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HOUSE OF REPRESENTATIVES

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Part 1

SWAPS BAILOUT PREVENTION ACT

MAY 11, 2012.—Ordered to be printed

Mr. BACHUS, from the Committee on Financial Services, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 1838]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1838) to repeal a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act prohibiting any Federal bailout of swap dealers or participants, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Swaps Bailout Prevention Act".

SEC. 2. REFORM OF PROHIBITION ON SWAP ACTIVITY ASSISTANCE.

Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8305) is amended—

(1) in subsection (b), by adding at the end the following:

"(3) COVERED DEPOSITORY INSTITUTION.—The term 'covered depository institution' means—

"(A) an insured depository institution; and

"(B) a United States uninsured branch or agency of a foreign bank that has a prudential regulator.";

(2) in subsection (c)—

(A) in the heading for such subsection, by striking "INSURED" and inserting "COVERED";

(B) by striking "an insured" and inserting "a covered";

(C) by striking "such insured" and inserting "such covered"; and

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(D) by striking "or savings and loan holding company" and inserting "savings and loan holding company, or foreign banking organization (as such term is defined under Regulation K (12 C.F.R. 211.21(o)))";

(3) by amending subsection (d) to read as follows:

"(d) ONLY BONA FIDE HEDGING AND TRADITIONAL BANK ACTIVITIES PERMITTED.—

"(1) IN GENERAL.—The prohibition in subsection (a) shall not apply to any covered depository institution that limits its swap and security-based swap activities to the following:

"(A) HEDGING AND OTHER SIMILAR RISK MITIGATION ACTIVITIES.—Hedging and other similar risk mitigating activities directly related to the covered depository institution's activities.

"(B) NON-STRUCTURED FINANCE SWAP ACTIVITIES.—Acting as a swaps entity for swaps or security-based swaps other than a structured finance swap.

"(C) CERTAIN STRUCTURED FINANCE SWAP ACTIVITIES.—Acting as a swaps entity for swaps or security-based swaps that are structured finance swaps, if—

"(i) such structured finance swaps are undertaken for hedging or risk management purposes; or

"(ii) each asset-backed security underlying such structured finance swaps is of a credit quality and of a type or category with respect to which the prudential regulators have jointly adopted rules authorizing swap or security-based swap activity by covered depository institutions.

"(2) DEFINITIONS.—For purposes of this subsection:

"(A) STRUCTURED FINANCE SWAP.—The term 'structured finance swap' means a swap or security-based swap based on an asset-backed security (or group or index primarily comprised of asset-backed securities).

"(B) ASSET-BACKED SECURITY.—The term 'asset-backed security' has the meaning given such term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).";

(4) in subsection (e), by striking "an insured" and inserting "a covered";

(5) in subsection (f)—

(A) by striking "an insured" and inserting "a covered"; and

(B) by striking "the insured" each place such term appears and inserting "the covered";

(6) in subsection (g), by striking "insured" and inserting "covered";

(7) in subsection (m), by striking "An insured" and inserting "A covered"; and

(8) by adding at the end the following:

"(n) FOREIGN SWAP ACTIVITY.—

"(1) IN GENERAL.—This section shall not apply to swap or security-based swap activity conducted outside the United States with a non-U.S. counterparty by a non-U.S. swaps entity.

"(2) DEFINITIONS.—For purposes of this subsection, the terms 'non-U.S. swaps entity' and 'non-U.S. counterparty' mean a swaps entity or counterparty, respectively, that is licensed, in the case of a foreign branch of a United States depository institution, or organized under the laws of a jurisdiction outside the United States.".

Amend the title so as to read:

A bill to amend provisions in section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to Federal assistance for swaps entities.

PURPOSE AND SUMMARY

H.R. 1838, the "Swaps Bailout Prevention Act," amends Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203) in order to allow covered depository institutions to trade swaps with their affiliates, except for certain structured finance swaps. Under the legislation, the only swaps that covered depository institutions must spin out to separately capitalized entities are structured finance swaps, unless they 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." These amendments to the Dodd-Frank Act

mitigate the potential negative impacts of Section 716; if Section 716 is left unchanged, it could weaken the U.S. financial system and place U.S. financial institutions at a competitive disadvantage against their foreign counterparts.

