

112TH CONGRESS
1ST SESSION

H. R. 3283

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to provide an exemption for certain swaps and security-based swaps involving non-U.S. persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2011

Mr. HIMES (for himself and Mr. GARRETT) 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 amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to provide an exemption for certain swaps and security-based swaps involving non-U.S. persons, and for other purposes.

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 “Swap Jurisdiction Cer-
5 tainty Act”.

1 **SEC. 2. COMMODITY EXCHANGE ACT.**

2 Section 4s(a) of the Commodity Exchange Act (7
3 U.S.C. 6s(a)) is amended by adding at the end the fol-
4 lowing:

5 “(3) EXTRA-TERRITORIAL SWAP TRANSACTION
6 APPLICATION OF TITLE VII.—

7 “(A) IN GENERAL.—A swap entered into
8 between—

9 “(i) a swap dealer that is registered
10 with the Commission who is either—

11 “(I) a U.S. person, or

12 “(II) a person that has a parent
13 company that is a U.S. person, and

14 “(ii) a person who is—

15 “(I) a U.S. or non-U.S. sub-
16 sidiary, branch, or affiliate of such
17 swap dealer, or

18 “(II) any other non-U.S. person
19 that is not registered as a swap dealer
20 with the Commission,

21 shall not be subject to the provisions of
22 title VII of the Dodd-Frank Wall Street
23 Reform and Consumer Protection Act, and
24 of amendments added by such title, so long
25 as each swap dealer described under clause

1 (i) reports such swap to a swap data repos-
2 itory registered with the Commission.

3 “(B) SWAPS ENTERED INTO BY REG-
4 ISTERED NON-U.S. PERSONS.—

5 “(i) IN GENERAL.—A non-U.S. person
6 that registers as a swap dealer with the
7 Commission shall only be subject to the re-
8 quirements of title VII of the Dodd-Frank
9 Wall Street Reform and Consumer Protec-
10 tion Act, and of amendments added by
11 such title, with respect to swaps that such
12 person enters into with a U.S. person who
13 is not a U.S. subsidiary, branch, or affil-
14 iate of such non-U.S. person.

15 “(ii) CAPITAL REQUIREMENTS.—A
16 non-U.S. person that registers as a swap
17 dealer with the Commission shall be per-
18 mitted by the Commission to comply with
19 the capital requirements under subsection
20 (e) by complying with comparable require-
21 ments established by the appropriate gov-
22 ernmental authorities in the home country
23 of the non-U.S. person, so long as such
24 home country is a signatory to the Basel
25 Accords.

1 “(C) NON-U.S. PERSON.—For purposes of
2 this paragraph, the term ‘non-U.S. person’ in-
3 cludes—

4 “(i) any person that is not a U.S. per-
5 son;

6 “(ii) any discretionary account or
7 similar account (other than an estate or
8 trust) held for the benefit or account of a
9 non-U.S. person by a dealer or other pro-
10 fessional fiduciary organized, incorporated,
11 or (if an individual) resident in the United
12 States;

13 “(iii) any agency or branch of a U.S.
14 person located outside the United States
15 if—

16 “(I) the agency or branch oper-
17 ates for valid business reasons; and

18 “(II) the agency or branch is en-
19 gaged in the business of insurance or
20 banking and is subject to substantive
21 insurance or banking regulation, re-
22 spectively, in the jurisdiction where it
23 is located;

1 “(iv) any trust of which any profes-
2 sional fiduciary acting as trustee is a U.S.
3 person, if—

4 “(I) a trustee who is a non-U.S.
5 person has sole or shared investment
6 discretion with respect to the trust as-
7 sets; and

8 “(II) no beneficiary of the trust
9 (and no settlor if the trust is rev-
10 ocable) is a U.S. person;

11 “(v) an employee benefit plan estab-
12 lished and administered in accordance with
13 the law, customary practices, and docu-
14 mentation of a country other than the
15 United States; and

16 “(vi) the International Monetary
17 Fund, the International Bank for Recon-
18 struction and Development, the Inter-
19 American Development Bank, the Asian
20 Development Bank, the African Develop-
21 ment Bank, the United Nations, a central
22 bank or its functional equivalent which is
23 located in a non-U.S. jurisdiction and that
24 is a signatory to the Basel Accords, and
25 their agencies, affiliates and pension plans,

1 and any other similar international organi-
2 zations, their agencies, affiliates and pen-
3 sion plans.

