Memorandum

To: Members of the Committee on Financial Services

From: Committee Staff

Date: May 2, 2013

Subject: May 7, 2013 Full Committee Markup

The Committee on Financial Services will mark up the following nine bills at 10 a.m. on Tuesday, May 7, 2013, and subsequent days if necessary, in Room 2128 of the Rayburn House Office Building:

- H.R. 634, the Business Risk Mitigation and Price Stabilization Act of 2013
- H.R. 677, the Inter-Affiliate Swap Clarification Act
- H.R. 701, To amend a provision of the Securities Act of 1933 directing the Securities and Exchange Commission to add a particular class of securities to those exempted under such Act to provide a deadline for such action.
- H.R. 742, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013
- H.R. 801, Holding Company Registration Threshold Equalization Act of 2013
- H.R. 992, the Swaps Regulatory Improvement Act
- H.R. 1062, the SEC Regulatory Accountability Act
- H.R. 1256, the Swap Jurisdiction Certainty Act
- H.R. 1341, the Financial Competitive Act of 2013

H.R. 634, "The Business Risk Mitigation and Price Stabilization Act of 2013"

Introduced by Reps. Michael Grimm, Gary Peters, Austin Scott and Mike McIntyre, H.R. 634, the Business Risk Mitigation and Price Stability Act of 2013, would exempt end-users from the margin and capital requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203). During consideration of the Dodd-Frank Act, a colloquy among the chairmen of the four committees with primary jurisdiction over Title VII (Senators Dodd and Lincoln and Representatives Frank and Peterson) clarified Congress's intent that the Dodd-Frank Act did not grant regulators the authority to impose margin requirements for end-user transactions. Notwithstanding this expression of Congressional intent, some regulators have interpreted Title VII as granting them the authority to impose margin requirements on end-users merely because they are counterparties to swaps with a regulated entity, such as a swap dealer or financial institution.

In the 112th Congress, Reps. Grimm and Peters introduced the same bill (H.R. 2682), which passed the Committee by voice vote on November 30, 2011, and passed the House by a vote of 370-24 on March 26, 2012.

In the 113th Congress, the Committee on Agriculture reported the legislation favorably to the House of Representatives by voice vote on March 20, 2013.

H.R. 677, the Inter-Affiliate Swap Clarification Act

Introduced by Reps. Steve Stivers, Marcia Fudge, Chris Gibson and Gwen Moore, H.R. 677, the Inter-Affiliate Swap Clarification Act, would exempt inter-affiliate trades from the Dodd-Frank Act's margin, clearing, and reporting requirements. Inter-affiliate swaps are swaps executed between entities under common corporate ownership. Inter-affiliate swaps allow a corporate group with subsidiaries and affiliates to better manage risk by transferring the risk of its affiliates to a single affiliate and then executing swaps through that affiliate. Inter-affiliate swaps do not create additional counterparty exposures or increase the interconnectedness between parties outside the corporate group; nonetheless, the Dodd-Frank Act subjects inter-affiliate swaps to the same requirements as swaps between unrelated parties.

In the 112th Congress, Reps. Stivers and Fudge introduced a similar bill (H.R. 2779), which passed the Committee (as amended) by a vote of 53-0 on November 30, 2011. The House passed H.R. 2779 by a vote of 357-36 on March 26, 2012.

In the 113th Congress, the Committee on Agriculture reported the legislation favorably to the House of Representatives by voice vote on March 20, 2013.

H.R. 701, To amend a provision of the Securities Act of 1933 directing the Securities and Exchange Commission to add a particular class of securities to those exempted under such Act to provide a deadline for such action.

Introduced by Reps. McHenry, Eshoo, Scott, Schweikert and Garrett, H.R. 701 would amend Title IV of the Jumpstart Our Business Startups Act (JOBS Act) and require the Securities and Exchange Commission (SEC) to complete the rules to implement this title by October 31, 2013. To date, the SEC has not taken any action to implement this title. Title IV requires the SEC to create an exemption from registration under the Securities Act of 1933 for certain "small issue" offerings up to $50 million in a 12-month period.