BACKGROUND AND NEED FOR LEGISLATION

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, security-based swap dealers, major swap participants, and major security-based swap participants. Section 716 is known as the swap desk "push out" or "spin off" provision, because it will force financial institutions that have swap desks to move them out of the financial institution and into an affiliate in order for that institution to maintain its access to Federal Reserve credit facilities and federal deposit insurance. Section 716 allows insured depository institutions to continue dealing in swaps related to interest rates, foreign currency, and swaps permitted under the National Bank Act; however, it prohibits insured depository institutions from engaging in swaps related to commodities, equities, and credit. Section 716 also prohibits the uninsured U.S. branches and agencies of foreign institutions from engaging in swaps if those foreign institutions retain access to federal assistance.

Section 716 could result in two negative consequences for the U.S. financial system and U.S. financial institutions. First, Section 716 may make the U.S. financial system less stable by forcing swap trading into the unregulated shadow banking system. As Federal Reserve Board Chairman Ben Bernanke has pointed out, 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." Second, Section 716 may place U.S. financial institutions at a significant competitive disadvantage against their foreign counterparts because foreign jurisdictions do not plan to adopt a provision similar to Section 716 in their ongoing efforts to reform the global derivatives marketplace.

In light of the potential negative consequences, former Federal Reserve Board Chairman Paul Volcker and former Federal Deposit Insurance Corporation Chairman Sheila Bair both expressed serious concerns about Section 716 during the Dodd-Frank House-Senate Conference Committee deliberations. Mr. Volcker stated that the "provision of derivatives by commercial banks to their customers in the usual course of a banking relationship should not be prohibited." Ms. Bair stated that "one unintended outcome of this provision would be weakened, not strengthened, protection of the insured bank and the Deposit Insurance Fund." To ensure that the U.S. financial system is not weakened and that U.S. financial institutions are not placed at a competitive disadvantage against their foreign counterparts, Representative Nan Hayworth introduced H.R. 1838 on May 11, 2011.

The Subcommittee on Capital Markets and Government Sponsored Enterprises held a legislative hearing on H.R. 1838 on October 14, 2011. During that hearing, the Subcommittee received testi-

mony from a variety of financial market participants, many of whom expressed concerns about Section 716 and support for H.R. 1838. For example, Conrad Voldstad, Chief Executive Officer of the International Swaps and Derivatives Association, testified that "Section 716 brings no real risk-reducing benefits" and that it will place U.S. financial institutions "at a competitive disadvantage to their non-U.S. counterparts," which will lead to "American customers of these firms" having "higher costs." Keith Bailey, Managing Director of Barclays Capital, testified on behalf of the Institute of International Bankers, and spoke about the negative effects of the differential treatment of uninsured U.S. branches and agencies of foreign banks, which he stated would "significantly reduce competition and worsen pricing in the U.S. swaps market, especially given that 8 of the 14 largest global derivatives dealers are foreign banks."

Moreover, on November 14, 2011, economist Mark Zandi wrote to Chairman Bachus to express concerns similar to those raised by Mr. Bernanke, Mr. Volcker, and Ms. Bair. Mr. Zandi explained that he has "significant concerns with [Section 716] because of its potential to increase systemic risk, create major inefficiencies in markets, and likely have a major impact on U.S. competitiveness."

HEARING

On October 14, 2011, the Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled "Legislative Proposals to Bring Certainty to the Over-the-Counter Derivatives Market," to consider H.R. 1838, and three other bills. This was a one-panel hearing, and the following witnesses testified:

- Mr. Keith Bailey, Managing Director, Fixed Income, Currencies and Commodities, Barclays Capital, on behalf of the Institute of International Bankers
- Mr. Shawn Bernardo, Senior Managing Director, Tullett Prebon, on behalf of the Wholesale Market Brokers' Association Americas
- Ms. Brenda Boultwood, Chief Risk Officer and Senior Vice President, CE Risk Management Division Office, Constellation Energy, on behalf of the Coalition of Derivatives End-Users
- Mr. James Cawley, CEO, Javelin Capital Markets LLC
- Mr. Kent Mason, Davis & Harman LLP, on behalf of the American Benefits Council and the Committee on the Investment of Employee Benefit Assets
- Mr. Conrad Voldstad, Chief Executive Officer, International Swaps and Derivatives Association

COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets and Government Sponsored Enterprises met in open session on November 15, 2011, and ordered H.R. 1838, as amended, favorably reported to the full Committee by a record vote of 21 yeas and 12 nays (Record vote No. CM–44).

