112TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
112–391

PROTECTING MAIN STREET END-USERS FROM EXCESSIVE REGULATION

FEBRUARY 8, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LUCAS, from the Committee on Agriculture, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3527]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 3527) to amend the Commodity Exchange Act to clarify the definition of swap dealer, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting Main Street End-Users From Excessive Regulation".

SEC. 2. CLARIFICATION OF THE DEFINITION OF SWAP DEALER.

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

"(49) SWAP DEALER.—

"(A) IN GENERAL.—The term 'swap dealer' means any person who—

"(i) holds itself out as a dealer in swaps;

"(ii) makes a market in swaps;

"(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or

"(iv) engages in any activity causing the person to be commonly known as a dealer or market maker in swaps,

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

"(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

"(C) EXCEPTIONS.—

"(i) The term 'swap dealer' does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as part of regular business activities as described in subparagraph (A).

"(ii) In determining whether a person is a 'swap dealer' within the meaning of subparagraph (A), any transaction entered into for a person's own account for the purpose of hedging or mitigating commercial risk shall not be considered as part of that determination.

"(iii) The Commission shall by rule adopt standards distinguishing the activities described in subparagraph (A) and entering into swaps for a person's own account for the purpose of achieving one's own trading objectives as determined by the Commission.

"(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that enters into swap dealing transactions with or on behalf of the person's customers if the aggregate gross notional amount of the outstanding swap dealing transactions entered into over the course of the preceding calendar year does not exceed $3,000,000,000 (or such greater amount as the Commission may establish as market conditions warrant), multiplied by the sum of 1 and the percentage (if any) by which the Consumer Price Index for all Urban Customers published by the Bureau of Labor Statistics of the Department of Labor changed for the 12-month period ending the preceding April 30.".

SEC. 3. IMPLEMENTATION.

The amendments made by this Act shall be implemented—

(1) without regard to—

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

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

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

BRIEF EXPLANATION

H.R. 3527 amends Section 1a(49)(C) of the Commodity Exchange Act (CEA) to include 2 new exceptions to the definition of "swap dealer": an exception for transactions entered into to hedge or mitigate an entity's commercial risk, and a directive for the Commodity Futures Trading Commission (CFTC) to establish, by rule, a standard for distinguishing between swap dealing activities and trading for one's own account for one's own trading objectives.

In addition, H.R. 3527 requires the CFTC to exempt from designation as a "swap dealer" entities that, over the preceding calendar year, entered into less than $3 billion in aggregate gross notional swap dealing transactions with or on behalf of customers.

PURPOSE AND NEED

A central element of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203) (the Dodd-Frank Act) is the registration and regulation of "swap dealers." Registration as a swap dealer brings the most comprehensive new regulatory regime in Title VII: swap dealers are subject to clearing and execution requirements when they trade with counterparties other than non-financial end-users, reporting and recordkeeping requirements, new capital and margin requirements, the Section 716 "push-out" rule, and significant new business conduct standards to govern their sales practices and interaction with counterparties.

Most of the derivatives activity in the U.S. is concentrated among several large, complex and global financial institutions. In fact, five

banks alone collectively hold 86% of the credit exposure and 96% of the total notional value of all derivatives within the U.S. banking system. As such, Congress targeted the swap dealer definition to those entities that hold themselves out as dealers, make markets or are commonly known in the market as "dealers." In fact, the Chairman of the CFTC, Gary Gensler, described the intent of dealer regulation:

> "I also think we need regulation of the institutions, that Congress would actually have a statutory regime for derivative dealers, somewhat like we have for banks, where you have capital rules which address the excess leverage, have business conduct rules to make sure there is not fraud and manipulation in the sales practices. And then, of course, lastly and very importantly, reporting rules. These dealers—there is about 15 or 20 around the globe that make up 99 percent of the market for over-the-counter derivatives."