H.R. 742, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013

Introduced by Reps. Rick Crawford, Sean Patrick Maloney, Bill Huizenga and Gwen Moore, H.R. 742, the Swap Data Repository and Clearinghouse Indemnification Act of 2013, would remove an indemnification requirement imposed on foreign regulators by the Dodd-Frank Act as a condition of obtaining access to data repositories. Sections 728 and 763 of the Dodd-Frank Act require swap data repositories and security-based swap data repositories to make data available to non-U.S. financial regulators, including foreign financial supervisors, foreign central banks, and foreign ministries. Before a U.S. data repository may share data with a foreign regulator, however, the foreign regulator must agree that it will abide by applicable confidentiality requirements and that it will indemnify the data repository and the SEC or the Commodity Futures Trading Commission (CFTC) for litigation expenses that may result from the sharing of data with the foreign regulator. Section 725 imposes similar requirements for data sharing between derivatives clearing organizations and foreign regulators, including the requirement that foreign regulators indemnify derivatives clearing organizations and U.S. regulators for litigation expenses that may result from the sharing of data with foreign regulators.

These indemnification provisions threaten to make data sharing arrangements with foreign regulators unworkable. On February 1, 2012, the CFTC and the SEC staff issued a "Joint Report on International Swap Regulation," which highlighted problems arising from the indemnification provisions in Sections 728 and 763. The SEC and CFTC staff reported that the indemnification provisions have "caused concern among foreign regulators, some of which have expressed unwillingness to register or recognize [a swaps data repository] unless able to have direct access to necessary information." The staff noted that "Congress may determine that a legislative amendment to the indemnification provision is appropriate."

In the 112th Congress, Reps. Robert Dold and Gwen Moore introduced a similar bill (H.R. 4235), which passed the Committee (as amended) by voice vote on March 27, 2012.

In the 113th Congress, the Committee on Agriculture reported the legislation favorably to the House of Representatives by voice vote on March 20, 2013.

H.R. 801, the "Holding Company Registration Threshold Equalization Act of 2013"

Introduced by Reps. Steve Womack, Jim Himes, John Delaney and Ann Wagner, H.R. 801 the, Holding Company Registration Threshold Equalization Act of 2013, would amend Title VI of the JOBS Act to raise the threshold for mandatory SEC registration of savings and loan companies from 500 shareholders of record to 2,000 shareholders of record (with no limitation on the number of non-accredited investors) and to raise the threshold for a savings and loan company to terminate its SEC registration from 300 shareholders of record to 1,200 shareholders of record.

H.R. 992, the Swaps Regulatory Improvement Act

Introduced by Reps. Randy Hultgren, James Himes, Richard Hudson and Sean Patrick Maloney, H.R. 992, the Swaps Regulatory Improvement Act, would repeal most of Section 716 of the Dodd-Frank Act. Section 716 prohibits "federal assistance"—defined as "the use of any advances from any Federal Reserve credit facility or discount window . . . [or] Federal Deposit Insurance Corporation insurance or guarantees"— to "swaps entities," which include swap dealers and major swap participants, securities and futures exchanges, swap-execution facilities, and clearing organizations. Section 716— known as the swap desk "push out" or "spin off" provision—forces financial institutions that have swap desks to move them into an affiliate to preserve their access to Federal Reserve credit facilities and federal deposit insurance. Although the provision allows banks to continue dealing in swaps related to interest rates, foreign currency, and swaps permitted under the National Bank Act, they are prohibited from engaging in swaps related to commodities, equities, and credit.

Rather than making the financial system more stable, Section 716 appears to have made it more fragile. Federal Reserve Board Chairman Ben Bernanke has noted that Section 716 "would make the U.S. financial system less resilient and more susceptible to systemic risk" because "forcing [commercial and hedging activities] out of insured depository institutions would weaken both financial stability and strong prudential regulation."[1]

H.R. 992 would require covered depository institutions to "push out" to a separately capitalized entity structured-finance swaps, which the legislation defines as a, "swap or security-based swap based on an asset-backed security (or group or index primarily comprised of asset-backed securities)." A covered depository institution may continue to execute structured-finance swaps so long as the swaps are: (1) undertaken for hedging or risk management purposes or (2) expressly permitted by prudential regulators to take place in a covered depository institution. The bill also ensures that uninsured U.S. branches and agencies of foreign banks are treated the same as insured depository institutions by defining both groups as "covered depository institutions," thereby ending an unintended disparity created by Section 716 of the Dodd-Frank Act.

In the 112th Congress, Rep. Nan Hayworth introduced a similar bill (H.R. 1838), which passed the Committee (as amended) by voice vote on February 16, 2012.

In the 113th Congress, the Committee on Agriculture reported the legislation favorably to the House of Representatives by a roll call vote of 31-14 on March 20, 2013.

