

112TH CONGRESS
1ST SESSION

S. 1650

To provide for the orderly implementation of the provisions of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2011

Mr. CRAPO (for himself, Mr. JOHANNES, Mr. SHELBY, Mr. VITTER, Mr. TOOMEY, Mr. MORAN, and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for the orderly implementation of the provisions of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 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 “Dodd-Frank Improve-
5 ment Act of 2011”.

1 **SEC. 2. DODD-FRANK IMPROVEMENTS REGARDING REGU-**
2 **LATION OF DERIVATIVES.**

3 (a) ESTABLISHMENT.—Section 4 of the Securities
4 Exchange Act of 1934 (15 U.S.C. 78d) is amended by
5 adding at the end the following:

6 “(j) OFFICE OF DERIVATIVES.—

7 “(1) OFFICE ESTABLISHED.—There is estab-
8 lished within the Commission the Office of Deriva-
9 tives (referred to in this subsection as the ‘Office’)—

10 “(A) to administer the rules of the Com-
11 mission with respect to security-based swaps
12 and, as necessary, to make recommendations to
13 the Commission for new rules or changes to ex-
14 isting rules with respect to security-based
15 swaps;

16 “(B) to coordinate oversight of the market
17 for swaps and security-based swaps, partici-
18 pants in that market, and infrastructure pro-
19 viders for that market with other relevant do-
20 mestic and international regulators; and

21 “(C) to monitor developments in the mar-
22 ket for swaps and security-based swaps.

23 “(2) DIRECTOR OF THE OFFICE.—The head of
24 the Office shall be the Director, who shall report to
25 the Director of the Division of Trading and Markets

1 and the Director of Risk, Strategy, and Financial
2 Innovation.

3 “(3) STAFFING.—

4 “(A) IN GENERAL.—The Office shall be
5 staffed by persons transferred in accordance
6 with subparagraph (B), including persons hav-
7 ing knowledge of and expertise in the uses for,
8 trading in, execution of, and clearing of swaps
9 and security-based swaps.

10 “(B) TRANSFERS.—The Director of the
11 Office of Derivatives, the Director of the Divi-
12 sion of Trading and Markets, the Director of
13 Risk, Strategy, and Financial Innovation, and
14 the Director of the Office of Compliance, In-
15 spections, and Examinations shall jointly iden-
16 tify employees to be transferred from the Divi-
17 sion of Trading and Markets, the Division of
18 Risk, Strategy, and Financial Innovation, and
19 the Office of Compliance, Inspections, and Ex-
20 aminations, respectively, to the Office of De-
21 rivatives, in numbers sufficient to carry out
22 fully the requirements of this subsection.

23 “(4) ENFORCEMENT.—The Division of Enforce-
24 ment shall consult with the Office before presenting

1 a recommendation with respect to security-based
2 swaps to the Commission.

3 “(5) INSPECTIONS AND EXAMINATIONS.—A
4 representative of the Office shall be afforded the op-
5 portunity to participate in any inspection or exam-
6 ination of a security-based swap dealer, major secu-
7 rity-based swap participant, security-based swap
8 data repository, or clearing agency that clears secu-
9 rity-based swaps.

10 “(6) ANNUAL REPORT.—On or before the date
11 that is one year after the Office is established and
12 annually thereafter, the Director shall submit to the
13 Chairman and publish on the public website of the
14 Commission a report that describes the activities of
15 the Office during the preceding year, and the devel-
16 opments in the swaps and security-based swaps mar-
17 ket.”

18 (b) ORDERLY IMPLEMENTATION OF DERIVATIVES
19 PROVISIONS.—

20 (1) REVIEW OF REGULATORY AUTHORITY.—
21 Section 712 of the Dodd-Frank Wall Street Reform
22 and Consumer Protection Act (15 U.S.C. 8302) is
23 amended—

1 (A) in each of subsections (a)(3) and (e),
2 by striking “360” each place that term appears
3 and inserting “720”; and

4 (B) by adding at the end the following:

5 “(g) ORDERLY IMPLEMENTATION SCHEDULE.—

6 “(1) IN GENERAL.—Not later than December
7 31, 2011, the Commodity Futures Trading Commis-
8 sion, the Securities and Exchange Commission, and
9 the prudential regulators shall jointly, pursuant to
10 the notice and comment requirements contained in
11 title 5, United States Code, adopt an implementation
12 schedule for this title.

