

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 677
OFFERED BY MR. LUCAS OF OKLAHOMA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Inter-Affiliate Swap
3 Clarification Act”.

4 SEC. 2. TREATMENT OF AFFILIATE TRANSACTIONS.

5 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—

6 (1) TREATMENT OF AFFILIATE TRANS-
7 ACTIONS.—Section 1a(47) of the Commodity Ex-
8 change Act (7 U.S.C. 1a(47)), as added by section
9 721(a)(21) of the Dodd-Frank Wall Street Reform
10 and Consumer Protection Act, is amended by adding
11 at the end the following:

12 “(G) TREATMENT OF AFFILIATE TRANS-
13 ACTIONS.—

14 “(i) IN GENERAL.—For the purposes
15 of any clearing and execution requirements
16 under section 2(h) and any applicable mar-
17 gin and capital requirements of section
18 4s(e) and for purposes of defining ‘swap

1 dealer' or 'major swap participant', and re-
2 porting requirements other than those set
3 forth in clause (ii), the term 'swap' does
4 not include any agreement, contract, or
5 transaction that—

6 “(I) would otherwise be included
7 as a 'swap' under subparagraph (A);
8 and

9 “(II) is entered into by parties,
10 neither of which is a 'swap dealer'
11 that is an insured depository institu-
12 tion or a 'major swap participant'
13 that is an insured depository institu-
14 tion, that report information or pre-
15 pare financial statements on a consoli-
16 dated basis, or for which a company
17 affiliated with both parties reports in-
18 formation or prepares financial state-
19 ments on a consolidated basis.

20 “(ii) REPORTING.—All agreements,
21 contracts, or transactions described in
22 clause (i) shall be reported to either a
23 swap data repository, or, if there is no
24 swap data repository that would accept
25 such agreements, contracts, or trans-

1 actions, to the Commission pursuant to
2 section 4r, or to a swap data repository or
3 to the Commission pursuant to section
4 2(h)(5), within such time period as the
5 Commission may by rule or regulation pre-
6 scribe. Nothing in this subparagraph shall
7 prohibit the Commission from establishing
8 public reporting requirements for covered
9 transactions between affiliates as described
10 in sections 23A and 23B of the Federal
11 Reserve Act in a manner consistent with
12 rules governing the treatment of such cov-
13 ered transactions pursuant to section
14 2(a)(13) of this Act.

15 “(iii) PROTECTION OF INSURANCE
16 FUNDS.—Nothing in this subparagraph
17 shall be construed to prevent the regulator
18 of a Federal or State insurance fund or
19 guaranty fund from exercising its other ex-
20 isting authority to protect the integrity of
21 such a fund, except that such regulator
22 shall not subject agreements, contracts, or
23 transactions described in clause (i) to
24 clearing and execution requirements under
25 section 2 of this Act, to any applicable

1 margin and capital requirements of section
2 4s(e) of this Act, or to reporting require-
3 ments of title VII of Public Law 111–203
4 other than those set forth in clause (ii) of
5 this subparagraph.

6 “(iv) PRESERVATION OF FEDERAL RE-
7 SERVE ACT AUTHORITY.—Nothing in this
8 subparagraph shall exempt a transaction
9 described in this subparagraph from sec-
10 tions 23A or 23B of the Federal Reserve
11 Act or implementing regulations there-
12 under.

13 “(v) PRESERVATION OF FEDERAL
14 AND STATE REGULATORY AUTHORITIES.—
15 Nothing in this subparagraph shall affect
16 the Federal banking agencies’ safety-and-
17 soundness authorities over banks estab-
18 lished in law other than title VII of Public
19 Law 111–203 or the authorities of State
20 insurance regulators over insurers, includ-
21 ing the authority to impose capital require-
22 ments with regard to swaps. For purposes
23 of this clause, the term ‘bank’ shall be de-
24 fined pursuant to section 3(a)(6) of the Se-
25 curities Exchange Act of 1934, ‘insurer’

1 shall be defined pursuant to title V of Pub-
2 lic Law 111–203, and ‘swap’ shall be de-
3 fined pursuant to title VII of Public Law
4 111–203.

5 “(vi) PREVENTION OF EVASION.—The
6 Commission may prescribe rules under this
7 subparagraph (and issue interpretations of
8 such rules) as determined by the Commis-
9 sion to be necessary to include in the defi-
10 nition of swaps under this paragraph any
11 agreement, contract, or transaction that
12 has been structured to evade the require-
13 ments of this Act applicable to swaps.”.

14 (2) TREATMENT OF AFFILIATES.—Section
15 2(h)(7)(D)(i) of the Commodity Exchange Act (7
16 U.S.C. 2(h)(7)(D)(i)), as added by section 723(a) of
17 the Dodd-Frank Wall Street Reform and Consumer
18 Protection Act, is amended to read as follows:

19 “(i) IN GENERAL.—An affiliate of a
20 person that qualifies for an exception
21 under subparagraph (A) (including affiliate
22 entities predominantly engaged in pro-
23 viding financing for the purchase of the
24 merchandise or manufactured goods of the
25 person) may qualify for the exception only

1 if the affiliate enters into the swap to
2 hedge or mitigate the commercial risk of
3 the person or other affiliate of the person
4 that is not a financial entity.”.