The statutory definition of "swap dealer" requires the CFTC to further define the term, which they did jointly with the SEC in the proposal "Further Definition of "Swap Dealer", "Security-based Swap Dealer", "Major Swap Participant," "Major Security-based Swap Participant," and "Eligible Contract Participant" (http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-31130a.pdf). It is important to note that the statutory definition of "swap dealer" was derived from the securities laws and the definition of a "dealer" in securities. Distinguishing dealers from other market participants for the purpose of securities regulation based upon that definition has occurred for decades in the application and interpretation of the Securities Exchange Act of 1934.

Many end-users, particularly from the energy and agriculture sectors, testified in the Committee's hearings that the CFTC's proposed definition of "swap dealer" is overly broad and vague, and that it could result in them having to register as swap dealers and subsequently be subject to the most significant and costly regulations in Title VII—regulations that were generally designed for large financial institutions. For example, the proposed criteria used to identify swap dealing activity could describe the activities of many market participants that are not engaged in dealing activity, such as "dealers are generally available to enter into swaps to facilitate other parties' interest in entering into those instruments," and "dealers tend to accommodate demand for swaps." At the same time, registration as a swap dealer is a self-selecting process; in other words, entities will need to identify themselves as dealers based upon the regulation and not upon an indication from the CFTC. This increases the need for a clear, unambiguous rule to ensure entities do not go unregistered.

Compounded by the breadth of the definition, the CFTC proposed a "de minimis" exception that is too low (less than $100 million notional amount annually, less than 20 swaps per year, and less than 15 counterparties) to achieve Congress' intent in providing for the exception. Congress expressly granted the CFTC the authority to establish an exception for entities that engage in only a small amount of swap dealing. However, the proposed threshold would result in few, if any, entities that would be eligible.

H.R. 3527 clarifies the definition of swap dealer to avoid entities that are not swap dealers from having to register as such. First, it clarifies that the Commission should not consider swaps entered into for the purpose of hedging commercial risk as "dealing." Second, the bill directs the CFTC to develop rules establishing standards by which to distinguish entities that are acting as dealers, and those that are trading for their own account to achieve their own trading objectives. The SEC, in applying and interpreting the securities "dealer" definition has long upheld a "Dealer/Trader" distinction to permit entities that are trading for their own investment objectives from having to register as dealers. The SEC also proposes to uphold this distinction in the definition of "Security-based Swap Dealer," but the CFTC does not. The second provision in H.R. 3527 directs the CFTC to adopt a similar standard to be applied within the "swap dealer" definition.

These important clarifications to the swap dealer definition are critical to ensuring that end-users, the very entities Congress intended to exempt from many of the new regulations in Title VII, are not subject to the most burdensome and costly new regulatory regime in Title VII. For example, a recent study by the National Economic Research Associates estimates that for non-financial commercial energy firms, designation as a swap dealer would impose incremental costs of $388 million.

Lastly, the bill increases the "de minimis" threshold to $3 billion average aggregate gross notional to ensure entities that are engaged in only a small amount of swap dealing will not be regulated as such. As a reference, this is less than 5/10,000 of 1% of the notional value of the entire U.S. swaps market.

On February 10, 2011, Edward Gallagher of Dairy Farmers of America, testified to the breadth of the definition and the impact it would have on farmer cooperatives, summarizing well the need to clarify the definition:

> "We believe that by applying the "interpretive approach for identifying whether a person is a swap dealer," as outlined in the proposed rule, CFTC would likely capture a number of entities that were never intended to be regulated as swap dealers, including farmer cooperatives. This is because cooperatives engage in activities that look very similar to those of a dealer when they enter into swaps with farmers, local elevators, and customers as they provide risk mitigation services and products throughout the agriculture and energy sector. If farmer cooperatives were to be regulated as dealers, increased requirements for posting capital and margin, complying with reporting, record keeping and other regulatory requirements intended for large systemically important institutions could make providing those services uneconomical to our members. Such action would result in the unintended consequence of increasing the very risk the law intends to mitigation."

SECTION-BY-SECTION

Section 1 is the short title, "Protecting Main Street End-Users from Excessive Regulation".

Section 2 amends the Commodity Exchange Act to modify the definition of swap dealer in the Dodd-Frank Act to prohibit the CFTC from considering an entity's transactions entered into for the purpose of hedging or mitigating commercial risk. It also directs the commission by rule to adopt standards distinguishing swap dealing activities from trading of swaps.