4 “(D) U.S. PERSON.—For purposes of this
5 paragraph, the term ‘U.S. person’ includes—

6 “(i) any natural person resident in the
7 United States;

8 “(ii) any partnership or corporation
9 organized or incorporated under the laws
10 of the United States;

11 “(iii) any estate of which any executor
12 or administrator is a U.S. person;

13 “(iv) any trust of which any trustee is
14 a U.S. person;

15 “(v) any agency or branch of a for-
16 eign entity located in the United States;

17 “(vi) any non-discretionary account or
18 similar account (other than an estate or
19 trust) held by a dealer or other fiduciary
20 for the benefit or account of a United
21 States person;

22 “(vii) any discretionary account or
23 similar account (other than an estate or
24 trust) held by a dealer or other fiduciary

1 organized, incorporated, or (if an indi-
2 vidual) resident in the United States; and

3 “(viii) any partnership or corpora-
4 tion—

5 “(I) organized or incorporated
6 under the laws of any foreign jurisdic-
7 tion; and

8 “(II) formed by a U.S. person
9 principally for the purpose of invest-
10 ing in securities not registered under
11 the Securities Act of 1933, unless it is
12 organized or incorporated, and owned,
13 by accredited investors (as such term
14 is defined under section 230.501 of
15 title 17, Code of Federal Regulations)
16 that are not natural persons, estates,
17 or trusts.

18 “(E) ANTI-EVASION.—Notwithstanding
19 any other provision of this paragraph, each reg-
20 istered swap dealer shall be subject to the pro-
21 vision under section 2(i)(2).”.

22 **SEC. 3. SECURITIES EXCHANGE ACT OF 1934.**

23 Section 15F(a) of the Securities Exchange Act of
24 1934 (78o–10(a)) is amended by adding at the end the
25 following:

1 “(3) EXTRA-TERRITORIAL SWAP TRANSACTION
2 APPLICATION OF TITLE VII.—

3 “(A) IN GENERAL.—A security-based swap
4 entered into between—

5 “(i) a security-based swap dealer that
6 is registered with the Commission who is
7 either—

8 “(I) a U.S. person, or

9 “(II) a person that has a parent
10 company that is a U.S. person, and

11 “(ii) a person who is—

12 “(I) a U.S. or non-U.S. sub-
13 sidiary, branch, or affiliate of such se-
14 curity-based swap dealer, or

15 “(II) any other non-U.S. person
16 that is not registered as a security-
17 based swap dealer with the Commis-
18 sion,

19 shall not be subject to the provisions of
20 title VII of the Dodd-Frank Wall Street
21 Reform and Consumer Protection Act, and
22 of amendments added by such title, so long
23 as each security-based swap dealer de-
24 scribed under clause (i) reports such secu-
25 rity-based swap to a security-based swap

1 data repository registered with the Com-
2 mission.

3 “(B) SECURITY-BASED SWAPS ENTERED
4 INTO BY REGISTERED NON-U.S. PERSONS.—

5 “(i) IN GENERAL.—A non-U.S. person
6 that registers as a security-based swap
7 dealer with the Commission shall only be
8 subject to the requirements of title VII of
9 the Dodd-Frank Wall Street Reform and
10 Consumer Protection Act, and of amend-
11 ments added by such title, with respect to
12 security-based swaps that such person en-
13 ters into with a U.S. person who is not a
14 U.S. subsidiary, branch, or affiliate of such
15 non-U.S. person.