5 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
6 MENTS.—

7 (1) TREATMENT OF AFFILIATE TRANS-
8 ACTIONS.—Section 3(a)(68) of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78c(a)(68)), as
10 added by section 761(a)(6) of the Dodd-Frank Wall
11 Street Reform and Consumer Protection Act, is
12 amended by adding at the end the following:

13 “(F) TREATMENT OF AFFILIATE TRANS-
14 ACTIONS.—

15 “(i) IN GENERAL.—For the purposes
16 of any clearing and execution requirements
17 under section 3C and any applicable mar-
18 gin and capital requirements of section
19 15F(e), and for purposes of defining ‘secu-
20 rity-based swap dealer’ or a ‘major secu-
21 rity-based swap participant’, and reporting
22 requirements other than those set forth in
23 clause (ii), the term ‘security-based swap’
24 does not include any agreement, contract,
25 or transaction that—

1 “(I) would otherwise be included
2 as a ‘security-based swap’ under sub-
3 paragraph (A); and

4 “(II) is entered into by parties,
5 neither of which is a ‘security-based
6 swap dealer’ that is an insured deposi-
7 tory institution or a ‘major security-
8 based swap participant’ that is an in-
9 sured depository institution, that re-
10 port information or prepare financial
11 statements on a consolidated basis, or
12 for which a company affiliated with
13 both parties reports information or
14 prepares financial statements on a
15 consolidated basis.

16 “(ii) REPORTING.—All agreements,
17 contracts, or transactions described in
18 clause (i) shall be reported to either a se-
19 curity-based swap data repository, or, if
20 there is no security-based swap data repos-
21 itory that would accept such agreements,
22 contracts, or transactions, to the Commis-
23 sion pursuant to section 13A, within such
24 time period as the Commission may by rule
25 or regulation prescribe.

1 “(iii) PRESERVATION OF FEDERAL
2 RESERVE ACT AUTHORITY.—Nothing in
3 this subparagraph shall exempt a trans-
4 action described in this subparagraph from
5 sections 23A or 23B of the Federal Re-
6 serve Act or implementing regulations
7 thereunder.

8 “(iv) PROTECTION OF INSURANCE
9 FUNDS.—Nothing in this subparagraph
10 shall be construed to prevent the regulator
11 of a Federal or State insurance fund or
12 guaranty fund from exercising its other ex-
13 isting authority to protect the integrity of
14 such a fund, except that such regulator
15 shall not subject security-based swap
16 transactions between affiliated companies
17 to clearing and execution requirements
18 under section 3C, to any applicable margin
19 and capital requirements of section 15F(e),
20 or to reporting requirements of title VII of
21 Public Law 111–203 other than those set
22 forth in clause (ii).

23 “(v) PRESERVATION OF FEDERAL
24 AND STATE REGULATORY AUTHORITIES.—
25 Nothing in this subparagraph shall affect

1 the Federal banking agencies' safety-and-
2 soundness authorities over banks estab-
3 lished in law other than title VII of Public
4 Law 111-203 or the authorities of State
5 insurance regulators over insurers, includ-
6 ing the authority to impose capital require-
7 ments with regard to security-based swaps.
8 For purposes of this clause, the term
9 'bank' shall be defined pursuant to section
10 3(a)(6) of the Securities Exchange Act of
11 1934, 'insurer' shall be defined pursuant
12 to title V of Public Law 111-203, and 'se-
13 curity-based swap' shall be defined pursu-
14 ant to title VII of Public Law 111-203.

15 “(vi) PREVENTION OF EVASION.—The
16 Commission may prescribe rules under this
17 subparagraph (and issue interpretations of
18 such rules) as determined by the Commis-
19 sion to be necessary to include in the defi-
20 nition of security-based swap under this
21 paragraph any agreement, contract, or
22 transaction that has been structured to
23 evade the requirements of this Act applica-
24 ble to security-based swaps.”.

1 (2) TREATMENT OF AFFILIATES.—Section
2 3C(g)(4)(A) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78c-3(g)(4)(A)), as added by section
4 763(a) of the Dodd-Frank Wall Street Reform and
5 Consumer Protection Act, is amended to read as fol-
6 lows:

7 “(i) IN GENERAL.—An affiliate of a
8 person that qualifies for an exception
9 under this subsection (including affiliate
10 entities predominantly engaged in pro-
11 viding financing for the purchase of the
12 merchandise or manufactured goods of the
13 person) may qualify for the exception only
14 if the affiliate enters into the security-
15 based swap to hedge or mitigate the com-
16 mercial risk of the person or other affiliate
17 of the person that is not a financial enti-
18 ty.”.

19 **SEC. 3. IMPLEMENTATION.**

20 The amendments made by this Act to the Commodity
21 Exchange Act shall be implemented—

22 (1) without regard to—

23 (A) chapter 35 of title 44, United States
24 Code; and

1 (B) the notice and comment provisions of
2 section 553 of title 5, United States Code;

3 (2) through the promulgation of an interim
4 final rule, pursuant to which public comment will be
5 sought before a final rule is issued; and

6 (3) such that paragraph (1) shall apply solely
7 to changes to rules and regulations, or proposed
8 rules and regulations, that are limited to and di-
9 rectly a consequence of such amendments.

