



Consumer Federation of America

June 10, 2013

Don't Outsource Crucial Financial Market Regulation Vote NO on H.R. 1256

Dear Representative:

We understand that H.R. 1256, the “Swaps Jurisdiction Certainty Act,” is scheduled for a vote on the floor of the House later this week. This bill threatens to reverse the considerable progress that has been made in recent years to bring transparency, reduce systemic risks, and provide reasonable regulatory oversight to the U.S. swaps markets. It would do so by further delaying implementation of a cross-border policy, creating a system of regulatory oversight easily gamed by large, multi-national swaps dealers, and inappropriately delegating significant responsibility for protecting U.S. markets, and the consumers and businesses who rely on those markets, to foreign regulators that may or may not provide equivalent regulatory protections. We urge you to vote no.

Today's financial markets are global in scope. It is an inescapable fact that modern technology enables large, multi-national swaps dealers to shift the “location” of transactions among hundreds, even thousands, of international affiliates in a matter of seconds. Absent a strong cross-border policy, swaps transactions (and financial services jobs) will migrate to less regulated foreign jurisdictions, but the risks will come home to haunt us, as the U.S.-based parent company will still be on the hook for any resulting losses. Congress recognized that threat when it included a requirement in the Dodd-Frank Act that swaps market regulations must apply not just within our borders, but also to any activities outside the United States that have “a direct and significant connection with activities in, or effect on, commerce” of the United States.

The CFTC has proposed a balanced approach to regulating cross-border transactions that recognizes the need to work cooperatively with its foreign regulatory counterparts, but defers to them where U.S. interests are at stake only after making a specific determination that their regulations provide protections as strong as those provided under U.S. law. This legislation would undermine that progress by requiring the SEC and CFTC to jointly issue rules in this area. Based on recent experience, that would likely delay implementation for at least a year and possibly longer, all the while leaving U.S. businesses and taxpayers exposed to unacceptable risks. Requiring joint rulemaking also gives undue influence over CFTC policy to the SEC, which oversees only about 10 percent of the U.S. market based on gross notional value to the CFTC's 90 percent.

But the inevitable delay it would cause is not the only or even the most serious problem with this legislation. The bill creates a presumption that overseas transactions in the nine largest

derivatives markets would be governed by home country regulations, allowing exemptions only where CFTC and SEC agree that those regulations are not “broadly equivalent” to U.S. regulations. As a result, U.S. regulators would face a major new hurdle in applying derivatives rules to overseas transactions that pose potential risks to the U.S. economy. And the SEC would again be given what amounts to veto authority in an area where the CFTC has the primary regulatory responsibility and expertise.

Moreover, a standard based on broad equivalence provides no objective means to determine whether foreign regulations are in fact as strong as those afforded under U.S. law. Nor does it provide a means to hold regulators accountable for the decisions they make. Such an approach would all but guarantee that we would end up delegating regulatory authority to countries that lack crucial components of a strong regulatory regime, particularly when combined with an approach that defaults to substituted compliance for key markets. Global institutions would be able to channel transactions through these less regulated jurisdictions in order to evade appropriate regulation.

Without a strong policy on cross-border application of U.S. derivatives rules, efforts to increase transparency, reduce risks, and restore integrity to the swaps market will be for naught. H.R. 1256 would fatally weaken our cross-border policy and thereby put the stability of the financial system at risk. We urge you to vote NO.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barbara Roper", with a stylized flourish at the end.

Barbara Roper
Director of Investor Protection