

BUSINESS RISK MITIGATION AND PRICE STABILIZATION
ACT OF 2011

DECEMBER 23, 2011.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 2682]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2682) to provide end user exemptions from certain provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

“End-users” are companies that use derivatives to hedge their business risk. Because end-users’ swap and security-based swap transactions do not pose a systemic risk to the financial system, Congress did not intend that end-user derivatives transactions would be subject to the margin and capital requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) (the Dodd-Frank Act). Despite Congressional intent and the statute’s plain language, some regulators have interpreted Title VII as a grant of new 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. H.R. 2682 would exempt end-users from the margin and capital requirements under Title VII of the Dodd-Frank Act for swaps and security-based swap transactions that are not made with financial entities as defined under the Dodd-Frank Act.

BACKGROUND AND NEED FOR LEGISLATION

During floor debate on the conference report for the Dodd-Frank Act, two colloquies among the then-chairmen of the four committees with primary jurisdiction over Title VII clarified Congressional intent that the Dodd-Frank Act did not grant regulators the authority to impose margin requirements on end-user derivatives transactions. Nevertheless, some regulators have interpreted Title VII as a grant of new authority to impose margin requirements on end-users. Accordingly, H.R. 2682 is necessary to ensure that the regulators do not force end-users to post margin, thereby diverting much-needed capital from being used to fuel job creation and economic growth.

On February 15, 2011, Mr. Craig Reiners of MillerCoors LLC, on behalf of the Coalition for Derivatives End-Users, testified before the Committee, and stated that “the prudent use of derivatives by end-user companies, such as MillerCoors, does not generate risk or instability in the financial marketplace and played no role in the financial crisis. On the contrary, these risk management tools are critical to reducing commercial risk and volatility in our day-to-day business operations, allowing us to create sustainable and prosperous businesses.” Further, he testified that “we believe that a broad end-user exemption is critically important as the [Commodity Futures Trading Commission] promulgates final rules. During the regulatory process, we have sought to ensure that the exemption created by Congress would not be unduly narrowed. In particular, we have urged regulators to give thoughtful consideration to key definitions to ensure that end-users like us are not saddled with bank-like regulation. . . . The unintended consequence of margin requirements applied to end-users or excessive capital requirements applied to our financial counterparties could be to reduce the risk management activity of end-users. Such a result could actually increase systemic risk or even push transactions offshore.”

On March 16, 2011, Mr. Luke Zubrod of Chatham Financial, on behalf of the Coalition for Derivatives End-Users, testified before the Subcommittee on Capital Markets and Government-Sponsored Enterprises, and stated that “[i]f capital charges are disproportionately increased, end users may opt out of hedging, which in turn would translate to increased volatility in consumer prices for things like airline tickets, apartment rents, farm equipment, various types of financing, life insurance contracts, and even the price of cereal.” Further, he stated that “[w]e respectfully request that this committee provide end users with certainty by clarifying that their hedges will not be subject to margin requirements. In addition to providing important certainty for Main Street businesses, such a clarification would promote international harmonization and minimize regulatory arbitrage.”

On July 28, 2011, Representatives Michael Grimm, Gary Peters, Austin Scott, and Bill Owens introduced H.R. 2682, which would exempt end-users from the margin requirements under Title VII of the Dodd-Frank Act. Representative Grimm originally introduced an end-user exemption bill on April 15, 2011. That bill—H.R. 1610, Business Risk Mitigation and Price Stabilization Act of 2011—was discussed at a legislative hearing on March 16, 2011. On May 3,

2011, the Subcommittee on Capital Markets and Government-Sponsored Enterprises met in open session to consider H.R. 1610. Following the Subcommittee markup, Representatives Grimm, Peters, Scott, and Owens reached a compromise on the language for an end-user exemption, and introduced a new bill, H.R. 2682.

