

112TH CONGRESS  
1ST SESSION

# H. R. 3283

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to provide an exemption for certain swaps and security-based swaps involving non-U.S. persons, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2011

Mr. HIMES (for himself and Mr. GARRETT) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to provide an exemption for certain swaps and security-based swaps involving non-U.S. persons, and for other purposes.

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. SHORT TITLE.**

4 This Act may be cited as the “Swap Jurisdiction Cer-  
5 tainty Act”.

1 **SEC. 2. COMMODITY EXCHANGE ACT.**

2 Section 4s(a) of the Commodity Exchange Act (7  
3 U.S.C. 6s(a)) is amended by adding at the end the fol-  
4 lowing:

5 “(3) EXTRA-TERRITORIAL SWAP TRANSACTION  
6 APPLICATION OF TITLE VII.—

7 “(A) IN GENERAL.—A swap entered into  
8 between—

9 “(i) a swap dealer that is registered  
10 with the Commission who is either—

11 “(I) a U.S. person, or

12 “(II) a person that has a parent  
13 company that is a U.S. person, and

14 “(ii) a person who is—

15 “(I) a U.S. or non-U.S. sub-  
16 sidiary, branch, or affiliate of such  
17 swap dealer, or

18 “(II) any other non-U.S. person  
19 that is not registered as a swap dealer  
20 with the Commission,

21 shall not be subject to the provisions of  
22 title VII of the Dodd-Frank Wall Street  
23 Reform and Consumer Protection Act, and  
24 of amendments added by such title, so long  
25 as each swap dealer described under clause

1 (i) reports such swap to a swap data repos-  
2 itory registered with the Commission.

3 “(B) SWAPS ENTERED INTO BY REG-  
4 ISTERED NON-U.S. PERSONS.—

5 “(i) IN GENERAL.—A non-U.S. person  
6 that registers as a swap dealer with the  
7 Commission shall only be subject to the re-  
8 quirements of title VII of the Dodd-Frank  
9 Wall Street Reform and Consumer Protec-  
10 tion Act, and of amendments added by  
11 such title, with respect to swaps that such  
12 person enters into with a U.S. person who  
13 is not a U.S. subsidiary, branch, or affil-  
14 iate of such non-U.S. person.

15 “(ii) CAPITAL REQUIREMENTS.—A  
16 non-U.S. person that registers as a swap  
17 dealer with the Commission shall be per-  
18 mitted by the Commission to comply with  
19 the capital requirements under subsection  
20 (e) by complying with comparable require-  
21 ments established by the appropriate gov-  
22 ernmental authorities in the home country  
23 of the non-U.S. person, so long as such  
24 home country is a signatory to the Basel  
25 Accords.

1           “(C) NON-U.S. PERSON.—For purposes of  
2 this paragraph, the term ‘non-U.S. person’ in-  
3 cludes—

4           “(i) any person that is not a U.S. per-  
5 son;

6           “(ii) any discretionary account or  
7 similar account (other than an estate or  
8 trust) held for the benefit or account of a  
9 non-U.S. person by a dealer or other pro-  
10 fessional fiduciary organized, incorporated,  
11 or (if an individual) resident in the United  
12 States;

13           “(iii) any agency or branch of a U.S.  
14 person located outside the United States  
15 if—

16           “(I) the agency or branch oper-  
17 ates for valid business reasons; and

18           “(II) the agency or branch is en-  
19 gaged in the business of insurance or  
20 banking and is subject to substantive  
21 insurance or banking regulation, re-  
22 spectively, in the jurisdiction where it  
23 is located;

1           “(iv) any trust of which any profes-  
2           sional fiduciary acting as trustee is a U.S.  
3           person, if—

4                   “(I) a trustee who is a non-U.S.  
5                   person has sole or shared investment  
6                   discretion with respect to the trust as-  
7                   sets; and

8                   “(II) no beneficiary of the trust  
9                   (and no settlor if the trust is rev-  
10                  ocable) is a U.S. person;

11                  “(v) an employee benefit plan estab-  
12                  lished and administered in accordance with  
13                  the law, customary practices, and docu-  
14                  mentation of a country other than the  
15                  United States; and

16                  “(vi) the International Monetary  
17                  Fund, the International Bank for Recon-  
18                  struction and Development, the Inter-  
19                  American Development Bank, the Asian  
20                  Development Bank, the African Develop-  
21                  ment Bank, the United Nations, a central  
22                  bank or its functional equivalent which is  
23                  located in a non-U.S. jurisdiction and that  
24                  is a signatory to the Basel Accords, and  
25                  their agencies, affiliates and pension plans,

1 and any other similar international organi-  
2 zations, their agencies, affiliates and pen-  
3 sion plans.

