

Calendar No. 343

112TH CONGRESS
2D SESSION**H. R. 2779**

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2012

Received; read the first time

MARCH 28, 2012

Read the second time and placed on the calendar

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,*

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

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

1 “(G) TREATMENT OF AFFILIATE TRANS-
2 ACTIONS.—

3 “(i) IN GENERAL.—For the purposes
4 of any clearing and execution requirements
5 under section 2(h) and any applicable mar-
6 gin and capital requirements of section
7 4s(e) and for purposes of defining ‘swap
8 dealer’ or ‘major swap participant’, and re-
9 porting requirements other than those set
10 forth in clause (ii), the term ‘swap’ does
11 not include any agreement, contract, or
12 transaction that—

13 “(I) would otherwise be included
14 as a ‘swap’ under subparagraph (A);
15 and

16 “(II) is entered into by parties
17 that report information or prepare fi-
18 nancial statements on a consolidated
19 basis, or for which a company affili-
20 ated with both parties reports infor-
21 mation or prepares financial state-
22 ments on a consolidated basis.

23 “(ii) REPORTING.—All agreements,
24 contracts, or transactions described in
25 clause (i) shall be reported to either a

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

18 “(iii) 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 agreements, contracts, or

1 transactions described in clause (i) to
2 clearing and execution requirements under
3 section 2 of this Act, to any applicable
4 margin and capital requirements of section
5 4s(e) of this Act, or to reporting require-
6 ments of title VII of Public Law 111–203
7 other than those set forth in clause (ii) of
8 this subparagraph.

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

16 “(v) PRESERVATION OF FEDERAL
17 AND STATE REGULATORY AUTHORITIES.—
18 Nothing in this subparagraph shall affect
19 the Federal banking agencies’ safety-and-
20 soundness authorities over banks estab-
21 lished in law other than title VII of Public
22 Law 111–203 or the authorities of State
23 insurance regulators over insurers, includ-
24 ing the authority to impose capital require-
25 ments with regard to swaps. For purposes

1 of this clause, the term ‘bank’ shall be de-
2 fined pursuant to section 3(a)(6) of the Se-
3 curities Exchange Act of 1934, ‘insurer’
4 shall be defined pursuant to title V of Pub-
5 lic Law 111–203, and ‘swap’ shall be de-
6 fined pursuant to title VII of Public Law
7 111–203.

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

17 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
18 MENTS.—Section 3(a)(68) of the Securities Exchange Act
19 of 1934 (15 U.S.C. 78c(a)(68)), as added by section
20 761(a)(6) of the Dodd-Frank Wall Street Reform and
21 Consumer Protection Act, is amended by adding at the
22 end the following:

23 “(F) TREATMENT OF AFFILIATE TRANS-
24 ACTIONS.—

1 “(i) IN GENERAL.—For the purposes
2 of any clearing and execution requirements
3 under section 3C and any applicable mar-
4 gin and capital requirements of section
5 15F(e), and for purposes of defining ‘secu-
6 rity-based swap dealer’ or a ‘major secu-
7 rity-based swap participant’, and reporting
8 requirements other than those set forth in
9 clause (ii), the term ‘security-based swap’
10 does not include any agreement, contract,
11 or transaction that—

12 “(I) would otherwise be included
13 as a ‘security-based swap’ under sub-
14 paragraph (A); and

15 “(II) is entered into by parties
16 that report information or prepare fi-
17 nancial statements on a consolidated
18 basis, or for which a company affili-
19 ated with both parties reports infor-
20 mation or prepares financial state-
21 ments on a consolidated basis.

22 “(ii) REPORTING.—All agreements,
23 contracts, or transactions described in
24 clause (i) shall be reported to either a se-
25 curity-based swap data repository, or, if

1 there is no security-based swap data repos-
2 itory that would accept such agreements,
3 contracts, or transactions, to the Commis-
4 sion pursuant to section 13A, within such
5 time period as the Commission may by rule
6 or regulation prescribe.

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

14 “(iv) PROTECTION OF INSURANCE
15 FUNDS.—Nothing in this subparagraph
16 shall be construed to prevent the regulator
17 of a Federal or State insurance fund or
18 guaranty fund from exercising its other ex-
19 isting authority to protect the integrity of
20 such a fund, except that such regulator
21 shall not subject security-based swap
22 transactions between affiliated companies
23 to clearing and execution requirements
24 under section 3C, to any applicable margin
25 and capital requirements of section 15F(e),

1 or to reporting requirements of title VII of
2 Public Law 111–203 other than those set
3 forth in clause (ii).

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

21 “(vi) PREVENTION OF EVASION.—The
22 Commission may prescribe rules under this
23 subparagraph (and issue interpretations of
24 such rules) as determined by the Commis-
25 sion to be necessary to include in the defi-

1 nition of security-based swap under this
 2 paragraph any agreement, contract, or
 3 transaction that has been structured to
 4 evade the requirements of this Act applica-
 5 ble to security-based swaps.”.

6 **SEC. 2. IMPLEMENTATION.**

7 The amendments made by this Act to the Commodity
 8 Exchange Act shall be implemented—

9 (1) without regard to—

10 (A) chapter 35 of title 44, United States
 11 Code; and

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

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

17 (3) such that paragraph (1) shall apply solely
 18 to changes to rules and regulations, or proposed
 19 rules and regulations, that are limited to and di-
 20 rectly a consequence of such amendments.

Passed the House of Representatives March 26,
 2012.

Attest:

KAREN L. HAAS,

Clerk.

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