113TH CONGRESS
1ST SESSION

H. R. 1256

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

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

This Act may be cited as the “Swap Jurisdiction Certainty Act”.

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

(a) JOINT RULEMAKING REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly issue rules setting forth the application of United States swaps requirements of the Securities Exchange Act of 1934 and the Commodity Exchange Act relating to swaps and security-based swaps transacted between U.S. persons and non-U.S. persons.

(2) CONSTRUCTION.—The Commissions shall jointly issue the rules required under paragraph (1) notwithstanding any difference in the authorities granted the Commissions in sections 30(c) and 36(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd(c); 78mm(c)) and section 2(i) of the Commodity Exchange Act (7 U.S.C. 2(i)), respectively.

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

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

(2) which of the United States swaps requirements shall apply to the swap and security-based swap activities of non-U.S. persons, U.S. persons, and their branches, agencies, subsidiaries, and affiliates outside of the United States and the extent to which such requirements shall apply; and

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

(e) Rule in Accordance With APA Required.—

No guidance, memorandum of understanding, or any such other agreement may satisfy the requirement to issue a joint rule from the Commissions in accordance with section 553 of title 5, United States Code.

(d) General Application to G20 Member Nations.—

(1) General Application.—In issuing rules under this section, the Commissions shall provide that a non-U.S. person in compliance with the swaps regulatory requirements of a G20 member nation, or other foreign jurisdiction as jointly determined by
the Commissions, shall be exempt from United States swaps requirements in accordance with the schedule set forth in paragraph (2), unless the Commissions jointly determine that the regulatory requirements of the G20 member nation or other foreign jurisdiction are not broadly equivalent to United States swaps requirements.

(2) EFFECTIVE DATE SCHEDULE.—The exemption described in paragraph (1) and set forth under the rules required by this section shall apply to persons or transactions relating to or involving—

(A) G20 member nations, or any other foreign jurisdiction as jointly determined by the Commissions, accounting for the five largest combined swap and security-based swap markets by notional amount in the calendar year preceding issuance of such rules, on the date on which final rules are issued under this section;

(B) G20 member nations, or any other foreign jurisdiction as jointly determined by the Commissions, accounting for the next five largest combined swap and security-based swap markets by notional amount in the calendar year preceding issuance of such rules, 1 year
after the date on which such rules are issued; and

(C) the remaining G20 member nations, and any other foreign jurisdiction as jointly determined by the Commissions, 18 months after the date on which such rules are issued.

(3) CRITERIA.—In such rules, the Commissions shall jointly establish criteria for determining that one or more categories of regulatory requirements of a G20 member nation or other foreign jurisdiction is not broadly equivalent to United States swaps requirements and shall jointly determine the appropriate application of certain United States swap requirements to persons or transactions relating to or involving that G20 member nation or other foreign jurisdiction. Such criteria shall include the scope and objectives of the regulatory requirements of a G20 member nation or other foreign jurisdiction as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by such G20 member nation or other foreign jurisdiction, and such other factors as the Commissions, by rule, jointly determine to be necessary or appropriate in the public interest.
(4) REQUIRED ASSESSMENT.—Beginning on after the date on which final rules are issued under this section, the Commissions shall begin to jointly assess the regulatory requirements of G20 member nations, as the Commissions jointly determine appropriate, in accordance with the criteria established pursuant to paragraph (3), to determine if one or more categories of regulatory requirements of a G20 member nation or other foreign jurisdiction is not broadly equivalent to United States swaps requirements.

(e) REPORT TO CONGRESS.—If the Commissions make the joint determination described in subsection (d)(1) that the regulatory requirements of the G20 member nation or other foreign jurisdiction are not broadly equivalent to United States swaps requirements, the Commissions shall articulate the basis for such a determination in a written report transmitted to the Committee on Financial Services and the Committee on Agriculture of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 30 days of the determination. The determination shall not be effective until the transmission of such report.
(f) DEFINITIONS.—As used in this Act and for purposes of the rules issued pursuant to this Act, the following definitions apply:

(1) The term "G20 member nation" refers to a nation that is a member nation of the Group of Twenty Finance Ministers and Central Bank Governors.

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

(g) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—
Section 36(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78mm(c)) is amended by inserting "or except as necessary to effectuate the purposes of the Swap Jurisdiction Certainty Act," after "to grant exemptions, ".

(2) COMMODITY EXCHANGE ACT.—Section 4(c)(1)(A) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)(A)) is amended by inserting "or except as necessary to effectuate the purposes of the Swap Jurisdiction Certainty Act," after "to grant exemptions, ".