4 “(D) U.S. PERSON.—For purposes of this  
5 paragraph, the term ‘U.S. person’ includes—

6 “(i) any natural person resident in the  
7 United States;

8 “(ii) any partnership or corporation  
9 organized or incorporated under the laws  
10 of the United States;

11 “(iii) any estate of which any executor  
12 or administrator is a U.S. person;

13 “(iv) any trust of which any trustee is  
14 a U.S. person;

15 “(v) any agency or branch of a for-  
16 eign entity located in the United States;

17 “(vi) any non-discretionary account or  
18 similar account (other than an estate or  
19 trust) held by a dealer or other fiduciary  
20 for the benefit or account of a United  
21 States person;

22 “(vii) any discretionary account or  
23 similar account (other than an estate or  
24 trust) held by a dealer or other fiduciary

1 organized, incorporated, or (if an indi-  
2 vidual) resident in the United States; and

3 “(viii) any partnership or corpora-  
4 tion—

5 “(I) organized or incorporated  
6 under the laws of any foreign jurisdic-  
7 tion; and

8 “(II) formed by a U.S. person  
9 principally for the purpose of invest-  
10 ing in securities not registered under  
11 the Securities Act of 1933, unless it is  
12 organized or incorporated, and owned,  
13 by accredited investors (as such term  
14 is defined under section 230.501 of  
15 title 17, Code of Federal Regulations)  
16 that are not natural persons, estates,  
17 or trusts.

18 “(E) ANTI-EVASION.—Notwithstanding  
19 any other provision of this paragraph, each reg-  
20 istered swap dealer shall be subject to the pro-  
21 vision under section 2(i)(2).”.

22 **SEC. 3. SECURITIES EXCHANGE ACT OF 1934.**

23 Section 15F(a) of the Securities Exchange Act of  
24 1934 (78o–10(a)) is amended by adding at the end the  
25 following:

1           “(3) EXTRA-TERRITORIAL SWAP TRANSACTION  
2           APPLICATION OF TITLE VII.—

3           “(A) IN GENERAL.—A security-based swap  
4           entered into between—

5                   “(i) a security-based swap dealer that  
6                   is registered with the Commission who is  
7                   either—

8                           “(I) a U.S. person, or

9                           “(II) a person that has a parent  
10                          company that is a U.S. person, and

11                          “(ii) a person who is—

12                                  “(I) a U.S. or non-U.S. sub-  
13                                  sidiary, branch, or affiliate of such se-  
14                                  curity-based swap dealer, or

15                                  “(II) any other non-U.S. person  
16                                  that is not registered as a security-  
17                                  based swap dealer with the Commis-  
18                                  sion,

19                          shall not be subject to the provisions of  
20                          title VII of the Dodd-Frank Wall Street  
21                          Reform and Consumer Protection Act, and  
22                          of amendments added by such title, so long  
23                          as each security-based swap dealer de-  
24                          scribed under clause (i) reports such secu-  
25                          rity-based swap to a security-based swap



1 data repository registered with the Com-  
2 mission.

3 “(B) SECURITY-BASED SWAPS ENTERED  
4 INTO BY REGISTERED NON-U.S. PERSONS.—

5 “(i) IN GENERAL.—A non-U.S. person  
6 that registers as a security-based swap  
7 dealer with the Commission shall only be  
8 subject to the requirements of title VII of  
9 the Dodd-Frank Wall Street Reform and  
10 Consumer Protection Act, and of amend-  
11 ments added by such title, with respect to  
12 security-based swaps that such person en-  
13 ters into with a U.S. person who is not a  
14 U.S. subsidiary, branch, or affiliate of such  
15 non-U.S. person.

