obligations of the treasury affiliate to be guaranteed.

Market participants expressed concern with respect to the fifth General Condition to the Swap Activity in No-Action Letter 13–22. The fifth condition states that the payment obligations of the eligible treasury affiliate on the exempted swap must be guaranteed by: (i) its non-financial parent; (ii) an entity that wholly-owns or is wholly-owned by its non-financial parent; or (iii) the related affiliates for which the swap hedges or mitigates commercial risk.

Market participants have explained that corporate parents and structures may avail themselves of other types of support arrangements, such as keepwell agreements, letters of credit, or revolving credit facilities for example, which would not satisfy the requirements of No-Action Letter 13–22. As a result, the Division is removing the condition to accommodate the additional support arrangements that may exist with regard to the eligible treasury affiliate's payment obligations.

DIVISION NO-ACTION POSITION

The Division recognizes the benefits that arise from the use of treasury affiliates within corporate groups and has determined to provide the following no-action relief; described below.

For purposes of this no-action letter only, the following definitions shall apply:

Eligible treasury affiliate means a person that meets each of the following qualifications:

(i) The person is (A) directly, wholly-owned by a non-financial entity or another eligible treasury affiliate (its ''non-financial parent''), and (B) is not indirectly majority-owned by a financial entity, as defined in section 2(h)(7)(C)(i) of the CEA;

(ii) The person's ultimate parent is not a financial entity as defined in section 2(h)(7)(C)(i) of the CEA;

(iii) The person is a financial entity as defined in section 2(h)(7)(C)(i)(VIII) of the CEA solely as a result of acting as principal to swaps with, or on behalf of, one or more of its related affiliates, or providing other services that are financial in nature to such related affiliates;

(iv) The person is not, and is not affiliated with, any of the following:

(A) a swap dealer;

(B) a major swap participant;

(C) a security-based swap dealer; or

(D) a major security-based swap participant.

(v) The person is not any of the following:

(A) a private fund as defined in section 202(a) of the Investment Advisors Act of 1940 (15 U.S.C. § 80–b–2(a));

(B) a commodity pool;

(C) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002);

(D) a bank holding company;

(E) an insured depository institution;

(F) a farm credit system institution;

(G) a credit union;

(H) a nonbank financial company that has been designated as systemically important by the Financial Stability Oversight Council; or

(I) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

(vi) The person does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company that has been designated as systemically important by the Financial Stability Oversight Council.

Non-financial entity means a person that is not a financial entity as defined in section 2(h)(7)(C)(i) of the CEA.

Related affiliate means with respect to an eligible treasury affiliate:

(i) A non-financial entity that is, or is directly or indirectly wholly- or majority-owned by, the ultimate parent; or

(ii) A person that is another eligible treasury affiliate.

The Division will not recommend that the Commission commence an enforcement action against an eligible treasury affiliate for its failure to comply with the requirements under section 2(h)(1)(A) of the CEA and part 50 of the Commission's regulations to clear a swap with an unaffiliated counterparty or another eligible treasury affiliate (the ''exempted swap'') that is subject to required clearing pursuant to § 50.4 of the Commission's regulations, subject to the following conditions:

GENERAL CONDITIONS TO THE SWAP ACTIVITY

(i) The eligible treasury affiliate enters into the exempted swap for the sole purpose of hedging or mitigating the commercial risk of one or more related affiliates that was transferred to the eligible treasury affiliate;

(ii) The eligible treasury affiliate does not enter into swaps with its related affiliates or unaffiliated counterparties other than for the purpose of hedging or mitigating its own commercial risk or the commercial risk of one or more related affiliates;

(iii) Neither any related affiliate that enters into swaps with the eligible treasury affiliate nor the eligible treasury affiliate, enters into swaps with or on behalf of any affiliate that is a financial entity (''financial affiliate''), or otherwise assumes, nets, combines, or consolidates the risk of swaps entered into by any financial affiliate, except in the case of financial affiliates that qualify as eligible treasury affiliates under this letter; and

(iv) Each swap entered into by the eligible treasury affiliate is subject to a centralized risk management program that is reasonably designed (A) to monitor and manage the risks associated with the swap, and (B) to identify the related affiliate or affiliates on whose behalf each exempted swap has been entered into by the eligible treasury affiliate.

REPORTING CONDITIONS

With respect to each swap that an eligible treasury affiliate (''electing counterparty'') elects not to clear in reliance on the relief provided in this letter, the reporting counterparty, as determined in accordance with § 45.8 of the Commission's regulations, shall provide or cause to be provided the following information to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission, in the form and manner specified by the Commission:

(i) Notice of the election of the relief and confirmation that the electing counterparty satisfies the General Conditions to the Swap Activity of this no-action relief specified above;

(ii) How the electing counterparty generally meets its financial obligations associated with entering into non-cleared swaps by identifying one or more of the following categories, as applicable:

(A) A written credit support agreement;

(B) Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise);

(C) A written guarantee from another party;

(D) The electing counterparty's available financial resources; or

(E) Means other than those described in (A)–(D); and

(iii) If the electing counterparty is an entity that is an issuer of securities registered under section 12 of, or is required to file reports under section 15(d) of, the Securities Exchange Act of 1934:

(A) The relevant SEC Central Index Key number for such counterparty; and

(B) Acknowledgment that an appropriate committee of the board of directors (or equivalent body) of the electing counterparty has reviewed and approved the decision to enter into swaps that are exempt from the requirements of section 2(h)(1), and if applicable, section 2(h)(8) of the CEA.

(iv) If there is more than one electing counterparty to a swap, the information specified in the Reporting Conditions of this no-action relief specified above shall be provided with respect to each of the electing counterparties.

(v) An entity that qualifies for the relief provided in this no-action letter may report the information listed in paragraphs (ii) and (iii) above, annually in anticipation of electing the relief for one or more swaps. Any such reporting under this paragraph will be effective for purposes of paragraphs (ii) and (iii) above for 365 days following the date of such reporting. During the 365–day period, the entity shall amend the report as necessary to reflect any material changes to the information reported.

(vi) Each reporting counterparty shall have a reasonable basis to believe that the electing counterparty meets the General Conditions to the Swap Activity for the no-action relief specified above.

This no-action letter, and the positions taken herein, represent the view of the Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse the affected persons from compliance with any other applicable requirements contained in the CEA or in the Commission's regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the information available to the Division. Any different or changed material facts or circumstances might render this letter void. As with all no-action letters, the Division retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein. This letter supersedes No-Action Letter 13–22.

Sincerely,

PHYLLIS DIETZ,
Acting Director.

Ms. MOORE. Mr. Speaker, I have no further requests for time.

Again, I just want to thank everyone who was involved in this process. This is something that is going to protect thousands of jobs across our country. People often criticize us for not doing things in a bipartisan manner, but I think this is exemplary of what we can do when we really work at it, even though it has taken a couple of years.

I yield back the balance of my time.

Mr. LUETKEMEYER. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. LUETKEMEYER) that the House suspend the rules and pass the bill, H.R. 5471.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

REGULATION D STUDY ACT

Mr. LUETKEMEYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3240) to instruct the Comptroller General of the United States to study the impact of Regulation D, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3240

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Regulation D Study Act''.

SEC. 2. GOVERNMENT ACCOUNTABILITY OFFICE STUDY.

(a) STUDY.—The Comptroller General of the United States shall conduct a comprehensive study on the impact on depository institutions, consumers, and monetary