

[DISCUSSION DRAFT]

MARCH 12, 2013

113TH CONGRESS
1ST SESSION**H. R.** _____

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

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Swap Jurisdiction Cer-
3 tainty Act”.

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

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of enactment of this Act, the Securities and Ex-
7 change Commission and the Commodity Futures Trading
8 Commission shall jointly issue rules setting forth the ap-
9 plication of United States swaps requirements of the Secu-
10 rities Exchange Act of 1934 and the Commodity Exchange
11 Act relating to swaps transacted between U.S. persons and
12 non-U.S. persons.

13 (b) CONSIDERATIONS.—The Commissions shall issue
14 rules that address—

15 (1) the nature of the connections to the United
16 States that require a non-U.S. person to register as
17 a swap dealer or major swap participant under each
18 Commission’s respective Acts and the regulations
19 issued under such Acts;

20 (2) which of the United States swaps require-
21 ments shall apply to the swap activities of non-U.S.
22 persons, U.S. persons, and their branches, agencies,
23 subsidiaries, and affiliates outside of the United
24 States and the extent to which such requirements
25 shall apply; and

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

5 (c) **RULE IN ACCORDANCE WITH APA REQUIRED.**—
6 No guidance, memorandum of understanding, or any such
7 other agreement may satisfy the requirement to issue a
8 formal joint rule from the Commissions in accordance with
9 section 553 of title 5, United States Code.

10 (d) **GENERAL APPLICATION TO G20 MEMBER NA-**
11 **TIONS.**—

12 (1) **GENERAL APPLICATION.**—In issuing rules
13 under subsection (b), the Commissions shall provide
14 that a non-U.S. person in compliance with the regu-
15 latory requirements of a G20 member nation, or
16 other foreign jurisdiction as jointly determined by
17 the Commissions, shall be exempt from United
18 States swaps requirements, unless the Commissions
19 jointly determine that the regulatory requirements of
20 the G20 member nation or other foreign jurisdiction
21 are not broadly equivalent to United States swaps
22 requirements.

23 (2) **CRITERIA.**—In such rules, the Commissions
24 shall jointly establish criteria for determining that
25 the regulatory requirements of a G20 member na-

1 tion or other foreign jurisdiction are not broadly
2 equivalent to United States swaps requirements and
3 shall jointly determine the appropriate application of
4 certain United States swap requirements to that for-
5 eign jurisdiction or G20 nation.

6 (e) REPORT TO CONGRESS.—If the Commissions
7 make the joint determination described in subsection
8 (d)(1) that the regulatory requirements of the G20 mem-
9 ber nation or other foreign jurisdiction are not broadly
10 equivalent to United States swaps requirements, the Com-
11 missions shall articulate the basis for such a determination
12 in a written report transmitted to the Committee on Fi-
13 nancial Services and the Committee on Agriculture of the
14 House of Representatives and the Committee on Banking
15 and the Committee on Agriculture of the Senate within
16 30 days of the determination. The determination shall not
17 be effective until the transmission of such report.

18 (f) DEFINITIONS.—As used in this Act and for pur-
19 poses of the rules issued pursuant to this Act—

20 (1) the term “G20 member nation” refers to a
21 nation that is a member nation of the Group of
22 Twenty Finance Ministers and Central Bank Gov-
23 ernors;

24 (2) the term “U.S. person” has the meaning
25 given such term in section 230.902(k) of title 17,

1 Code of Federal Regulations, and the term “non-
2 U.S. person” refers to any person excluded from the
3 definition of U.S. person in such section; and

4 (3) the term “United States swaps require-
5 ments” means the provisions relating to swaps and
6 security-based swaps contained in the Commodity
7 Exchange Act (7 U.S.C. 1a et seq.) and the Securi-
8 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.)
9 that were added by title VII of the Dodd-Frank Wall
10 Street Reform and Consumer Protection Act (15
11 U.S.C. 8301 et seq.) and any rules or regulations
12 prescribed by the Securities and Exchange Commis-
13 sion and the Commodity Futures Trading Commis-
14 sion pursuant to such provisions.