The amendment in section 2 (amendment to 1a(49)(D)) requires the CFTC to exempt from the designation of a swap dealer anyone who enters into swap dealing transactions with or on behalf of customers if the total amount of outstanding swap dealing transactions is less than $3 billion, indexed to inflation, over the last calendar year.

Section 3 excludes the amendments made by this bill from the requirements of the Paperwork Reduction Act and from notice and comment requirements of the Administrative Procedure Act.

COMMITTEE CONSIDERATION

I. HEARINGS

In the 112th Congress, the Committee has held seven hearings, four Full Committee and two General Farm Commodities and Risk Management Subcommittee hearings to examine the implementation of Title VII of the Dodd-Frank Act and one Full Committee hearing to examine legislative proposals related thereto, including a discussion draft of H.R. 3527. The Committee took testimony from witnesses that represented a broad spectrum of participants in the derivatives markets.

In the following hearings, witnesses testified to the CFTC's overly broad definition of "swap dealer" and the importance of ensuring that end-users are not unnecessarily miscategorized as swap dealers:

Public hearing to review implementation of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act: February 10, 2011

Defining the Market: Entity and Product Classifications Under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act: March 31, 2011

Derivatives Reform: The View from Main Street: July 21, 2011

To review legislative proposals amending Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act: October 12, 2011

For example, on July 21, 2011 the Honorable Glenn English, CEO of the National Rural Electric Cooperative Association testified:

> "The regulators have suggested they might interpret this definition broadly enough to sweep in our not-for-profit members. If so, such an interpretation has the potential to be one of the more damaging unintended consequences of the Dodd-Frank Act. If our members were considered "swap dealers," those cooperatives would be subject to a slew of new capital-draining requirements, business prac-

> tices, and financial markets regulations that Congress intended to impose on Wall Street derivatives dealers. To put it bluntly—it would be an incredible regulatory overreach for the CFTC to apply the definition of "swap dealer" to rural electric cooperatives—who are obviously not in the business of derivatives dealing, but instead are not-for-profit end-users of nonfinancial energy derivatives to hedge commercial risk and protect consumers from price volatility in wholesale power markets. The rural electric cooperatives' core mission is keeping the lights on for farmers, families and small businesses in rural America, not dealing in the global swaps markets. There are no "Wall Street derivatives dealers" in our membership."

Also on July 21, 2011, Mr. Randy Howard testified on behalf of the City of Los Angeles, Department of Water and Power and the Large Public Power Council stating:

> "In particular, we are concerned that individual LPPC members could be considered a "swap dealer" due to certain transactions we use to hedge our costs. LADWP and the members of LPPC do not belong within this definition, as we hedge strictly to minimize commercial risk and do not contribute to systemic risk of the market. If our utility systems were regulated as swap dealers, our ratepayers—the residents and businesses which we are obligated to serve—would be swept into the same regulatory regime meant to target financial speculation."

On October 12, Mr. Scott Cordes, President of Country Hedging testified on behalf of the National Council of Farmer Cooperatives:

> "The uncertainty created by the "definitions" rules is NCFC's greatest concern as implementation continues. As the rule was proposed, some activities of cooperatives such as those previously mentioned would appear to push cooperatives into the "swap dealer" category. Regulating farmer cooperatives as dealers would increase requirements for posting capital and margin on swaps it uses with other dealers to offset the risk of providing risk management products and services to its members and customers. This requirement, combined with the cost of complying with other regulatory requirements intended for large financial institutions, could make providing those services to a cooperative's member-owners uneconomical. Such action would result in the unintended consequence of increasing risk in the agricultural sector."

II. FULL COMMITTEE

The Committee on Agriculture met, pursuant to notice, with a quorum present, on January 25, 2012, to consider H.R. 3527, to amend the Commodity Exchange Act to clarify the definition of swap dealer, and other pending business. Chairman Lucas offered an opening statement, as did Ranking Member Peterson and Hultgren.