16 “(ii) CAPITAL REQUIREMENTS.—A  
17 non-U.S. person that registers as a secu-  
18 rity-based swap dealer with the Commis-  
19 sion shall be permitted by the Commission  
20 to comply with the capital requirements  
21 under subsection (e) by complying with  
22 comparable requirements established by  
23 the appropriate governmental authorities  
24 in the home country of the non-U.S. per-

1 son, so long as such home country is a sig-  
2 natory to the Basel Accords.

3 “(C) NON-U.S. PERSON.—For purposes of  
4 this paragraph, the term ‘non-U.S. person’ in-  
5 cludes—

6 “(i) any person that is not a U.S. per-  
7 son;

8 “(ii) any discretionary account or  
9 similar account (other than an estate or  
10 trust) held for the benefit or account of a  
11 non-U.S. person by a dealer or other pro-  
12 fessional fiduciary organized, incorporated,  
13 or (if an individual) resident in the United  
14 States;

15 “(iii) any agency or branch of a U.S.  
16 person located outside the United States  
17 if—

18 “(I) the agency or branch oper-  
19 ates for valid business reasons; and

20 “(II) the agency or branch is en-  
21 gaged in the business of insurance or  
22 banking and is subject to substantive  
23 insurance or banking regulation, re-  
24 spectively, in the jurisdiction where it  
25 is located;

1           “(iv) any trust of which any profes-  
2           sional fiduciary acting as trustee is a U.S.  
3           person, if—

4                   “(I) a trustee who is a non-U.S.  
5                   person has sole or shared investment  
6                   discretion with respect to the trust as-  
7                   sets; and

8                   “(II) no beneficiary of the trust  
9                   (and no settlor if the trust is rev-  
10                  ocable) is a U.S. person;

11           “(v) an employee benefit plan estab-  
12           lished and administered in accordance with  
13           the law, customary practices, and docu-  
14           mentation of a country other than the  
15           United States; and

16           “(vi) the International Monetary  
17           Fund, the International Bank for Recon-  
18           struction and Development, the Inter-  
19           American Development Bank, the Asian  
20           Development Bank, the African Develop-  
21           ment Bank, the United Nations, a central  
22           bank or its functional equivalent which is  
23           located in a non-U.S. jurisdiction and that  
24           is a signatory to the Basel Accords, and  
25           their agencies, affiliates and pension plans,

1 and any other similar international organi-  
2 zations, their agencies, affiliates and pen-  
3 sion plans.

4 “(D) U.S. PERSON.—For purposes of this  
5 paragraph, the term ‘U.S. person’ includes—

6 “(i) any natural person resident in the  
7 United States;

8 “(ii) any partnership or corporation  
9 organized or incorporated under the laws  
10 of the United States;

11 “(iii) any estate of which any executor  
12 or administrator is a U.S. person;

13 “(iv) any trust of which any trustee is  
14 a U.S. person;

15 “(v) any agency or branch of a for-  
16 eign entity located in the United States;

17 “(vi) any non-discretionary account or  
18 similar account (other than an estate or  
19 trust) held by a dealer or other fiduciary  
20 for the benefit or account of a United  
21 States person;

22 “(vii) any discretionary account or  
23 similar account (other than an estate or  
24 trust) held by a dealer or other fiduciary

1 organized, incorporated, or (if an indi-  
2 vidual) resident in the United States; and

3 “(viii) any partnership or corpora-  
4 tion—

5 “(I) organized or incorporated  
6 under the laws of any foreign jurisdic-  
7 tion; and

8 “(II) formed by a U.S. person  
9 principally for the purpose of invest-  
10 ing in securities not registered under  
11 the Securities Act of 1933, unless it is  
12 organized or incorporated, and owned,  
13 by accredited investors (as such term  
14 is defined under section 230.501 of  
15 title 17, Code of Federal Regulations)  
16 that are not natural persons, estates,  
17 or trusts.

18 “(E) ANTI-EVASION.—Notwithstanding  
19 any other provision of this paragraph, a reg-  
20 istered security-based swap dealer shall not con-  
21 duct any activities that are designed to evade  
22 any provision of this Act that was enacted by  
23 the Wall Street Transparency and Account-  
24 ability Act of 2010.”.

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