

112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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

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**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;

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

10           “(C) a regulated entity, as defined in sec-  
11 tion 1303 of the Federal Housing Enterprises  
12 Financial Safety and Soundness Act of 1992  
13 (12 U.S.C. 4502); or

14           “(D) a commodity pool.

15           “(5) MARGIN TRANSITION RULES.—Security-  
16 based swaps entered into before the date on which  
17 final rules are required to be published under section  
18 712(a)(5) of the Wall Street Transparency and Ac-  
19 countability Act of 2010 (15 U.S.C. 8302(a)(5)) are  
20 exempt from the margin requirements of this sub-  
21 section.”.

22           (b) DEFINITIONS.—Section 3(a)(67)(A)(ii)(II) of the  
23 Securities Exchange Act of 1934 (15 U.S.C.  
24 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).