13 “(2) SCHEDULE CONTENT.—Such implementa-
14 tion schedule shall—

15 “(A) set forth a schedule for the publica-
16 tion of final rules required by this title, except
17 that, unless otherwise specifically provided by a
18 provision of this title, the rules required by sub-
19 section (d)(1) shall be adopted before any other
20 required rules;

21 “(B) set forth a schedule for the effective
22 dates for provisions of this title, including pro-
23 visions that require a rulemaking and provisions
24 that do not require a rulemaking;

25 “(C) take into consideration—

1 “(i) a quantitative analysis of the ef-
2 fects of this title on United States eco-
3 nomic growth and job creation;

4 “(ii) the implications of this title for
5 cross-border activity by, and international
6 competitiveness of, United States financial
7 institutions, companies, and investors;

8 “(iii) whether and how the defini-
9 tional, clearing, trading, reporting, record-
10 keeping, real-time reporting, registration,
11 capital, margin, business conduct, position
12 limits and other requirements of this title
13 work together, and how they affect market
14 depth and liquidity; and

15 “(iv) the implications of any lack of
16 harmonization by the Securities and Ex-
17 change Commission, the Commodity Fu-
18 tures Trading Commission, and the pru-
19 dential regulators with respect to the tim-
20 ing and the substance of their rules.

21 “(h) ORDERLY IMPLEMENTATION AUTHORITY.—
22 Notwithstanding any other provision of law, the Com-
23 modity Futures Trading Commission, the Securities and
24 Exchange Commission and the prudential regulators, by
25 rule, regulation, or order, may conditionally or uncondi-

1 tionally exempt any person, swap, security-based swap, ac-
2 tivity, or transaction, or any class or classes of persons,
3 swaps, security-based swaps, activities, or transactions,
4 from any provision or provisions of this title administered
5 thereby, or any rule or regulation thereunder, to the extent
6 that such exemption is necessary or appropriate in the
7 public interest and is in furtherance of the objectives of
8 this title, such as the orderly implementation and inter-
9 national harmonization of the timing and substance of de-
10 rivatives regulatory reform.”.

11 (2) EFFECTIVE DATES.—Title VII of the Dodd-
12 Frank Wall Street Reform and Consumer Protection
13 Act (Public Law 111–203, 124 Stat. 1641) is
14 amended—

15 (A) in section 754 (7 U.S.C. 7a note), by
16 striking “the later of” and all that follows
17 through the period and inserting “the dates
18 specified in the implementation schedule adopt-
19 ed pursuant to section 712(g).”; and

20 (B) in section 774 (15 U.S.C. 77b note),
21 by striking “the later of” and all that follows
22 through the period and inserting “the dates
23 specified in the implementation schedule adopt-
24 ed pursuant to section 712(g).”.

25 (c) CLARIFICATION OF END USER STATUS.—

1 (1) END USERS OF SWAPS.—

2 (A) MARGIN REQUIREMENTS.—Section
3 4s(e) of the Commodity Exchange Act (7
4 U.S.C. 6s(e)), as added by section 731 of the
5 Dodd-Frank Wall Street Reform and Consumer
6 Protection Act, is amended by adding at the
7 end the following:

8 “(4) APPLICABILITY WITH RESPECT TO
9 COUNTERPARTIES.—The margin requirements of
10 this subsection shall not apply to a swap in which
11 one of the counterparties is not—

12 “(A) a swap dealer or major swap partici-
13 pant;

14 “(B) an investment fund that—

15 “(i) has issued securities (other than
16 debt securities) to more than 5 unaffiliated
17 persons;

