

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2013

Mr. STIVERS (for himself, Ms. FUDGE, Ms. MOORE, Mr. GIBSON, and Mr. SCHWEIKERT) 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

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 Representa-*
2 *tives 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
5 Clarification Act”.

6 **SEC. 2. TREATMENT OF AFFILIATE TRANSACTIONS.**

7 (a) COMMODITY EXCHANGE ACT AMENDMENTS.—

1 (1) TREATMENT OF AFFILIATE TRANS-
2 ACTIONS.—Section 1a(47) of the Commodity Ex-
3 change Act (7 U.S.C. 1a(47)), as added by section
4 721(a)(21) of the Dodd-Frank Wall Street Reform
5 and Consumer Protection Act, is amended by adding
6 at the end the following:

7 “(G) TREATMENT OF AFFILIATE TRANS-
8 ACTIONS.—

9 “(i) IN GENERAL.—For the purposes
10 of any clearing and execution requirements
11 under section 2(h) and any applicable mar-
12 gin and capital requirements of section
13 4s(e) and for purposes of defining ‘swap
14 dealer’ or ‘major swap participant’, and re-
15 porting requirements other than those set
16 forth in clause (ii), the term ‘swap’ does
17 not include any agreement, contract, or
18 transaction that—

19 “(I) would otherwise be included
20 as a ‘swap’ under subparagraph (A);
21 and

22 “(II) is entered into by parties,
23 neither of which is a ‘swap dealer’
24 that is an insured depository institu-
25 tion or a ‘major swap participant’

1 that is an insured depository institu-
2 tion, that report information or pre-
3 pare financial statements on a consoli-
4 dated basis, or for which a company
5 affiliated with both parties reports in-
6 formation or prepares financial state-
7 ments on a consolidated basis.

8 “(ii) REPORTING.—All agreements,
9 contracts, or transactions described in
10 clause (i) shall be reported to either a
11 swap data repository, or, if there is no
12 swap data repository that would accept
13 such agreements, contracts, or trans-
14 actions, to the Commission pursuant to
15 section 4r, or to a swap data repository or
16 to the Commission pursuant to section
17 2(h)(5), within such time period as the
18 Commission may by rule or regulation pre-
19 scribe. Nothing in this subparagraph shall
20 prohibit the Commission from establishing
21 public reporting requirements for covered
22 transactions between affiliates as described
23 in sections 23A and 23B of the Federal
24 Reserve Act in a manner consistent with
25 rules governing the treatment of such cov-

1 ered transactions pursuant to section
2 2(a)(13) of this Act.

3 “(iii) PROTECTION OF INSURANCE
4 FUNDS.—Nothing in this subparagraph
5 shall be construed to prevent the regulator
6 of a Federal or State insurance fund or
7 guaranty fund from exercising its other ex-
8 isting authority to protect the integrity of
9 such a fund, except that such regulator
10 shall not subject agreements, contracts, or
11 transactions described in clause (i) to
12 clearing and execution requirements under
13 section 2 of this Act, to any applicable
14 margin and capital requirements of section
15 4s(e) of this Act, or to reporting require-
16 ments of title VII of Public Law 111–203
17 other than those set forth in clause (ii) of
18 this subparagraph.

19 “(iv) PRESERVATION OF FEDERAL RE-
20 SERVE ACT AUTHORITY.—Nothing in this
21 subparagraph shall exempt a transaction
22 described in this subparagraph from sec-
23 tions 23A or 23B of the Federal Reserve
24 Act or implementing regulations there-
25 under.

“(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

1 has been structured to evade the require-
2 ments of this Act applicable to swaps.”.

3 (2) TREATMENT OF AFFILIATES.—Section
4 2(h)(7)(D)(i) of the Commodity Exchange Act (7
5 U.S.C. 2(h)(7)(D)(i)), as added by section 723(a) of
6 the Dodd-Frank Wall Street Reform and Consumer
7 Protection Act, is amended to read as follows:

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

19 (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-
20 MENTS.—

21 (1) TREATMENT OF AFFILIATE TRANS-
22 ACTIONS.—Section 3(a)(68) of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78c(a)(68)), as
24 added by section 761(a)(6) of the Dodd-Frank Wall

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

3 “(F) TREATMENT OF AFFILIATE TRANS-
4 ACTIONS.—

5 “(i) IN GENERAL.—For the purposes
6 of any clearing and execution requirements
7 under section 3C and any applicable mar-
8 gin and capital requirements of section
9 15F(e), and for purposes of defining ‘secu-
10 rity-based swap dealer’ or a ‘major secu-
11 rity-based swap participant’, and reporting
12 requirements other than those set forth in
13 clause (ii), the term ‘security-based swap’
14 does not include any agreement, contract,
15 or transaction that—

16 “(I) would otherwise be included
17 as a ‘security-based swap’ under sub-
18 paragraph (A); and

19 “(II) is entered into by parties,
20 neither of which is a ‘security-based
21 swap dealer’ that is an insured deposi-
22 tory institution or a ‘major security-
23 based swap participant’ that is an in-
24 sured depository institution, that re-
25 port information or prepare financial

1 statements on a consolidated basis, or
2 for which a company affiliated with
3 both parties reports information or
4 prepares financial statements on a
5 consolidated basis.

6 “(ii) REPORTING.—All agreements,
7 contracts, or transactions described in
8 clause (i) shall be reported to either a se-
9 curity-based swap data repository, or, if
10 there is no security-based swap data repos-
11 itory that would accept such agreements,
12 contracts, or transactions, to the Commis-
13 sion pursuant to section 13A, within such
14 time period as the Commission may by rule
15 or regulation prescribe.

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

23 “(iv) PROTECTION OF INSURANCE
24 FUNDS.—Nothing in this subparagraph
25 shall be construed to prevent the regulator

1 of a Federal or State insurance fund or
2 guaranty fund from exercising its other ex-
3 isting authority to protect the integrity of
4 such a fund, except that such regulator
5 shall not subject security-based swap
6 transactions between affiliated companies
7 to clearing and execution requirements
8 under section 3C, to any applicable margin
9 and capital requirements of section 15F(e),
10 or to reporting requirements of title VII of
11 Public Law 111-203 other than those set
12 forth in clause (ii).

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 security-based swaps.
23 For purposes of this clause, the term
24 ‘bank’ shall be defined pursuant to section
25 3(a)(6) of the Securities Exchange Act of

1 1934, ‘insurer’ shall be defined pursuant
2 to title V of Public Law 111–203, and ‘se-
3 curity-based swap’ shall be defined pursu-
4 ant to title VII of Public Law 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 security-based swap under this
11 paragraph any agreement, contract, or
12 transaction that has been structured to
13 evade the requirements of this Act applica-
14 ble to security-based swaps.”.

15 (2) TREATMENT OF AFFILIATES.—Section
16 3C(g)(4)(A) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78c-3(g)(4)(A)), as added by section
18 763(a) of the Dodd-Frank Wall Street Reform and
19 Consumer Protection Act, is amended to read as fol-
20 lows:

21 “(i) IN GENERAL.—An affiliate of a
22 person that qualifies for an exception
23 under this subsection (including affiliate
24 entities predominantly engaged in pro-
25 viding financing for the purchase of the

1 merchandise or manufactured goods of the
2 person) may qualify for the exception only
3 if the affiliate enters into the security-
4 based swap to hedge or mitigate the com-
5 mercial risk of the person or other affiliate
6 of the person that is not a financial enti-
7 ty.”.

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