

Union Calendar No. 72

113TH CONGRESS
1ST SESSION

H. R. 1256

[Report No. 113–103, Parts I and II]

To direct the Securities and Exchange Commission and the Commodity Futures Trading Commission to jointly adopt rules setting forth the application to cross-border swaps transactions of certain provisions relating to swaps that were enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2013

Mr. GARRETT (for himself, Mr. CONAWAY, Mr. CARNEY, and Mr. DAVID SCOTT of Georgia) 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

JUNE 10, 2013

Reported from the Committee on Financial Services with amendments

[Omit the part struck through and insert the part printed in *italie*]

JUNE 10, 2013

Reported from the Committee on Agriculture; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To direct the Securities and Exchange Commission and the Commodity Futures Trading Commission to jointly adopt rules setting forth the application to cross-border swaps transactions of certain provisions relating to swaps that were enacted as part of 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. SHORT TITLE.**

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

6 **SEC. 2. JOINT RULEMAKING ON CROSS-BORDER SWAPS.**

7 (a) JOINT RULEMAKING REQUIRED.—

8 (1) IN GENERAL.—Not later than ~~180 days~~ 270
 9 *days* after the date of enactment of this Act, the Se-
 10 curities and Exchange Commission and the Com-
 11 modity Futures Trading Commission shall jointly
 12 issue rules setting forth the application of United
 13 States swaps requirements of the Securities Ex-
 14 change Act of 1934 and the Commodity Exchange
 15 Act relating to *cross-border* swaps and security-based
 16 swaps ~~transacted between~~ *transactions involving*
 17 U.S. persons ~~and~~ *or* non-U.S. persons.

18 (2) CONSTRUCTION.—The ~~Commissions shall~~
 19 ~~jointly issue the rules required under paragraph (1)~~
 20 *shall be identical*, notwithstanding any difference in
 21 the authorities granted the Commissions in ~~sections~~
 22 ~~30(e) and 36(e)~~ *section 30(c)* of the Securities Ex-
 23 change Act of 1934 (15 U.S.C. 78dd(c); ~~78mm(e)~~)
 24 and section 2(i) of the Commodity Exchange Act (7
 25 U.S.C. 2(i)), respectively, *except to the extent nec-*

1 *essary to accommodate differences in other underlying*
2 *statutory requirements under such Acts, and the rules*
3 *thereunder.*

4 (b) CONSIDERATIONS.—The Commissions shall joint-
5 ly issue rules that address—

6 (1) the nature of the connections to the United
7 States that require a non-U.S. person to register as
8 a swap dealer, major swap participant, security-
9 based swap dealer, or *major* security-based swap
10 participant under each Commission’s respective Acts
11 and the regulations issued under such Acts;

12 (2) which of the United States swaps require-
13 ments shall apply to the swap and security-based
14 swap activities of non-U.S. persons, U.S. persons,
15 and their branches, agencies, subsidiaries, and affili-
16 ates outside of the United States and the extent to
17 which such requirements shall apply; and

18 (3) the circumstances under which a non-U.S.
19 person in compliance with the regulatory require-
20 ments of a foreign jurisdiction shall be exempt from
21 United States swaps requirements.

22 (c) RULE IN ACCORDANCE WITH APA REQUIRED.—
23 No guidance, memorandum of understanding, or any such
24 other agreement may satisfy the requirement to issue a

1 joint rule from the Commissions in accordance with sec-
2 tion 553 of title 5, United States Code.

3 (d) GENERAL APPLICATION TO ~~G20 MEMBER NA-~~
4 ~~TIONS~~ *COUNTRIES OR ADMINISTRATIVE REGIONS HAVING*
5 *NINE LARGEST MARKETS.*—

6 (1) GENERAL APPLICATION.—In issuing rules
7 under this section, the Commissions shall provide
8 that a non-U.S. person in compliance with the swaps
9 regulatory requirements of a ~~G20 member nation~~
10 *country or administrative region that has one of the*
11 *nine largest combined swap and security-based swap*
12 *markets by notional amount in the calendar year pre-*
13 *ceding issuance of such rules, or other foreign juris-*
14 *isdiction as jointly determined by the Commissions,*
15 *shall be exempt from United States swaps require-*
16 *ments in accordance with the schedule set forth in*
17 *paragraph (2), unless the Commissions jointly deter-*
18 *mine that the regulatory requirements of the G20*
19 *member nation such country or administrative region*
20 *or other foreign jurisdiction are not broadly equiva-*
21 *lent to United States swaps requirements.*

22 (2) EFFECTIVE DATE SCHEDULE.—The exemp-
23 tion described in paragraph (1) and set forth under
24 the rules required by this section shall apply to per-
25 sons or transactions relating to or involving—

1 (A) ~~G20 member nations~~ *countries or ad-*
2 *ministrative regions described in such para-*
3 *graph*, or any other foreign jurisdiction as joint-
4 ly determined by the Commissions, accounting
5 for the five largest combined swap and security-
6 based swap markets by notional amount in the
7 calendar year preceding issuance of such rules,
8 on the date on which final rules are issued
9 under this section; *and*

10 ~~(B) G20 member nations, or any other for-~~
11 ~~ign jurisdiction as jointly determined by the~~
12 ~~Commissions, accounting for the next five larg-~~
13 ~~est combined swap and security-based swap~~
14 ~~markets by notional amount in the calendar~~
15 ~~year preceding issuance of such rules, 1 year~~
16 ~~after the date on which such rules are issued;~~
17 ~~and~~

18 ~~(C) the remaining G20 member nations,~~
19 ~~and any other foreign jurisdiction as jointly de-~~
20 ~~termined by the Commissions, 18 months after~~
21 ~~the date on which such rules are issued.~~

