

112TH CONGRESS
1ST SESSION

S. 947

To provide end user exemptions from certain provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2011

Mr. JOHANNIS (for himself, Mr. TOOMEY, Mr. CRAPO, Mr. HOEVEN, Mr. WICKER, Mr. MORAN, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide end user exemptions from certain provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934, 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. MARGIN RULES.**

4 (a) CAPITAL AND MARGIN REQUIREMENTS.—Section
5 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e))
6 is amended by adding at the end the following:

7 “(4) APPLICABILITY WITH RESPECT TO
8 COUNTERPARTIES.—The margin requirements of

1 this subsection shall not apply to swaps in which 1
2 of the counterparties is not—

3 “(A) a swap dealer or major swap partici-
4 pant;

5 “(B) an investment fund that—

6 “(i) has issued securities (other than
7 debt securities) to more than 5 unaffiliated
8 persons;

9 “(ii) would be an investment company
10 (as defined in section 3 of the Investment
11 Company Act of 1940 (15 U.S.C. 80a–3))
12 but for paragraph (1) or (7) of subsection
13 (c) of that section; and

14 “(iii) is not primarily invested in
15 physical assets (including commercial real
16 estate) directly or through an interest in
17 an affiliate that owns the physical assets;

18 “(C) a regulated entity, as defined in sec-
19 tion 1303 of the Federal Housing Enterprises
20 Financial Safety and Soundness Act of 1992
21 (12 U.S.C. 4502); or

22 “(D) a commodity pool.

23 “(5) MARGIN TRANSITION RULES.—Swaps en-
24 tered into before the date on which final rules are
25 required to be promulgated under section 712(e) of

1 the Dodd-Frank Wall Street Reform and Consumer
 2 Protection Act (15 U.S.C. 8302(e)) shall be exempt
 3 from the margin requirements under this sub-
 4 section.”.

5 (b) MAJOR SWAP PARTICIPANT.—Section 1a(33)(A)
 6 of the Commodity Exchange Act (7 U.S.C. 1a(33)(A)) is
 7 amended by striking clause (ii) and inserting the following:
 8 “(ii) whose outstanding swaps create
 9 substantial net counterparty exposure that
 10 could have serious adverse effects on the
 11 financial stability of the United States
 12 banking system or financial markets; or”.

13 **SEC. 2. SECURITIES LAWS AMENDMENTS.**

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

19 “(4) APPLICABILITY WITH RESPECT TO
 20 COUNTERPARTIES.—The margin requirements of
 21 this subsection shall not apply to security-based
 22 swaps in which 1 of the counterparties is not—

23 “(A) a security-based swap dealer or major
 24 security-based swap participant;

“(B) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)), but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c)), that is not primarily invested in physical assets (including commercial real estate) directly or through interest in its affiliates that own such assets;

“(C) a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502); or

“(D) a commodity pool.

“(5) MARGIN TRANSITION RULES.—Security-based swaps entered into before the date on which final rules are required to be published under section 712(a)(5) of the Wall Street Transparency and Accountability Act of 2010 (15 U.S.C. 8302(a)(5)) are exempt from the margin requirements of this subsection.”.

(b) DEFINITIONS.—Section 3(a)(67)(A)(ii)(II) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)(A)(ii)(II)), as amended to read as follows:

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

7 **SEC. 3. EFFECTIVE DATE.**

8 The amendments made by this Act shall have the
9 same effective date as provided in section 774 of the Wall
10 Street Transparency and Accountability Act of 2010 (15
11 U.S.C. 77b note).

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