

BUSINESS RISK MITIGATION AND PRICE STABILIZATION
ACT OF 2013

JUNE 12, 2013.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 634]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 634) to provide end user exemptions from certain provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

“End-users” are companies that use derivatives to hedge their business risk. Because end-users’ swap and security-based swap transactions do not pose a systemic risk to the financial system, Congress did not intend that end-user derivatives transactions would be subject to the margin and capital requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) (the “Dodd-Frank Act”).

Despite Congressional intent and the statute’s plain language, some regulators have interpreted Title VII as a grant of new authority to impose margin requirements on end-users merely because they are counterparties to swaps with a regulated entity, such as a swap dealer or financial institution. H.R. 634 exempts end-users from the margin and capital requirements under Title VII of the Dodd-Frank Act for swaps and security-based swap transactions that are not made with financial entities as defined under the Dodd-Frank Act.

BACKGROUND AND NEED FOR LEGISLATION

During floor debate on the conference report for the Dodd-Frank Act, two colloquies among the then-chairmen of the four committees with primary jurisdiction over Title VII clarified Congressional intent that the Dodd-Frank Act did not grant regulators the authority to impose margin requirements on end-user derivatives transactions. Nevertheless, some regulators have interpreted Title VII as a grant of new authority to impose margin requirements on end-users. H.R. 634 is necessary to ensure that the regulators do not force end-users to post margin, thereby diverting much-needed capital from being used to fuel job creation and economic growth.

On April 11, 2013, Mr. Thomas Deas, Vice President and Treasurer of FMC Corporation, on behalf of the Coalition for Derivatives End-Users testified, "Adopting more conservative cash management practices might sound like an appropriate response in the wake of the financial crisis. However, end-users did not cause the financial crisis. End-users do not contribute to systemic risk because their use of derivatives constitutes prudent, risk mitigating hedging of their underlying business. Forcing end-users to put up cash for fluctuating derivatives valuations means less funding available to grow their businesses and expand employment. The reality treasurers face is that the money to margin derivatives has to come from somewhere and inevitably less funding will be available to operate their businesses."

Mr. Deas further testified that FMC and other members of the Business Roundtable estimated that non-financial member companies would have to set aside on average \$269 million in cash or immediately available bank credit to meet margin calls, assuming a 3 percent initial margin and no variation margin. "In our world of finite limits and financial constraints, this is a direct dollar-for-dollar subtraction from funds that we would otherwise use to expand our plants, build inventory to support higher sales, undertake research and development activities, and ultimately sustain and grow jobs." He continued:

In fact, the study extrapolated the effects across the S&P 500, of which FMC is also a member, to predict the consequent loss of 100,000 to 120,000 jobs. The effect on the many thousands of end-users beyond the S&P 500 would be proportionately greater. We would also have to make a considerable investment in information systems that would replicate much of the technology in a bank's trading room for marking to market and settling derivatives transactions.

On February 15, 2011, Mr. Craig Reiners of MillerCoors LLC, on behalf of the Coalition for Derivatives End-Users, testified before the Committee, and stated that "the prudent use of derivatives by end-user companies, such as MillerCoors, does not generate risk or instability in the financial marketplace and played no role in the financial crisis. On the contrary, these risk management tools are critical to reducing commercial risk and volatility in our day-to-day business operations, allowing us to create sustainable and prosperous businesses." Further, he testified that he believes that

a broad end-user exemption is critically important as the [Commodity Futures Trading Commission] promulgates final rules. During the regulatory process, we have sought to ensure that the exemption created by Congress would not be unduly narrowed. In particular, we have urged regulators to give thoughtful consideration to key definitions to ensure that end-users like us are not saddled with bank-like regulation. . . . The unintended consequence of margin requirements applied to end-users or excessive capital requirements applied to our financial counterparties could be to reduce the risk management activity of end-users. Such a result could actually increase systemic risk or even push transactions offshore.

On March 16, 2011, Mr. Luke Zubrod of Chatham Financial, on behalf of the Coalition for Derivatives End-Users, testified before the Subcommittee on Capital Markets and Government-Sponsored Enterprises that “[i]f capital charges are disproportionately increased, end users may opt out of hedging, which in turn would translate to increased volatility in consumer prices for things like airline tickets, apartment rents, farm equipment, various types of financing, life insurance contracts, and even the price of cereal.” Further, he stated that “[w]e respectfully request that this committee provide end users with certainty by clarifying that their hedges will not be subject to margin requirements. In addition to providing important certainty for Main Street businesses, such a clarification would promote international harmonization and minimize regulatory arbitrage.”

HEARINGS

The Committee on Financial Services’ Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on H.R. 634 on April 11, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 7, 2013, and ordered H.R. 634 to be reported favorably to the House without amendment by a recorded vote of 59 yeas to 0 nays (Record vote no. FC–11), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 59 yeas to 0 nays (Record vote no. FC–11), a quorum being present.