22 *(B) the remaining countries or administra-*
23 *tive regions described in such paragraph, and*
24 *any other foreign jurisdiction as jointly deter-*

1 *mined by the Commissions, 1 year after the date*
2 *on which such rules are issued.*

3 (3) CRITERIA.—In such rules, the Commissions
4 shall jointly establish criteria for determining that
5 one or more categories of regulatory requirements of
6 a ~~G20 member nation~~ *country or administrative re-*
7 *gion described in paragraph (1)* or other foreign ju-
8 risdiction is not broadly equivalent to United States
9 swaps requirements and shall jointly determine the
10 appropriate application of certain United States
11 swap requirements to persons or transactions relat-
12 ing to or involving ~~that G20 member nation~~ *such*
13 *country or administrative region* or other foreign ju-
14 risdiction. Such criteria shall include the scope and
15 objectives of the regulatory requirements of a ~~G20~~
16 ~~member nation~~ *country or administrative region de-*
17 *scribed in paragraph (1)* or other foreign jurisdiction
18 as well as the effectiveness of the supervisory com-
19 pliance program administered, and the enforcement
20 authority exercised, by such ~~G20 member nation~~
21 *country or administrative region* or other foreign ju-
22 risdiction, and such other factors as the Commis-
23 sions, by rule, jointly determine to be necessary or
24 appropriate in the public interest.

1 (4) REQUIRED ASSESSMENT.—Beginning on
2 ~~after~~ the date on which final rules are issued under
3 this section, the Commissions shall begin to jointly
4 assess the regulatory requirements of ~~G20 member~~
5 ~~nations~~ *countries or administrative regions described*
6 *in paragraph (1)*, as the Commissions jointly deter-
7 mine appropriate, in accordance with the criteria es-
8 tablished pursuant to ~~paragraph (3)~~ *this subsection*,
9 to determine if one or more categories of regulatory
10 requirements of a ~~G20 member nation~~ *such a coun-*
11 *try or administrative region* or other foreign jurisdic-
12 tion is not broadly equivalent to United States swaps
13 requirements.

14 (e) REPORT TO CONGRESS.—If the Commissions
15 make the joint determination described in subsection
16 (d)(1) that the regulatory requirements of ~~the G20 mem-~~
17 ~~ber nation~~ *a country or administrative region described in*
18 *such subsection* or other foreign jurisdiction are not broad-
19 ly equivalent to United States swaps requirements, the
20 Commissions shall articulate the basis for such a deter-
21 mination in a written report transmitted to the Committee
22 on Financial Services and the Committee on Agriculture
23 of the House of Representatives and the Committee on
24 Banking, Housing, and Urban Affairs and the Committee
25 on Agriculture, Nutrition, and Forestry of the Senate

1 within 30 days of the determination. The determination
2 shall not be effective until the transmission of such report.

3 (f) DEFINITIONS.—As used in this Act and for pur-
4 poses of the rules issued pursuant to this Act, the fol-
5 lowing definitions apply:

6 (1) The term “G20 member nation” refers to a
7 nation that is a member nation of the Group of
8 Twenty Finance Ministers and Central Bank Gov-
9 ernors.

10 (2) The term “U.S. person” has the meaning
11 given such term in section 230.902(k) of title 17,
12 Code of Federal Regulations. The Commissions may,
13 by rule, jointly revise the definition of U.S. person
14 for purposes of the rules required under this section
15 as they determine appropriate to more effectively
16 carry out the purposes of this Act.

17 (1) The term “U.S. person”—

18 (A) means—

19 (i) any natural person resident in the
20 United States;

21 (ii) any partnership, corporation,
22 trust, or other legal person organized or in-
23 corporated under the laws of the United
24 States or having its principal place of busi-
25 ness in the United States;

1 (iii) any account (whether discre-
2 tionary or non-discretionary) of a U.S. per-
3 son; and

4 (iv) any other person as the Commis-
5 sions may further jointly define to more ef-
6 fectively carry out the purposes of this Act;
7 and

8 (B) does not include the International Mon-
9 etary Fund, the International Bank for Recon-
10 struction and Development, the Inter-American
11 Development Bank, the Asian Development
12 Bank, the African Development Bank, the United
13 Nations, their agencies and pension plans, and
14 any other similar international organizations
15 and their agencies and pension plans.

16 ~~(3)~~ (2) The term “United States swaps require-
17 ments” means the provisions relating to swaps and
18 security-based swaps contained in the Commodity
19 Exchange Act (7 U.S.C. 1a et seq.) and the Securi-
20 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.)
21 that were added by title VII of the Dodd-Frank Wall
22 Street Reform and Consumer Protection Act (15
23 U.S.C. 8301 et seq.) and any rules or regulations
24 prescribed by the Securities and Exchange Commis-

1 sion and the Commodity Futures Trading Commis-
2 sion pursuant to such provisions.

3 (g) CONFORMING AMENDMENTS.—

4 (1) SECURITIES EXCHANGE ACT OF 1934.—

5 Section 36(c) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78mm(c)) is amended by inserting
7 “or except as necessary to effectuate the purposes of
8 the Swap Jurisdiction Certainty Act,” after “to
9 grant exemptions,”.

10 (2) COMMODITY EXCHANGE ACT.—Section

11 4(c)(1)(A) of the Commodity Exchange Act (7
12 U.S.C. 6(c)(1)(A)) is amended by inserting “or ex-
13 cept as necessary to effectuate the purposes of the
14 Swap Jurisdiction Certainty Act,” after “to grant
15 exemptions,”.

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