The Committee on Financial Services met in open session on February 16, 2012, and ordered H.R. 1838, as amended, favorably reported to the House by voice vote.

Committee Vote

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 1838, as amended, reported to the House.

During consideration of H.R. 1838 by the Committee, the following amendment was considered:

1. An amendment offered by Mr. Himes, Mrs. Maloney, and Ms. Hayworth, No. 1, to ensure that U.S. operations of foreign financial institutions are treated the same as U.S. financial institutions; clarify the extraterritorial reach of section 716 of the Dodd-Frank Act; and require structured finance swaps to be pushed out to a separate entity, was agreed to by voice vote.

Committee Oversight Findings

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held a hearing and made findings that are reflected in this report.

Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of H.R. 1838, the "Swaps Bailout Prevention Act" is to amend Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203) to require financial institutions to trade certain structured finance swaps in a separately capitalized entity, which cannot receive Federal financial assistance. H.R. 1838 prohibits all structured finance swaps from taking place in the financial institution except structured finance swaps (1) that are undertaken for hedging or risk management purposes or (2) that the prudential regulators have expressly allowed covered depository institutions to undertake. The bill also ensures that uninsured U.S. branches and agencies of foreign banks are treated the same as insured depository institutions. These amendments will mitigate the potential negative impacts of Section 716, which, if left unchanged, could weaken the U.S. financial system and place U.S. financial institutions at a competitive disadvantage against their foreign counterparts.

New Budget Authority, Entitlement Authority, and Tax Expenditures

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 4, 2012.

Hon. SPENCER BACHUS,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1838, the Swaps Bailout Prevention Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Daniel Hoople and Barbara Edwards.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1838—Swaps Bailout Prevention Act

H.R. 1838 would allow certain financial firms to retain their financial portfolios containing swaps and remain eligible for assistance from the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC). A swap is a contract between two parties to exchange payments based on the price of an underlying asset or change in reference rate. Swaps can be used to hedge or mitigate certain risks associated with a firm's traditional activities, such as interest rate risk, or to speculate based on expected changes in prices and rates.

CBO estimates that enacting this legislation would not have a significant impact on the net cash flows of the Federal Reserve or the FDIC over the next 10 years. Enacting this legislation could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant over the next 10 years.

H.R. 1838 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act denies federal assistance from the Federal Reserve (with some exception) and the FDIC to any swap dealer or major swap participant registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission. This prohibition does not apply to a major swap participant that is an insured depository institution (IDI) or an IDI acting as a swaps dealer for hedging purposes or for swaps involving bank-permissible securities. (Bank-permissible swaps include those that reference interest rates, currencies, government securities, and pre-

cious metals but not other commodities or equities.) Under current law, IDIs must divest of swaps that do not fall into those categories to an affiliate if the firm is part of a financial holding company or cease those activities altogether. (Commercial banks with retail operations in the United States are required to be federally insured; thus, losing access to FDIC assistance is not an option for those institutions.)

Similar to the exemption granted to IDIs, H.R. 1838 would allow an uninsured U.S. branch or agency of a foreign bank to engage in certain permissible swap activities and to divest of others to an affiliate without jeopardizing access to federal assistance. In addition, the legislation would expand permissible swap activities to only exclude swaps based on asset-backed securities that are unregulated or not of a credit quality established by regulation. Finally, H.R. 1838 would exempt swap activities of foreign entities conducted outside of the United States with non-U.S. counterparties.

CBO expects that enacting this legislation would have no measurable impact on advances made by the Federal Reserve or on the future cost of efforts by the FDIC to resolve failed IDIs. As such, CBO estimates no significant change in the net cash flows of either entity, resulting in no significant net effect on the federal budget over the next 10 years.