The bill, H.R. 3527 was placed before the Committee for consideration and without objection a first reading of the bill was waived

and it was opened for amendment at any point. The Chairman offered an Amendment in the Nature of a Substitute to the bill, and counsel provided a brief explanation of the amendment.

Mr. Costa was recognized to offer and explain an amendment that would clarify that actions undertaken to comply with state or local laws or regulations are specifically excluded in determining whether an entity is a swap dealer. Discussion occurred and without objection the amendment was withdrawn.

Mr. Walz as then recognized to offer and explain an amendment that clarifies that clarifies that none of the exceptions in section (c) of the "Protecting Main Street End-Users from Excessive Regulation Act" should apply to financial institutions. Discussion occurred and without objection the amendment was withdrawn.

Mr. Peterson was recognized to offer and explain an amendment to expedite implementation by excluding the amendments made by the bill from the requirements of the Paperwork Reduction Act and from notice and comment requirements of the Administrative Procedure Act. By a voice vote the Peterson amendment was adopted.

There being no further amendments, the Peterson motion to approve the Amendment in the Nature of a Substitute to H.R. 3527, as amended was adopted by a voice vote.

By a voice vote, the Peterson motion to report the bill favorably to the House with the recommendation that it do pass was adopted.

The Committee then moved onto other pending business, where at the conclusion of the meeting, Chairman Lucas advised Members that pursuant to the rules of the House of Representatives that Members have 2 calendar days to file such views with the Committee.

Without objection, staff was given permission to make any necessary clerical, technical or conforming changes to reflect the intent of the Committee.

Chairman Lucas thanked all the Members and adjourned the meeting.

REPORTING THE BILL—ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, H.R. 3527 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections

402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

FEBRUARY 6, 2012.

Hon. FRANK D. LUCAS,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3527, Protecting Main Street End-Users from Excessive Regulation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3527—Protecting Main Street End-Users from Excessive Regulation

H.R. 3527 would prevent the Commodity Futures Trading Commission (CFTC) from considering certain transactions undertaken by an entity when determining whether the entity should be considered a swap dealer. Current law defines a swap dealer as a person who, among other things, buys and sells swaps in the regular course of business to earn a profit on the transactions. (A swap is a contract that calls for an exchange of cash between two participants based on an underlying rate or index, or on the performance of an asset.) Under H.R. 3527, the CFTC would be directed to exclude swap transactions undertaken to mitigate business-related risk (for instance, an airline entering into a swap transaction to hedge the risk of rising fuel prices) when determining whether a person or entity would meet the definition of a swap dealer.

The CFTC is developing regulations relating to swap dealers as the result of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203), however, the agency has not finalized such regulations. Based on information from the agency, CBO expects that incorporating the provisions of H.R. 3527 at this point in the regulatory process would not require a significant increase in the agency's workload. Therefore, CBO estimates that any change in discretionary spending to implement the legislation, which would be subject to the availability of appropriated funds, would not be significant. Enacting H.R. 3527 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3527 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals

and objectives of this legislation are to amend the Commodity Exchange Act to clarify the definition of swap dealer.

CONSTITUTIONAL AUTHORITY STATEMENT

The Committee finds the Constitutional authority for this legislation in Article I, section 8, clause 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested in Congress by the Constitution of the United States or in any department or officer thereof.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

EARMARK STATEMENT REQUIRED BY CLAUSE 9 OF RULE XXI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

H.R. 3527 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

* * * * * * *

SEC. 1a. DEFINITIONS.

As used in this Act:

(1) * * *

* * * * * * *

[(49) SWAP DEALER.—

[(A) IN GENERAL.—The term "swap dealer" means any person who—

[(i) holds itself out as a dealer in swaps;

[(ii) makes a market in swaps;

[(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or

[(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

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

[(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

[(C) EXCEPTION.—The term "swap dealer" does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

[(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.]

(49) SWAP DEALER.—

(A) IN GENERAL.—The term "swap dealer" means any person who—

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

(ii) makes a market in swaps;

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

(iv) engages in any activity causing the person to be commonly known as a dealer or market maker in swaps,

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

(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

(C) EXCEPTIONS.—

(i) The term "swap dealer" does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not

as part of regular business activities as described in subparagraph (A).