HEARINGS

On March 16, 2011, the Subcommittee on Capital Markets and Government-Sponsored Enterprises held a hearing on a draft version of H.R. 1610 entitled “Legislative Proposals to Promote Job Creation, Capital Formation, and Market Certainty.” The following witnesses testified:

- Mr. Kenneth A. Bertsch, President and CEO, Society of Corporate Secretaries & Governance Professionals
- Mr. Tom Deutsch, Executive Director, American Securitization Forum
- Ms. Pam Hendrickson, Chief Operating Officer, The Riverside Company
- Mr. David Weild, Senior Advisor, Grant Thornton, LLP
- Mr. Luke Zubrod, Director, Chatham Financial
- Mr. Damon Silvers, Policy Director and Special Counsel, AFL-CIO

COMMITTEE CONSIDERATION

On May 3, 2011, the Subcommittee on Capital Markets and Government-Sponsored Enterprises met in open session and ordered H.R. 1610 favorably reported to the full Committee by a record vote of 19 yeas and 13 nays. (Record vote no. CM-30)

On November 30, 2011, the Committee on Financial Services met in open session and ordered H.R. 2682 favorably reported to the House by voice vote.

COMMITTEE VOTES

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. 2682 reported to the House. A motion by Chairman Bachus to report the bill to the House with a favorable recommendation 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 hearings 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. 2682 is to exempt end-users from the margin and capital requirements under Title VII of the Dodd-Frank Act for swaps and security-based swap transactions that are not

made with financial entities as defined under the Dodd-Frank Act. Because end-users' swap and security-based swap transactions do not pose a systemic risk to the financial system, Congress did not intend that end-user derivatives transactions would be subject to the margin and capital requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203). Despite Congressional intent and the statute's plain language, some regulators have interpreted Title VII as a grant of new 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.

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:

DECEMBER 14, 2011.

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. 2682, the Business Risk Mitigation and Price Stabilization Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2682—Business Risk Mitigation and Price Stabilization Act of 2011

H.R. 2682 would allow certain nonfinancial entities that are counterparties in swap or security-based swap transactions to be exempted from provisions in current law that require such entities to meet certain margin requirements. (A swap is a contract that calls for an exchange of cash between two participants based on an underlying rate or index or on the performance of an asset). Both the Commodity Futures Trading Commission (CFTC) and the Secu-

rities and Exchange Commission (SEC) are developing regulations relating to margin requirements in swap transactions as the result of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203).

Neither the CFTC nor the SEC has finalized regulations regarding margin requirements. Based on information from the two agencies, CBO expects that incorporating the provisions of H.R. 2682 at this point in the regulatory process would not require a significant increase in the workload of either agency. Therefore, CBO estimates that any change in discretionary spending to implement the legislation, which would be subject to the availability of appropriated funds, would not be significant. Enacting H.R. 2682 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2586 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.

The CBO staff contact for this estimate is Susan Willie. 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 section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2682 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

This section cites H.R. 2682 as the “Business Risk Mitigation and Price Stabilization Act of 2011.”

Section 2. Margin requirements

This section amends Section 4(s)(e) of the Commodity Exchange Act as added by Section 731 of the Dodd-Frank Act governing margin requirements, and exempts counterparties to swap contracts from those requirements other than for financial entities as defined under the Dodd-Frank Act.

This sections amends Section 15F(e) of the Securities Exchange Act of 1934 as added by Section 764(a) of the Dodd-Frank Act governing margin requirements and exempts counterparties to security-based swap contracts from those requirements other than for financial entities as defined under the Dodd-Frank Act

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

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SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

(a) * * *

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(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) * * *

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(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a swap in which one of the counterparties to the swap is not a financial entity as described in section 2(h)(7)(C), and such counterparty is eligible for the exception under section 2(h)(7)(A).

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SECTION 15F OF THE SECURITIES EXCHANGE ACT OF 1934

SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

(a) * * *

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(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) * * *

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(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a security-based swap in which one of the counterparties to the security-based swap is not a financial entity as described in section 3C(g)(3), and such counterparty is eligible for the exception under section 3C(g)(1).

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