



10-21-09

Update-House Ag Committee OKs bipartisan OTC derivatives bill

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On the surface and for the most part, the House Agriculture Committee took a calm, bipartisan approach Wednesday in reporting out the committee's substitute HR 3795, the Over-the-Counter Derivatives Markets Act of 2009. The bill was sent to the full House on a voice vote after a markup session which lasted just one hour and twenty-two minutes. Committee Chair Collin Peterson (D-MN) commented that "I think we have a bill here that will bring all of these dark markets into regulation and into transparency and preclude the kind of problems that we've had in the financial system from happening in the future."

Ranking Member Frank Lucas (R-OK) said that passing the Agriculture Committee's amended HR 3795 – to be melded with the version passed by the House Financial Services Committee last week – "is the next part of the process, most assuredly not the final step, in bringing a regulatory structure to an unregulated market."

Twice, Republican committee members insisted on roll call votes which split along party lines. Rep. Mike Conaway (R-TX) got four of the committee's 28 Democrats to side with all 18 Republicans in a vote calling on the committee to publish the final bill within 24 hours and rule out any further changes other than technical corrections. Conaway said he was acting out of frustration over the fact that the derivatives bill the committee was considering wasn't completed until early Wednesday morning.

Peterson made it clear that he did not welcome Conaway's insistence on a recorded vote – and that the reason the bill wasn't completed until just four hours before the markup session began Wednesday afternoon was "because we were trying to get a bipartisan bill." He said his priority was "that we get a bill that's supported by both sides of the committee." Peterson's bipartisan approach was supported by Lucas who told Peterson that "The reason I have no amendments today is because the issues that I've had concern about that we've addressed in a broad way over on the minority side, you have addressed in your manager's amendment and I appreciate that."

The second recorded vote was on an amendment from Rep. Jerry Moran (R-KS) seeking to limit new Commodity Futures Trading Commission authority to set strict rules rather

than continue with “core principle” flexibility. Peterson opposed the amendment which was defeated on a straight party-line 27-18 vote.

For the most part, Peterson either accepted amendments as useful changes – or else said he would work with members on further changes to the legislation. His approach led to members withdrawing most of the amendments they’d offered, confident Peterson will continue to fine-tune the bill with input from committee members. Peterson said this fine-tuning will be part of the process as he works with House Financial Services Committee Chair Barney Frank (D-MA) to write the final version of HR 3795 to be voted on by the full House.

To read the full text of the 205-page amended HR 3795 derivatives bill along with an analysis, summary, and the text of the amendments added in the Oct. 21 hearing, go to: <http://agriculture.house.gov/inside/legislation.html>

Provisions included in the bill would:

- Institute a clearing requirement for swaps and security-based swaps, with derivatives clearing organizations determining which swaps must be cleared.
- Provide for exceptions from the clearing requirement for commercial end users who are not swap dealers or major swap participants.
- Hold swaps dealers and major swap participants accountable through margin, capital, business, and other conduct requirements.
- Require cleared, listed swaps to be traded on regulated exchanges.
- Require reporting and public disclosure of swap transactions.
- Provide for exclusive jurisdiction of swaps products under the Commodities Futures Trading Commission (CFTC), with security-based swaps products under the exclusive jurisdiction of the Securities and Exchange Commission (SEC).
- Allow CFTC to impose position limits on non-security swaps and SEC to impose position limits on security-based swaps.
- Call for CFTC and SEC consultation in rulemaking regarding swap and security-based swap provisions.
- Require CFTC to set trading limits for physically-deliverable commodities, in order to prevent excessive speculation.