(ii) In determining whether a person is a "swap dealer" within the meaning of subparagraph (A), any transaction entered into for a person's own account for the purpose of hedging or mitigating commercial risk shall not be considered as part of that determination.

(iii) The Commission shall by rule adopt standards distinguishing the activities described in subparagraph (A) and entering into swaps for a person's own account for the purpose of achieving one's own trading objectives as determined by the Commission.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that enters into swap dealing transactions with or on behalf of the person's customers if the aggregate gross notional amount of the outstanding swap dealing transactions entered into over the course of the preceding calendar year does not exceed $3,000,000,000 (or such greater amount as the Commission may establish as market conditions warrant), multiplied by the sum of 1 and the percentage (if any) by which the Consumer Price Index for all Urban Customers published by the Bureau of Labor Statistics of the Department of Labor changed for the 12-month period ending the preceding April 30.

* * * * * * *

ADDITIONAL VIEWS

For the past year, our Committee has held several hearings and listened to a host of stakeholders who are concerned about how the Dodd-Frank Act is being implemented with regard to improving oversight and accountability in derivative markets. Looking at the Dodd-Frank rules that have already been finalized by the CFTC, it is safe to say that, so far, the CFTC has done a pretty good job.

Of all the bills considered during the mark-up on January 25, 2012, H.R. 3527 is the one that would benefit the most from a delay. The CFTC is very close to finalizing the rule defining a swap dealer. Given their past record, it is probable that the CFTC will satisfactorily address the concerns represented by this legislation when the Commission approves this definition.

The final rule defining swap dealer is particularly important considering the scope of regulation that would apply to such an entity. By acting too precipitously on H.R. 3527, Congress may unintentionally do more harm than good. While the final definition could raise concerns and issues for some market participants, it may provide a good outcome for others, resolving concerns to their satisfaction.

If the CFTC does get something wrong in the final rule, we should work to correct it. But we should tailor our efforts narrowly just toward that correction. We must not jeopardize the certainty and security of those market participants who finally know they will not be considered swap dealers under the final rule. In a similar vein, what happens if new and unique issues arise out of the final rule? Moving H.R. 3527 to the House floor too quickly may limit the ability of the House to address such new issues without resorting to brand new legislation.

The bill as amended and approved by the Committee is a reasonable compromise; neither the Majority nor Minority got exactly what they originally wanted. It is a good faith effort and allows us to move forward in a bipartisan manner.

Still, there are lingering concerns regarding the legislation's use of the phrase, "for the purpose of achieving one's own trading objectives." Companies and firms have made clear their concerns about the CFTC's proposed rule and how it distinguishes dealing from trading. As we crafted the Dodd-Frank derivative title, we strove to distinguish the dealing activities of the larger banks with the trading practices of other market participants who may be trying to speculate or take a view of the market in a manner that does not create legal loopholes where "dealing activity" can squeeze into "trading objective" activity. Misinterpretation of this language could lead to the creation of such loopholes.

In a colloquy, the Chairman and Ranking Member agreed to work together to improve the bill and ensure that end users are not

unnecessarily burdened by regulations without creating loopholes. That effort should and will continue.

Finally, the Committee approved the Peterson amendment, which includes language that should look very familiar to Farm Bill veterans. It is the exact same provisions that we incorporate in each Farm Bill for implementation of the Title I commodity programs. In that context, it exempts USDA from provisions of the Paperwork Reduction Act and notice and comment provisions of the Administrative Procedures Act.

With this change, comments can still be sent to the CFTC. Anyone would still be able to meet with CFTC officials to share their thoughts on how these bills should be implemented. Farm groups certainly did not have any trouble sharing their views on Farm Bill implementation. Given the openness the CFTC has already demonstrated, this provision will not hurt anyone's ability to provide input to the CFTC.

COLLIN C. PETERSON.
JOE COURTNEY.
JAMES P. MCGOVERN.
CHELLIE PINGREE.
TIMOTHY J. WALZ.

○