

[DISCUSSION DRAFT]

112TH CONGRESS
1ST SESSION

H. R. _____

To amend the Commodity Exchange Act to clarify the definition of swap dealer.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Commodity Exchange Act to clarify the
definition of swap dealer.

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. CLARIFICATION OF THE DEFINITION OF SWAP**
4 **DEALER.**

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

7 “(49) SWAP DEALER.—

1 “(A) IN GENERAL.—The term ‘swap deal-
2 er’ means any person who is engaged in the
3 business of entering into swaps, and—

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

6 “(ii) makes a market in swaps; or

7 “(iii) engages in any activity causing
8 the person to be commonly known as a
9 dealer or market maker in swaps,
10 provided however, in no event shall an insured
11 depository institution be considered to be a
12 swap dealer to the extent it offers to enter into
13 a swap with a customer in connection with orig-
14 inating a loan to the customer.

15 “(B) INCLUSION.—A person may be des-
16 ignated as a swap dealer for a single type or
17 single class or category of swap or activities and
18 considered not to be a swap dealer for other
19 types, classes, or categories of swaps or activi-
20 ties.

21 “(C) EXCEPTION.—The term ‘swap dealer’
22 does not include a person that enters into swap
23 transactions for the person’s own account—

24 “(i) for the purpose of hedging or
25 mitigating commercial risk or otherwise

1 achieving the person's own trading or in-
2 vestment objectives; or

3 “(ii) ancillary to the person's regular
4 business as a producer, processor, or com-
5 mercial user of, or a merchant handling, a
6 commodity (other than an excluded com-
7 modity) or the products or by-products
8 thereof.

9 “(D) DE MINIMIS EXCEPTION.—The Com-
10 mission shall exempt from designation as a
11 swap dealer an entity that engages in swap
12 dealing transactions with or on behalf of the
13 person's customers if the average aggregate
14 gross notional amount of outstanding swap
15 transactions of the entity over the course of the
16 preceding calendar year does not exceed
17 \$3,000,000,000 (or such greater amount as the
18 Commission may establish as market conditions
19 warrant), multiplied by the sum of 1 and the
20 percentage (if any) by which the Consumer
21 Price Index for all Urban Customers published
22 by the Bureau of Labor Statistics of the De-
23 partment of Labor changed for the 12-month
24 period ending the preceding April 30.”.