The CBO staff contacts for this estimate are Daniel Hoople and Barbara Edwards. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1838 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

The short title of the Act is the "Swaps Bailout Prevention Act."

Section 2. Reform of prohibition on swap activity assistance

This section defines a "covered depository institution" as an insured depository institution or a United States uninsured branch or agency of a foreign bank that has a prudential regulator.

This section also replaces the term "insured depository institution" in Section 716 with the term "covered depository institution."

This section provides that covered depository institutions can engage in to engage in all swap and security-based swap activities except structured finance swaps that are neither (1) undertaken for hedging or risk management purposes nor (2) expressly allowed by prudential regulators to take place in a covered depository institution.

This section defines "structured finance swap" as a swap or security-based swap based on an asset-backed security (or group or index primarily comprised of asset-backed securities.

This section also defines "asset-backed security" to have the same meaning it has under Section 3(a) of the Securities Exchange Act of 1934.

This section also clarifies that Section 716 does not apply to swaps or security-based swap activities conducted outside the United States with a non-U.S. counterparty by a non-U.S. swaps entity.

This section also defines "non-U.S. swaps entity" and "non-U.S. counterparty" as a swaps entity or counterparty licensed or organized under the laws of a jurisdiction outside the United States.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

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TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

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Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

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SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT BAILOUTS OF SWAPS ENTITIES.

(a) * * *

(b) DEFINITIONS.—In this section:

(1) * * *

* * * * * * *

(3) COVERED DEPOSITORY INSTITUTION.—The term "covered depository institution" means—

(A) an insured depository institution; and

(B) a United States uninsured branch or agency of a foreign bank that has a prudential regulator.

(c) AFFILIATES OF [INSURED] *COVERED* DEPOSITORY INSTITUTIONS.—The prohibition on Federal assistance contained in subsection (a) does not apply to and shall not prevent [an insured] *a covered* depository institution from having or establishing an affiliate which is a swaps entity, as long as [such insured] *such covered* depository institution is part of a bank holding company, [or savings and loan holding company] *savings and loan holding company, or foreign banking organization (as such term is defined under Regulation K (12 C.F.R. 211.21(o)))*, that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 23A and 23B of the Federal Reserve Act and such other requirements as the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, and the Board of Governors of the Federal Reserve System, may determine to be necessary and appropriate.

[(d) ONLY BONA FIDE HEDGING AND TRADITIONAL BANK ACTIVITIES PERMITTED.—The prohibition in subsection (a) shall apply to any insured depository institution unless the insured depository institution limits its swap or security-based swap activities to:

[(1) Hedging and other similar risk mitigating activities directly related to the insured depository institution's activities.

[(2) Acting as a swaps entity for swaps or security-based swaps involving rates or reference assets that are permissible for investment by a national bank under the paragraph designated as "Seventh." of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), other than as described in paragraph (3).

[(3) LIMITATION ON CREDIT DEFAULT SWAPS.—Acting as a swaps entity for credit default swaps, including swaps or security-based swaps referencing the credit risk of asset-backed securities as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) (as amended by this Act) shall not be considered a bank permissible activity for purposes of subsection (d)(2) unless such swaps or security-based swaps are cleared by a derivatives clearing organization (as such term is defined in section la of the Commodity Exchange Act (7 U.S.C. la)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c)) that is registered, or exempt from registration, as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act, respectively.]

(d) ONLY BONA FIDE HEDGING AND TRADITIONAL BANK ACTIVITIES PERMITTED.—

(1) IN GENERAL.—The prohibition in subsection (a) shall not apply to any covered depository institution that limits its swap and security-based swap activities to the following:

(A) HEDGING AND OTHER SIMILAR RISK MITIGATION ACTIVITIES.—Hedging and other similar risk mitigating activities directly related to the covered depository institution's activities.

(B) NON-STRUCTURED FINANCE SWAP ACTIVITIES.—Acting as a swaps entity for swaps or security-based swaps other than a structured finance swap.