Record vote no. FC-11

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters	X		
Mr. Gary G. Miller (CA)	X			Mrs. Maloney (NY)	X		
Mr. Bachus	X			Ms. Velázquez	X		
Mr. King (NY)	X			Mr. Watt	X		
Mr. Royce	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mrs. Capito	X			Mr. Capuano	X		
Mr. Garrett	X			Mr. Hinojosa	X		
Mr. Neugebauer	X			Mr. Clay	X		
Mr. McHenry	X			Mrs. McCarthy (NY)	X		
Mr. Campbell	X			Mr. Lynch	X		
Mrs. Bachmann	X			Mr. David Scott (GA)	X		
Mr. McCarthy (CA)	X			Mr. Al Green (TX)	X		
Mr. Pearce				Mr. Cleaver	X		
Mr. Posey	X			Ms. Moore	X		
Mr. Fitzpatrick	X			Mr. Ellison	X		
Mr. Westmoreland				Mr. Perlmutter	X		
Mr. Luetkemeyer	X			Mr. Himes	X		
Mr. Huizenga (MI)	X			Mr. Peters (MI)	X		
Mr. Duffy	X			Mr. Carney	X		
Mr. Hurt	X			Ms. Sewell (AL)	X		
Mr. Grimm	X			Mr. Foster	X		
Mr. Stivers	X			Mr. Kildee	X		
Mr. Fincher	X			Mr. Murphy (FL)	X		
Mr. Stutzman	X			Mr. Delaney	X		
Mr. Mulvaney	X			Ms. Sinema	X		
Mr. Hultgren	X			Mrs. Beatty	X		
Mr. Ross	X			Mr. Heck (WA)	X		
Mr. Pittenger	X						
Mrs. Wagner	X						
Mr. Barr	X						
Mr. Cotton	X						
Mr. Rothfus	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 634 will exempt end-users of derivatives from margin requirements.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 29, 2013.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 634, the Business Risk Mitigation and Price Stabilization Act of 2013.

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,
Director.

Enclosure.

H.R. 634—Business Risk Mitigation and Price Stabilization Act of 2013

H.R. 634 would exempt nonfinancial entities that enter into a swap or a security-based swap transaction from meeting certain margin requirements when the transaction is designed to offset losses or gains in other investments. (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.)

Both the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) are developing regulations relating to margin requirements (minimum amounts of collateral that must be deposited, often with a broker or exchange, to cover some or all of the risk of a counterparty) in swap transactions as a result of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203). In addition, other financial regulators, including the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) among others, are also developing margin requirements that would apply to the entities they regulate. Final regulations have not been completed by any agency.

Based on information from several of the affected agencies, CBO expects that incorporating the provisions of H.R. 634 at this point in the regulatory process would not require a significant increase in the workload of any agency. CBO estimates that any change in discretionary spending by the SEC and CFTC to implement the legislation would not be significant. Further, under current law, the SEC is authorized to collect fees sufficient to offset its appropriation each year. Therefore, we estimate that the net cost to the SEC would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 634 would affect direct spending and revenues; therefore, pay-as-you-go procedures apply. CBO expects that workloads for affected financial regulators (the Federal Reserve System, FDIC, and OCC among others) would not be significantly affected by the new requirements, and thus, we estimate that the effect on direct spending and revenues would be insignificant.

H.R. 634 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.

On April 11, 2013, CBO transmitted a cost estimate for H.R. 634 as ordered reported by the House Committee on Agriculture on March 20, 2013. The two versions of the bill are identical, and CBO cost estimates are the same.

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

FEDERAL MANDATES STATEMENT

The Committee adopts 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.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO 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 the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 634 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 634 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 634 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 634 as the “Business Risk Mitigation and Price Stabilization Act of 2013.”

Section 2. Margin requirements

This section amends Section 4s(e) of the Commodity Exchange Act as added by Section 731 of the Dodd-Frank Act governing margin requirements, and exempts counterparties to swap contracts from those requirements other than for financial entities as defined under the Dodd-Frank Act.

This sections also amends Section 15F(e) of the Securities Exchange Act of 1934 as added by Section 764(a) of the Dodd-Frank Act governing margin requirements and exempts counterparties to security-based swap contracts from those requirements other than for financial entities as defined under the Dodd-Frank Act.

Section 3. Implementation

This section excludes the amendments made by this bill to the Commodity Exchange Act from the requirements of the Paperwork Reduction Act and from notice and comment requirements of the Administrative Procedure Act.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

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SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

(a) * * *

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(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) * * *

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(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) or satisfies the criteria in section 2(h)(7)(D).

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SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

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SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

(a) * * *

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(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) * * *

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(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a security-based swap in which a counterparty qualifies for an exception under section 3C(g)(1) or satisfies the criteria in section 3C(g)(4).

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