16 “(ii) CAPITAL REQUIREMENTS.—A
17 non-U.S. person that registers as a secu-
18 rity-based swap dealer with the Commis-
19 sion shall be permitted by the Commission
20 to comply with the capital requirements
21 under subsection (e) by complying with
22 comparable requirements established by
23 the appropriate governmental authorities
24 in the home country of the non-U.S. per-

1 son, so long as such home country is a sig-
2 natory to the Basel Accords.

3 “(C) NON-U.S. PERSON.—For purposes of
4 this paragraph, the term ‘non-U.S. person’ in-
5 cludes—

6 “(i) any person that is not a U.S. per-
7 son;

8 “(ii) any discretionary account or
9 similar account (other than an estate or
10 trust) held for the benefit or account of a
11 non-U.S. person by a dealer or other pro-
12 fessional fiduciary organized, incorporated,
13 or (if an individual) resident in the United
14 States;

15 “(iii) any agency or branch of a U.S.
16 person located outside the United States
17 if—

18 “(I) the agency or branch oper-
19 ates for valid business reasons; and

20 “(II) the agency or branch is en-
21 gaged in the business of insurance or
22 banking and is subject to substantive
23 insurance or banking regulation, re-
24 spectively, in the jurisdiction where it
25 is located;

1 “(iv) any trust of which any profes-
2 sional fiduciary acting as trustee is a U.S.
3 person, if—

4 “(I) a trustee who is a non-U.S.
5 person has sole or shared investment
6 discretion with respect to the trust as-
7 sets; and

8 “(II) no beneficiary of the trust
9 (and no settlor if the trust is rev-
10 ocable) is a U.S. person;

11 “(v) an employee benefit plan estab-
12 lished and administered in accordance with
13 the law, customary practices, and docu-
14 mentation of a country other than the
15 United States; and

16 “(vi) the International Monetary
17 Fund, the International Bank for Recon-
18 struction and Development, the Inter-
19 American Development Bank, the Asian
20 Development Bank, the African Develop-
21 ment Bank, the United Nations, a central
22 bank or its functional equivalent which is
23 located in a non-U.S. jurisdiction and that
24 is a signatory to the Basel Accords, and
25 their agencies, affiliates and pension plans,

1 and any other similar international organi-
2 zations, their agencies, affiliates and pen-
3 sion plans.

4 “(D) U.S. PERSON.—For purposes of this
5 paragraph, the term ‘U.S. person’ includes—

6 “(i) any natural person resident in the
7 United States;

8 “(ii) any partnership or corporation
9 organized or incorporated under the laws
10 of the United States;

11 “(iii) any estate of which any executor
12 or administrator is a U.S. person;

13 “(iv) any trust of which any trustee is
14 a U.S. person;

15 “(v) any agency or branch of a for-
16 eign entity located in the United States;

17 “(vi) any non-discretionary account or
18 similar account (other than an estate or
19 trust) held by a dealer or other fiduciary
20 for the benefit or account of a United
21 States person;

22 “(vii) any discretionary account or
23 similar account (other than an estate or
24 trust) held by a dealer or other fiduciary

1 organized, incorporated, or (if an indi-
2 vidual) resident in the United States; and

3 “(viii) any partnership or corpora-
4 tion—

5 “(I) organized or incorporated
6 under the laws of any foreign jurisdic-
7 tion; and

8 “(II) formed by a U.S. person
9 principally for the purpose of invest-
10 ing in securities not registered under
11 the Securities Act of 1933, unless it is
12 organized or incorporated, and owned,
13 by accredited investors (as such term
14 is defined under section 230.501 of
15 title 17, Code of Federal Regulations)
16 that are not natural persons, estates,
17 or trusts.

18 “(E) ANTI-EVASION.—Notwithstanding
19 any other provision of this paragraph, a reg-
20 istered security-based swap dealer shall not con-
21 duct any activities that are designed to evade
22 any provision of this Act that was enacted by
23 the Wall Street Transparency and Account-
24 ability Act of 2010.”.

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