(C) CERTAIN STRUCTURED FINANCE SWAP ACTIVITIES.—Acting as a swaps entity for swaps or security-based swaps that are structured finance swaps, if—

(i) such structured finance swaps are undertaken for hedging or risk management purposes; or

(ii) each asset-backed security underlying such structured finance swaps is of a credit quality and of a type or category with respect to which the prudential regulators have jointly adopted rules authorizing swap or security-based swap activity by covered depository institutions.

(2) DEFINITIONS.—For purposes of this subsection:

(A) STRUCTURED FINANCE SWAP.—The term "structured finance swap" means a swap or security-based swap based on an asset-backed security (or group or index primarily comprised of asset-backed securities).

(B) ASSET-BACKED SECURITY.—The term "asset-backed security" has the meaning given such term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(e) EXISTING SWAPS AND SECURITY-BASED SWAPS.—The prohibition in subsection (a) shall only apply to swaps or security-based swaps entered into by [an insured] *a covered* depository institution after the end of the transition period described in subsection (f).

(f) TRANSITION PERIOD.—To the extent [an insured] *a covered* depository institution qualifies as a "swaps entity" and would be subject to the Federal assistance prohibition in subsection (a), the appropriate Federal banking agency, after consulting with and considering the views of the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, shall permit [the insured] *the covered* depository institution up to 24 months to divest the swaps entity or cease the activities that require registration as a swaps entity. In establishing the appropriate transition period to effect such divestiture or cessation of activities, which may include making the swaps entity an affiliate of [the insured] *the covered* depository institution, the appropriate Federal banking agency shall take into account and make written findings regarding the potential impact of such divestiture or cessation of activities on [the insured] *the covered* depository institution's (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation. The appropriate Federal banking agency may consider such other factors as may be appropriate. The appropriate Federal banking agency may place such conditions on [the insured] *the covered* depository institution's divestiture or ceasing of activities of the swaps entity as it deems necessary and appropriate. The transition period under this subsection may be extended by the appropriate Federal banking agen-

cy, after consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, for a period of up to 1 additional year.

(g) EXCLUDED ENTITIES.—For purposes of this section, the term "swaps entity" shall not include any [insured] *covered* depository institution under the Federal Deposit Insurance Act or a covered financial company under title II which is in a conservatorship, receivership, or a bridge bank operated by the Federal Deposit Insurance Corporation.

* * * * * * *

(m) BAN ON PROPRIETARY TRADING IN DERIVATIVES.—[An insured] *A covered* depository institution shall comply with the prohibition on proprietary trading in derivatives as required by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(n) FOREIGN SWAP ACTIVITY.—

(1) IN GENERAL.—This section shall not apply to swap or security-based swap activity conducted outside the United States with a non-U.S. counterparty by a non-U.S. swaps entity.

(2) DEFINITIONS.—For purposes of this subsection, the terms "non-U.S. swaps entity" and "non-U.S. counterparty" mean a swaps entity or counterparty, respectively, that is licensed, in the case of a foreign branch of a United States depository institution, or organized under the laws of a jurisdiction outside the United States.

* * * * * * *

MINORITY VIEWS

The Wall Street Reform and Consumer Protection Act requires, for the first time, the regulation of over-the-counter derivatives, previously opaque transactions that helped bring our financial system to the brink of disaster. The vast majority of derivatives must now be centrally cleared and publicly reported, and be backed by margin and capital to ensure that swap dealers and major swap users can honor their commitments. In addition, the reform law also prohibits banks from placing bets with federally insured deposits through the "Volcker Rule". Both measures serve as important safeguards as we rebuild trust in our financial system.

As amended, H.R. 1838 would repeal portions of Section 716 of the financial reform law, also known as the "push-out provision." Section 716 prohibits banks from engaging in several types of derivatives. Questions have been raised about this provision by economists and regulators including FDIC's Sheila Bair, who are concerned that it might interfere with a bank's ability to use derivatives to diminish risk. Section 716 was not part of the original House-passed version of the financial reform law.

During the Full Committee markup, Democrats worked with the Majority to amend H.R. 1838 to continue the prohibition of complex swaps employed by AIG with devastating effect. H.R. 1838, as amended, addresses the valid criticisms of Section 716 without weakening the financial reform law's important derivative safeguards or prohibitions on bank proprietary trading.

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