OPPOSE HR 1256
Don't Let Big Banks Evade Financial Regulation By Going Overseas

- HR 1256, the "Swaps Jurisdiction Certainty Act" would severely undermine regulators ability to protect U.S. taxpayers from risks that arise from overseas derivatives trading.

- In 2008, the $160 billion taxpayer bailout of AIG was driven by derivatives trades conducted in London. More recently, JP Morgan Chase suffered $6 billion in losses from London derivatives trades in the 'London Whale' incident. Bloomberg News has documented that large Wall Street banks routinely transact well over half of their swaps business through foreign subsidiaries.

- The four largest U.S. derivatives dealers have over 3,000 foreign affiliates. Without effective regulation of foreign subsidiaries, banks can easily evade oversight of derivatives risk by simply executing derivatives contracts in the affiliate located in the jurisdiction with the weakest rules. But the real risk stays in the U.S.

- Congress granted the CFTC explicit authority in the Dodd Frank Act to oversee all derivatives transactions with a 'direct and significant connection' to the U.S. economy. The CFTC, which regulates around 90 percent of U.S. derivatives markets, has issued proposed guidance on this issue. The CFTC's balanced approach would apply Dodd-Frank oversight to U.S. derivatives transactions conducted through foreign entities, but also allow foreign entities to be regulated under 'substituted compliance' by their local regulator when relevant foreign rules are as strong as the U.S. rules.

- HR 1256 would prevent regulators from assuring that U.S. derivatives transactions conducted through foreign entities are subject to regulations that meet U.S. standards:

  - HR 1256 establishes a statutory presumption that U.S. derivatives transactions that are executed in any of the nine largest foreign markets will be governed by foreign country rulemaking rather than U.S. rulemaking.

  - This presumption could only be overruled by a joint determination by both the CFTC and SEC, supported by a formal report to Congress, that foreign country rules are not 'broadly comparable' to the U.S. This determination could then be challenged in court, providing another opportunity for industry to evade oversight

  - HR 1256 effectively eliminates the CFTC's jurisdiction to oversee derivatives transactions that pose a threat to the U.S. economy. The bill requires any rules governing foreign transactions to be written jointly by both the CFTC and SEC, which does not have a similar statement of jurisdiction.

- Without effective regulation of foreign subsidiaries, U.S. financial institutions would have incentives to outsource jobs and business to less regulated foreign markets. We could see a return to the unregulated derivatives markets that proved so fantastically dangerous to the U.S. economy and U.S. taxpayers during the 2008 crisis.