H.R. 1062, the SEC Regulatory Accountability Act

Introduced by Capital Markets Subcommittee Chairman Scott Garrett, H.R. 1062, the SEC Regulatory Accountability Act, would direct the SEC to follow President Obama's Executive Order No. 13563, which requires government agencies to conduct cost-benefit analyses to ensure that the benefits of any rulemaking outweigh the costs. The Executive Order also requires that regulations be accessible, consistent, written in plain language, and easy to understand. Because the SEC is an independent agency, it is not required to follow the Executive Order. Former SEC Chairman Schapiro indicated that the SEC will abide by the Executive Order. This bill codifies the Executive Order, mandating by statute that the SEC conduct cost-benefit analyses rather than leaving the decision to comply with the Executive Order to the discretion of the SEC's Chairman. H.R. 1062 requires the SEC to identify the problem to be addressed by a proposed regulation and to assess the significance of that problem before the SEC issues a rule. The legislation requires the

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[1] Letter from Ben Bernanke, Chairman of the Board of Governors of the Federal Reserve System, to Senator Chris Dodd (May 12, 2010), available online
http://blogs.wsj.com/economics/2010/05/13/bernanke-letter-to-lawmakers-on-swaps-spin-off/

SEC's Chief Economist to conduct a cost-benefit analysis of potential rules to ensure that the burdens on economic growth and job creation from a proposed regulation do not outweigh the benefit of the regulation.

In the 112th Congress, Chairman Garrett introduced a similar bill (H.R. 2308), which passed the Committee by a vote of 30-26 on February 16, 2012.

H.R. 1256, the Swap Jurisdiction Certainty Act

Introduced by Reps. Scott Garrett, John Carney, Michael Conaway and David Scott, H.R. 1256, the Swap Jurisdiction Certainty Act, would require the SEC and CFTC to jointly issue rules relating to swaps transacted between U.S. persons and non-U.S. persons. H.R. 1256 would also exempt a non-U.S. person in compliance with the swaps regulatory requirements of a G20 member nation from U.S. swaps requirements unless the SEC and CFTC jointly determine that that nation's regulatory requirements are not "broadly equivalent" to U.S. swaps requirements.

Title VII of the Dodd-Frank Act seeks to regulate the over-the-counter derivatives (OTC) market similar to the way that equities and futures exchanges are regulated. Because the OTC market is global, Title VII raises questions about the extent to which U.S. regulations will apply to swap and security-based swap transactions that take place outside the U.S. Title VII's plain language makes clear that Congress intended it to apply outside the U.S. only in certain limited circumstances. Section 722 of the Dodd-Frank Act directs that provisions relating to swaps will not apply to activities outside the U.S. unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States, or (2) contravene anti-evasion rules promulgated by the CFTC. Notwithstanding Title VII's plain language, the comments and actions of U.S. regulators indicate that they are considering regulations that would result in Title VII being applied more broadly than Congress intended. Further, the Dodd-Frank Act requires both the CFTC and the SEC to issue rules on the extraterritorial scope of Title VII, creating the possibility that swap and swap-based transactions that take place outside the U.S. could be subject to two different and potentially conflicting regulatory regimes.

In the 112th Congress, Rep. Himes introduced a similar bill, H.R. 3283. While H.R. 3283 bill dealt with the extraterritorial scope of Title VII, it was also more prescriptive than H.R. 1256, defining "U.S. person," "non-U.S. person," and setting forth the circumstances in which Title VII would apply to non-U.S. financial institutions and transactions. H.R. 3283 passed the Committee by a vote of 41-18 on March 27, 2012.

In the 113th Congress, the Committee on Agriculture reported the legislation favorably to the House of Representatives by voice vote on March 20, 2013.

H.R. 1341, the Financial Competitive Act of 2013

Introduced by Rep. Stephen Fincher, H.R. 1341, the Financial Competitive Act of 2013, requires the Financial Stability Oversight Council (FSOC) to study the likely effects that will result from differences between the U.S. and other jurisdictions' implementation of the derivatives credit valuation adjustment (CVA) capital requirement. The Capital

Requirements Directive IV package, announced by the European Union (EU) on February 28, 2013, includes the CVA requirement and Basel III, which will implement internationally agreed-upon standards on capital and liquidity in the EU. Derivatives transactions with sovereign, pension fund and corporate counterparties (which are exempt from clearing obligations) will be exempt from the CVA. The EU's exemption for these transactions has raised concerns that derivatives transactions will be subject to different capital requirements and that the CVA exemption could distort the pricing of trades and limit the amount of liquidity available for non-financial U.S. derivative end-users, as their transactions would not receive the CVA exemption. The FSOC study is due within 90 days of enactment to the Chairman and Ranking Members of the Committees on Agriculture and Financial Services of the House of Representatives, as well as the Chairman and Ranking Members of the Committees on Agriculture, Nutrition and Forestry and Banking, Housing and Urban Affairs of the Senate.