

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2779

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## AN ACT

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,*

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

2 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—

3 Section 1a(47) of the Commodity Exchange Act (7 U.S.C.  
4 1a(47)), as added by section 721(a)(21) of the Dodd-  
5 Frank Wall Street Reform and Consumer Protection Act,  
6 is amended by adding at the end the following:

7 “(G) TREATMENT OF AFFILIATE TRANS-  
8 ACTIONS.—

9 “(i) IN GENERAL.—For the purposes  
10 of any clearing and execution requirements  
11 under section 2(h) and any applicable mar-  
12 gin and capital requirements of section  
13 4s(e) and for purposes of defining ‘swap  
14 dealer’ or ‘major swap participant’, and re-  
15 porting requirements other than those set  
16 forth in clause (ii), the term ‘swap’ does  
17 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 parties  
23 that report information or prepare fi-  
24 nancial statements on a consolidated  
25 basis, or for which a company affili-  
26 ated with both parties reports infor-

1           mation or prepares financial state-  
2           ments on a consolidated basis.

3           “(ii) REPORTING.—All agreements,  
4           contracts, or transactions described in  
5           clause (i) shall be reported to either a  
6           swap data repository, or, if there is no  
7           swap data repository that would accept  
8           such agreements, contracts, or trans-  
9           actions, to the Commission pursuant to  
10          section 4r, or to a swap data repository or  
11          to the Commission pursuant to section  
12          2(h)(5), within such time period as the  
13          Commission may by rule or regulation pre-  
14          scribe. Nothing in this subparagraph shall  
15          prohibit the Commission from establishing  
16          public reporting requirements for covered  
17          transactions between affiliates as described  
18          in sections 23A and 23B of the Federal  
19          Reserve Act in a manner consistent with  
20          rules governing the treatment of such cov-  
21          ered transactions pursuant to section  
22          2(a)(13) of this Act.

23          “(iii) PROTECTION OF INSURANCE  
24          FUNDS.—Nothing in this subparagraph  
25          shall be construed to prevent the regulator

1 of a Federal or State insurance fund or  
2 guaranty fund from exercising its other ex-  
3 isting authority to protect the integrity of  
4 such a fund, except that such regulator  
5 shall not subject agreements, contracts, or  
6 transactions described in clause (i) to  
7 clearing and execution requirements under  
8 section 2 of this Act, to any applicable  
9 margin and capital requirements of section  
10 4s(e) of this Act, or to reporting require-  
11 ments of title VII of Public Law 111–203  
12 other than those set forth in clause (ii) of  
13 this subparagraph.

14 “(iv) PRESERVATION OF FEDERAL RE-  
15 SERVE ACT AUTHORITY.—Nothing in this  
16 subparagraph shall exempt a transaction  
17 described in this subparagraph from sec-  
18 tions 23A or 23B of the Federal Reserve  
19 Act or implementing regulations there-  
20 under.

21 “(v) PRESERVATION OF FEDERAL  
22 AND STATE REGULATORY AUTHORITIES.—  
23 Nothing in this subparagraph shall affect  
24 the Federal banking agencies’ safety-and-  
25 soundness authorities over banks estab-

1           lished in law other than title VII of Public  
2           Law 111–203 or the authorities of State  
3           insurance regulators over insurers, includ-  
4           ing the authority to impose capital require-  
5           ments with regard to swaps. For purposes  
6           of this clause, the term ‘bank’ shall be de-  
7           fined pursuant to section 3(a)(6) of the Se-  
8           curities Exchange Act of 1934, ‘insurer’  
9           shall be defined pursuant to title V of Pub-  
10          lic Law 111–203, and ‘swap’ shall be de-  
11          fined pursuant to title VII of Public Law  
12          111–203.

13                   “(vi) PREVENTION OF EVASION.—The  
14          Commission may prescribe rules under this  
15          subparagraph (and issue interpretations of  
16          such rules) as determined by the Commis-  
17          sion to be necessary to include in the defi-  
18          nition of swaps under this paragraph any  
19          agreement, contract, or transaction that  
20          has been structured to evade the require-  
21          ments of this Act applicable to swaps.”.

