113TH CONGRESS
1ST SESSION

H. R. 677

To exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2013

Mr. STIVERs (for himself, Ms. FUDGE, Ms. MOORE, Mr. GIBSON, and Mr. SCHWIKERT) 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

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A BILL

To exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

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

6 SEC. 2. TREATMENT OF AFFILIATE TRANSACTIONS.

7 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—
(1) TREATMENT OF AFFILIATE TRANSACTIONS.—Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), as added by section 721(a)(21) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended by adding at the end the following:

"(G) TREATMENT OF AFFILIATE TRANSACTIONS.—

"(i) IN GENERAL.—For the purposes of any clearing and execution requirements under section 2(h) and any applicable margin and capital requirements of section 4s(e) and for purposes of defining ‘swap dealer’ or ‘major swap participant’, and reporting requirements other than those set forth in clause (ii), the term ‘swap’ does not include any agreement, contract, or transaction that—

"(I) would otherwise be included as a ‘swap’ under subparagraph (A); and

"(II) is entered into by parties, neither of which is a ‘swap dealer’ that is an insured depository institution or a ‘major swap participant’
that is an insured depository institution, that report information or prepare financial statements on a consolidated basis, or for which a company affiliated with both parties reports information or prepares financial statements on a consolidated basis.

"(ii) REPORTING.—All agreements, contracts, or transactions described in clause (i) shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such agreements, contracts, or transactions, to the Commission pursuant to section 4r, or to a swap data repository or to the Commission pursuant to section 2(h)(5), within such time period as the Commission may by rule or regulation prescribe. Nothing in this subparagraph shall prohibit the Commission from establishing public reporting requirements for covered transactions between affiliates as described in sections 23A and 23B of the Federal Reserve Act in a manner consistent with rules governing the treatment of such cov-
erred transactions pursuant to section 2(a)(13) of this Act.

"(iii) PROTECTION OF INSURANCE FUNDS.—Nothing in this subparagraph shall be construed to prevent the regulator of a Federal or State insurance fund or guaranty fund from exercising its other existing authority to protect the integrity of such a fund, except that such regulator shall not subject agreements, contracts, or transactions described in clause (i) to clearing and execution requirements under section 2 of this Act, to any applicable margin and capital requirements of section 4s(e) of this Act, or to reporting requirements of title VII of Public Law 111–203 other than those set forth in clause (ii) of this subparagraph.

"(iv) PRESERVATION OF FEDERAL RESERVE ACT AUTHORITY.—Nothing in this subparagraph shall exempt a transaction described in this subparagraph from sections 23A or 23B of the Federal Reserve Act or implementing regulations thereunder.
“(v) PRESERVATION OF FEDERAL AND STATE REGULATORY AUTHORITIES.—Nothing in this subparagraph shall affect the Federal banking agencies’ safety-and-soundness authorities over banks established in law other than title VII of Public Law 111–203 or the authorities of State insurance regulators over insurers, including the authority to impose capital requirements with regard to swaps. For purposes of this clause, the term ‘bank’ shall be defined pursuant to section 3(a)(6) of the Securities Exchange Act of 1934, ‘insurer’ shall be defined pursuant to title V of Public Law 111–203, and ‘swap’ shall be defined pursuant to title VII of Public Law 111–203.

“(vi) PREVENTION OF EVASION.—The Commission may prescribe rules under this subparagraph (and issue interpretations of such rules) as determined by the Commission to be necessary to include in the definition of swaps under this paragraph any agreement, contract, or transaction that
has been structured to evade the requirements of this Act applicable to swaps.”.

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

“(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.”.

(b) SECURITIES EXCHANGE ACT OF 1934 AMENDMENTS.—

Street Reform and Consumer Protection Act, is
amended by adding at the end the following:

"(F) TREATMENT OF AFFILIATE TRANS-

ACTIONS.—

"(i) IN GENERAL.—For the purposes
of any clearing and execution requirements
under section 3C and any applicable mar-
gin and capital requirements of section
15F(e), and for purposes of defining 'secu-

rity-based swap dealer' or a 'major secu-

rity-based swap participant', and reporting
requirements other than those set forth in
clause (ii), the term 'security-based swap'
does not include any agreement, contract,
or transaction that—

"(I) would otherwise be included
as a 'security-based swap' under sub-
paragraph (A); and

"(II) is entered into by parties,
neither of which is a 'security-based
swap dealer' that is an insured deposi-
tory institution or a 'major security-

based swap participant' that is an in-

sured depository institution, that re-

port information or prepare financial
statements on a consolidated basis, or
for which a company affiliated with
both parties reports information or
prepares financial statements on a
consolidated basis.

"(ii) REPORTING.—All agreements,
contracts, or transactions described in
clause (i) shall be reported to either a se-
curity-based swap data repository, or, if
there is no security-based swap data repos-
itory that would accept such agreements,
contracts, or transactions, to the Commiss-
ion pursuant to section 13A, within such
time period as the Commission may by rule
or regulation prescribe.

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

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

“(v) PRESERVATION OF FEDERAL AND STATE REGULATORY AUTHORITIES.—Nothing in this subparagraph shall affect the Federal banking agencies' safety-and-soundness authorities over banks established in law other than title VII of Public Law 111–203 or the authorities of State insurance regulators over insurers, including the authority to impose capital requirements with regard to security-based swaps.

For purposes of this clause, the term ‘bank’ shall be defined pursuant to section 3(a)(6) of the Securities Exchange Act of
1934, 'insurer' shall be defined pursuant to title V of Public Law 111–203, and 'security-based swap' shall be defined pursuant to title VII of Public Law 111–203.

"(vi) Prevention of evasion.—The Commission may prescribe rules under this subparagraph (and issue interpretations of such rules) as determined by the Commission to be necessary to include in the definition of security-based swap under this paragraph any agreement, contract, or transaction that has been structured to evade the requirements of this Act applicable to security-based swaps."

(2) Treatment of Affiliates.—Section 3C(g)(4)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(4)(A)), as added by section 763(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended to read as follows:

"(i) In general.—An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the

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merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity."