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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R. _____

To . . .

IN THE HOUSE OF REPRESENTATIVES

A BILL

To . . .

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. SHORT TITLE.**

4 This Act may be cited as the “Pension Plan Risk Re-
5 duction Act of 2011”.

6 **SEC. 2. CLARIFICATION OF THE DEFINITION OF FIDU-**
7 **CIARY.**

8 (a) IN GENERAL.—Section 3(21) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1002(21)) is amended by adding at the end the following:

1 “(C) No person in his capacity as a swap dealer or
2 major swap participant referred to in section 4s(h)(5)(A)
3 of the Commodity Exchange Act or a security-based swap
4 dealer or major security-based swap participant referred
5 to in section 15F(h)(5)(A) of the Securities Exchange Act
6 of 1934 shall be a fiduciary with respect to a plan solely
7 by reason of any service, act, or duty that such person
8 is required to perform with respect to such plan by reason
9 of section 4s(h) of the Commodity Exchange Act, section
10 15F(h) of the Securities Exchange Act of 1934, or any
11 rule, regulation, or standard prescribed pursuant to such
12 sections.”.

13 (b) CONFORMING AMENDMENT.—Section 3(21)(A) of
14 such Act (29 U.S.C. 1002(21)(A)) is amended by striking
15 “subparagraph (B)” and inserting “subparagraphs (B)
16 and (C)”.

17 **SEC. 3. CLARIFICATION OF DEFINITION OF ADVISOR.**

18 (a) AMENDMENT TO CEA.—Section 4s(h)(4) of the
19 Commodity Exchange Act (7 U.S.C. 6s(h)(4)) is amended
20 by adding at the end the following:

21 “(D) ADVISOR.—For purposes of this sub-
22 section, a swap dealer or major swap partici-
23 pant shall not be treated as acting as an advi-
24 sor to a Special Entity with respect to a swap
25 if the swap dealer or major swap participant

1 represents in writing to the Special Entity that
2 the swap dealer or major swap participant is
3 acting solely as a counterparty, and is not act-
4 ing as an advisor to the Special Entity, with re-
5 spect to the swap.”.

6 (b) AMENDMENT TO 1934 ACT.—Section 15F(h)(4)
7 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-
8 10(h)(4)) is amended by adding at the end the following:

9 “(D) ADVISOR.—For purposes of this sub-
10 section, a security-based swap dealer or major
11 security-based swap participant shall not be
12 treated as acting as an advisor to a special enti-
13 ty with respect to a security-based swap if the
14 security-based swap dealer or major security-
15 based swap participant represents in writing to
16 the special entity that the security-based swap
17 dealer or major security-based swap participant
18 is acting solely as a counterparty, and is not
19 acting as an advisor to the special entity, with
20 respect to the security-based swap.”.

21 **SEC. 4. COUNTERPARTY REQUIREMENTS.**

22 (a) AMENDMENT TO CEA.—Section 4s(h)(5)(A)(i) of
23 the Commodity Exchange Act (7 U.S.C. 6s(h)(5)(A)(i))
24 is amended to read as follows:

1 “(VII) in the case of employee
2 benefit plans, is a fiduciary as defined
3 in section 3 of that Act (29 U.S.C.
4 1002), except that, in such case, sub-
5 clauses (I) through (VI) shall not
6 apply and any duty established pursu-
7 ant to this clause shall be satisfied by
8 the receipt by a swap dealer or a
9 major swap participant of a written
10 representation from the Special Entity
11 or a representative of the Special En-
12 tity that the Special Entity has a rep-
13 resentative that is a fiduciary (as de-
14 fined in section 3 of that Act) with re-
15 spect to the swap; and”.

16 (b) AMENDMENT TO 1934 ACT.—Section
17 15F(h)(5)(A)(i)(VII) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78o-10(h)(5)(A)(i)(VII)) is amended to
19 read as follows:

20 “(VII) in the case of employee
21 benefit plans subject to the Employee
22 Retirement Income Security Act of
23 1974, is a fiduciary as defined in sec-
24 tion 3 of that Act (29 U.S.C. 1002),
25 except that, in such case, subclauses

1 (I) through (VI) shall not apply and
2 any duty established pursuant to this
3 clause shall be satisfied by the receipt
4 by a security-based swap dealer or a
5 major security-based swap participant
6 of a written representation from the
7 special entity or a representative of
8 such special entity that the special en-
9 tity has a representative that is a fi-
10 duciary (as defined in section 3 of
11 that Act) with respect to the security-
12 based swap; and”.

13 **SEC. 5. INDEPENDENT ADVISORS.**

14 Section 4s(h)(5) of the Commodity Exchange Act (7
15 U.S.C. 6s(h)(5)) is amended—

16 (1) in subparagraph (A), by striking “; and” at
17 the end and inserting a period;

18 (2) in subparagraph (B), by striking “the” the
19 1st place it appears and inserting “The”; and

20 (3) by redesignating subparagraph (B) as (C)
21 and inserting after subparagraph (A) the following:

22 “(B) For purposes of the requirement that
23 a swap dealer or major swap participant deter-
24 mine that a Special Entity has a qualified inde-
25 pendent representative, an employee of the Spe-

1 cial Entity may qualify as an independent rep-
2 resentative. In determining that a Special Enti-
3 ty has a qualified independent representative, a
4 swap dealer or major swap participant may rely
5 on a representation unless it knows that the
6 representation is not accurate.”.

7 **SEC. 6. EFFECTIVE DATE.**

8 (a) IN GENERAL.—The amendments made by sec-
9 tions 3 and 4 of this Act shall take effect as if included
10 in sections 731 and 764 of the Dodd-Frank Wall Street
11 Reform and Consumer Protection Act, respectively.

12 (b) ERISA AMENDMENTS.—The amendments made
13 by section 2 shall take effect as of the same date that
14 the amendments made by sections 3 and 4 take effect.