18 “(ii) would be an investment company
19 (as defined in section 3 of the Investment
20 Company Act of 1940 (15 U.S.C. 80a–3))
21 but for paragraph (1) or (7) of subsection
22 (c) of that section; and

23 “(iii) is not primarily invested in
24 physical assets (including commercial real

1 estate) directly or through an interest in
2 an affiliate that owns the physical assets;

3 “(C) a regulated entity, as defined in sec-
4 tion 1303 of the Federal Housing Enterprises
5 Financial Safety and Soundness Act of 1992
6 (12 U.S.C. 4502); or

7 “(D) a commodity pool that is predomi-
8 nantly invested in any combination of commod-
9 ities, commodity swaps, commodity options, or
10 commodity futures.

11 “(5) MARGIN TRANSITION RULES.—Swaps en-
12 tered into before the date on which final rules under
13 section 712(e) of the Dodd-Frank Wall Street Re-
14 form and Consumer Protection Act (15 U.S.C.
15 8302(e)) become effective shall be exempt from the
16 margin requirements under this subsection.”.

17 (B) MAJOR SWAP PARTICIPANT.—Section
18 1a(33)(A) of the Commodity Exchange Act (7
19 U.S.C. 1a(33)(A)) is amended by striking
20 clause (ii) and inserting the following:

21 “(ii) whose outstanding swaps create
22 substantial net uncollateralized counterpar-
23 ty exposure that could have serious adverse
24 effects on the financial stability of the

1 United States banking system or financial
2 markets; or”.

3 (C) EFFECTIVE DATE.—The amendments
4 made by subsection (a) shall have the same ef-
5 fective date as provided in section 754 of the
6 Dodd-Frank Wall Street Reform and Consumer
7 Protection Act, as amended by section 1(b) of
8 this Act.

9 (2) END USERS OF SECURITY-BASED SWAPS.—

10 (A) MARGIN REQUIREMENTS.—Section
11 15F(e) of the Securities Exchange Act of 1934
12 (15 U.S.C. 780–10(e)), as added by section 764
13 of the Dodd-Frank Wall Street Reform and
14 Consumer Protection Act, is amended by add-
15 ing at the end the following:

16 “(4) APPLICABILITY WITH RESPECT TO
17 COUNTERPARTIES.—The margin requirements of
18 this subsection shall not apply to a security-based
19 swap in which one of the counterparties is not—

20 “(A) a security-based swap dealer or major
21 security-based swap participant;

22 “(B) an investment fund that would be an
23 investment company (as defined in section 3 of
24 the Investment Company Act of 1940 (15
25 U.S.C. 80a–3)), but for paragraph (1) or (7) of

1 section 3(c) of that Act (15 U.S.C. 80a-3(c)),
2 that is not primarily invested in physical assets
3 (including commercial real estate) directly or
4 through interest in its affiliates that own such
5 assets;

6 “(C) a regulated entity, as defined in sec-
7 tion 1303 of the Federal Housing Enterprises
8 Financial Safety and Soundness Act of 1992
9 (12 U.S.C. 4502); or

10 “(D) a commodity pool that is predomi-
11 nantly invested in any combination of commod-
12 ities, commodity swaps, commodity options or
13 commodity futures.

14 “(5) MARGIN TRANSITION RULES.—Security-
15 based swaps entered into before the date on which
16 final rules under section 712(e) of the Dodd-Frank
17 Wall Street Reform and Consumer Protection Act
18 become effective are exempt from the margin re-
19 quirements of this subsection.”.

20 (B) MAJOR SECURITY-BASED SWAP PAR-
21 TICIPANT.—Section 3(a)(67)(A)(ii)(II) of the
22 Securities Exchange Act of 1934 (15 U.S.C.
23 78c(a)(67)(A)(ii)(II)), is amended to read as
24 follows:

1 “(II) whose outstanding security-
2 based swaps create substantial net
3 uncollateralized counterparty exposure
4 that could have serious adverse effects
5 on the financial stability of the United
6 States banking system or financial
7 markets;”.