22          (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-  
23          MENTS.—Section 3(a)(68) of the Securities Exchange Act  
24          of 1934 (15 U.S.C. 78c(a)(68)), as added by section  
25          761(a)(6) of the Dodd-Frank Wall Street Reform and

1 Consumer Protection Act, is amended by adding at the  
2 end the following:

3                   “(F) TREATMENT OF AFFILIATE TRANS-  
4                   ACTIONS.—

5                   “(i) IN GENERAL.—For the purposes  
6                   of any clearing and execution requirements  
7                   under section 3C and any applicable mar-  
8                   gin and capital requirements of section  
9                   15F(e), and for purposes of defining ‘secu-  
10                   rity-based swap dealer’ or a ‘major secu-  
11                   rity-based swap participant’, and reporting  
12                   requirements other than those set forth in  
13                   clause (ii), the term ‘security-based swap’  
14                   does not include any agreement, contract,  
15                   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 parties  
20                   that report information or prepare fi-  
21                   nancial statements on a consolidated  
22                   basis, or for which a company affili-  
23                   ated with both parties reports infor-  
24                   mation or prepares financial state-  
25                   ments on a consolidated basis.

1           “(ii) REPORTING.—All agreements,  
2           contracts, or transactions described in  
3           clause (i) shall be reported to either a se-  
4           curity-based swap data repository, or, if  
5           there is no security-based swap data repos-  
6           itory that would accept such agreements,  
7           contracts, or transactions, to the Commis-  
8           sion pursuant to section 13A, within such  
9           time period as the Commission may by rule  
10          or regulation prescribe.

11          “(iii) PRESERVATION OF FEDERAL  
12          RESERVE ACT AUTHORITY.—Nothing in  
13          this subparagraph shall exempt a trans-  
14          action described in this subparagraph from  
15          sections 23A or 23B of the Federal Re-  
16          serve Act or implementing regulations  
17          thereunder.

18          “(iv) PROTECTION OF INSURANCE  
19          FUNDS.—Nothing in this subparagraph  
20          shall be construed to prevent the regulator  
21          of a Federal or State insurance fund or  
22          guaranty fund from exercising its other ex-  
23          isting authority to protect the integrity of  
24          such a fund, except that such regulator  
25          shall not subject security-based swap

1 transactions between affiliated companies  
2 to clearing and execution requirements  
3 under section 3C, to any applicable margin  
4 and capital requirements of section 15F(e),  
5 or to reporting requirements of title VII of  
6 Public Law 111–203 other than those set  
7 forth in clause (ii).

8 “(v) PRESERVATION OF FEDERAL  
9 AND STATE REGULATORY AUTHORITIES.—  
10 Nothing in this subparagraph shall affect  
11 the Federal banking agencies’ safety-and-  
12 soundness authorities over banks estab-  
13 lished in law other than title VII of Public  
14 Law 111–203 or the authorities of State  
15 insurance regulators over insurers, includ-  
16 ing the authority to impose capital require-  
17 ments with regard to security-based swaps.  
18 For purposes of this clause, the term  
19 ‘bank’ shall be defined pursuant to section  
20 3(a)(6) of the Securities Exchange Act of  
21 1934, ‘insurer’ shall be defined pursuant  
22 to title V of Public Law 111–203, and ‘se-  
23 curity-based swap’ shall be defined pursu-  
24 ant to title VII of Public Law 111–203.

1                   “(vi) PREVENTION OF EVASION.—The  
2                   Commission may prescribe rules under this  
3                   subparagraph (and issue interpretations of  
4                   such rules) as determined by the Commis-  
5                   sion to be necessary to include in the defi-  
6                   nition of security-based swap under this  
7                   paragraph any agreement, contract, or  
8                   transaction that has been structured to  
9                   evade the requirements of this Act applica-  
10                  ble to security-based swaps.”.

11 **SEC. 2. IMPLEMENTATION.**

12                  The amendments made by this Act to the Commodity  
13 Exchange Act shall be implemented—

14                  (1) without regard to—

15                          (A) chapter 35 of title 44, United States  
16 Code; and

17                          (B) the notice and comment provisions of  
18 section 553 of title 5, United States Code;

19                  (2) through the promulgation of an interim  
20 final rule, pursuant to which public comment will be  
21 sought before a final rule is issued, and

22                  (3) such that paragraph (1) shall apply solely  
23 to changes to rules and regulations, or proposed

1 rules and regulations, that are limited to and di-  
2 rectly a consequence of such amendments.

Passed the House of Representatives March 26,  
2012.

Attest:

*Clerk.*



112<sup>TH</sup> CONGRESS  
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## **AN ACT**

To exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Wall Street Reform and Consumer Protection Act.