8 (C) EFFECTIVE DATE.—The amendments
9 made by this paragraph shall have the same ef-
10 fective date as provided in section 774 of the
11 Dodd-Frank Wall Street Reform and Consumer
12 Protection Act, as amended by this Act.

13 (d) TREATMENT OF AFFILIATE TRANSACTIONS.—
14 Title VII of the Dodd-Frank Wall Street Reform and Con-
15 sumer Protection Act (15 U.S.C. 8301 et seq.) is amended
16 by inserting after section 713 (15 U.S.C. the following
17 new section:

18 **“SEC. 713A. TREATMENT OF AFFILIATE TRANSACTIONS.**

19 “(a) IN GENERAL.—An agreement, contract, or
20 transaction that would otherwise be a swap or security-
21 based swap, and that is entered into by a party that is
22 controlling, controlled by, or under common control with
23 its counterparty shall not be deemed to be a ‘swap’ or ‘se-
24 curity-based swap’ for purposes of this Act.

1 “(b) REPORTING.—All agreements, contracts, or
2 transactions described in subsection (a) shall be reported
3 to either a swap data repository, or, if there is no swap
4 data repository that would accept such transaction re-
5 ports, to the Commission pursuant to sections 729 and
6 766. within such time period as the Commission may pre-
7 scribe by rule or regulation.”.

8 (e) INTERNATIONAL COMPETITIVENESS AND HARMO-
9 NIZATION.—

10 (1) STUDY ON INTERNATIONAL SWAP REGULA-
11 TION.—Section 719(c)(2) of the Dodd-Frank Wall
12 Street Reform and Consumer Protection Act (15
13 U.S.C. 8307(c)(2)) is amended—

14 (A) by striking “18” and inserting “30”;

15 (B) in subparagraph (C), by striking
16 “and” at the end;

17 (C) in subparagraph (D), by striking the
18 period at the end and inserting “; and”; and

19 (D) by adding at the end the following:

20 “(E) an analysis of the progress of mem-
21 bers of the Group of 20 and other countries to-
22 ward implementing derivatives regulatory re-
23 form, including material differences in the
24 schedule for implementation (as well as mate-
25 rial differences in definitions, clearing, trading,

1 reporting, registration, capital, margin, business
2 conduct, and position limits) and their possible
3 and likely effects on United States competitive-
4 ness, market liquidity, and financial stability.”.

5 (2) **APPLICABILITY.**—The Dodd-Frank Wall
6 Street Reform and Consumer Protection Act is
7 amended by inserting after section 719 the following
8 new section:

9 **“SEC. 719A. APPLICABILITY.**

10 “(a) **IN GENERAL.**—Subject to subsections (b) and
11 (c), and notwithstanding any other provision of this title,
12 no activities conducted outside of the United States be-
13 tween counterparties established under the laws of any ju-
14 risdiction outside of the United States (including a non-
15 United States branch of a United States entity licensed
16 and recognized under local law outside of the United
17 States) shall be considered—

18 “(1) to have a direct and significant connection
19 with activities in, or effect on, commerce of the
20 United States;

21 “(2) to constitute a business within the jurisdic-
22 tion of the United States; or

23 “(3) to constitute evasion of any provision of
24 this title, unless those activities contravene such
25 rules as may be adopted by the Commodity Futures

1 Trading Commission and the Securities and Ex-
2 change Commission pursuant to subsection (b).

3 “(b) RULEMAKING.—After completing the report re-
4 quired by section 719(c)(2), the Commodity Futures
5 Trading Commission and the Securities and Exchange
6 Commission may jointly issue such rules as are necessary
7 to prohibit transactions or activities, or classes of trans-
8 actions or activities conducted outside of the United States
9 that the agencies find—

10 “(1) have no valid business purpose;

11 “(2) are structured with the sole purpose of
12 evading the requirements of this title; and

13 “(3) might reasonably be expected to have a se-
14 rious adverse effect on the stability of the United
15 States financial system.

16 “(c) EXCEPTION.—Subsection (a) shall not apply to
17 any provision of this title prohibiting fraud or manipula-
18 tion or any rule or regulation thereunder.”.

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