

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE  
PETERSON, COLLIN OF MINNESOTA OR HIS DESIGNEE,  
DEBATABLE FOR 30 MINUTES

**AMENDMENT TO H.R. 4173****OFFERED BY MR. PETERSON OF MINNESOTA**

Page 481, strike line 8 and all that follows through  
page 665, line 6, and insert the following:

**1 TITLE III—DERIVATIVE MAR-**  
**2 KETS TRANSPARENCY AND**  
**3 ACCOUNTABILITY ACT**

**4 SEC. 3001. SHORT TITLE.**

**5** This title may be cited as the “Derivative Markets  
**6** Transparency and Accountability Act of 2009”.

**7 SEC. 3002. REVIEW OF REGULATORY AUTHORITY.**

**8** (a) CONSULTATION.—

**9** (1) CFTC.—Before commencing any rule-  
**10** making or issuing an order regarding swaps, swap  
**11** dealers, major swap participants, swap repositories,  
**12** persons associated with a swap dealer or major swap  
**13** participant, eligible contract participants, or swap  
**14** execution facilities pursuant to subtitle A, the Com-  
**15**modity Futures Trading Commission shall consult  
**16** with the Securities and Exchange Commission and  
**17** the Prudential Regulators.

**18** (2) SEC.—Before commencing any rulemaking  
**19** or issuing an order regarding security-based swaps,

1 security-based swap dealers, major security-based  
2 swap participants, security-based swap repositories,  
3 persons associated with a security-based swap dealer  
4 or major security-based swap participant, eligible  
5 contract participants with regard to security-based  
6 swaps, or swap execution facilities pursuant to sub-  
7 title B, the Securities and Exchange Commission  
8 shall consult with the Commodity Futures Trading  
9 Commission and the Prudential Regulators.

10 (3) In developing and promulgating rules or or-  
11 ders pursuant to this subsection, the Commodity Fu-  
12 tures Trading Commission and the Securities and  
13 Exchange Commission shall consider each other's  
14 views and the views of the Prudential Regulators.

15 (4) In adopting a rule or order described in  
16 paragraph (1) or (2), the Commodity Futures Trad-  
17 ing Commission and the Securities and Exchange  
18 Commission shall treat functionally or economically  
19 similar products or entities similarly.

20 (5) Paragraph (4) shall not be construed to re-  
21 quire the Commodity Futures Trading Commission  
22 or the Securities Exchange Commission to adopt a  
23 rule or order that treats functionally or economically  
24 similar products or entities identically.

25 (b) LIMITATION.—

1 (1) CFTC.—Nothing in this title, unless spe-  
2 cifically provided, shall be construed to confer juris-  
3 diction on the Commodity Futures Trading Commis-  
4 sion to issue a rule, regulation, or order providing  
5 for oversight or regulation of—

6 (A) security-based swaps; or

7 (B) with regard to their activities or func-  
8 tions concerning security-based swaps—

9 (i) security-based swap dealers;

10 (ii) major security-based swap partici-  
11 pants;

12 (iii) security-based swap repositories;

13 (iv) persons associated with a secu-  
14 rity-based swap dealer or major security-  
15 based swap participant;

16 (v) eligible contract participants with  
17 respect to security-based swaps; or

18 (vi) swap execution facilities.

19 (2) SEC.—Nothing in this title, unless specifi-  
20 cally provided, shall be construed to confer jurisdic-  
21 tion on the Securities and Exchange Commission to  
22 issue a rule, regulation, or order providing for over-  
23 sight or regulation of—

24 (A) swaps; or

1 (B) with regard to their activities or func-  
2 tions concerning swaps—

3 (i) swap dealers;

4 (ii) major swap participants;

5 (iii) swap repositories;

6 (iv) persons associated with a swap  
7 dealer or major swap participant;

8 (v) eligible contract participants with  
9 respect to swaps; or

10 (vi) swap execution facilities.

11 (c) OBJECTION TO COMMISSION REGULATION.—

12 (1) FILING OF PETITION FOR REVIEW.—If ei-  
13 ther Commission referred to in this section believes  
14 that a final rule, regulation, or order of the other  
15 such Commission conflicts with subsection (a)(4) or  
16 (b), then the complaining Commission may obtain  
17 review thereof in the United States Court of Appeals  
18 for the District of Columbia Circuit by filing in the  
19 court, not later than 60 days after the date of publi-  
20 cation of the final rule, regulation, or order, a writ-  
21 ten petition requesting that the rule, regulation, or  
22 order be set aside. Any such proceeding shall be ex-  
23 pedited by the Court of Appeals.

24 (2) TRANSMITTAL OF PETITION AND  
25 RECORD.—A copy of a petition described in para-

1 graph (1) shall be transmitted not later than 1 busi-  
2 ness day after filing by the complaining Commission  
3 to the Secretary of the responding Commission. On  
4 receipt of the petition, the responding Commission  
5 shall file with the court a copy of the rule, regula-  
6 tion, or order under review and any documents re-  
7 ferred to therein, and any other materials prescribed  
8 by the court.

9 (3) STANDARD OF REVIEW.—The court, giving  
10 deference to the views of neither Commission, shall  
11 determine to affirm or set aside a rule, regulation,  
12 or order of the responding Commission under this  
13 subsection, based on the determination of the court,  
14 as to whether the rule, regulation, or order is in con-  
15 flict with subsection (a)(4) or (b), as applicable.

16 (4) JUDICIAL STAY.—The filing of a petition by  
17 the complaining Commission pursuant to paragraph  
18 (1) shall operate as a stay of the rule, regulation, or  
19 order, until the date on which the determination of  
20 the court is final (including any appeal of the deter-  
21 mination).

22 (d) DEFINITIONS.—In this section, the terms “Pru-  
23 dential Regulators”, “swap”, “swap dealer”, “major swap  
24 participant”, “swap repository”, “person associated with  
25 a swap dealer or major swap participant”, “eligible con-

1 tract participant”, “swap execution facility”, “security-  
2 based swap”, “security-based swap dealer”, “major secu-  
3 rity-based swap participant”, “security-based swap reposi-  
4 tory”, and “person associated with a security-based swap  
5 dealer or major security-based swap participant” shall  
6 have the meanings provided, respectively, in the Com-  
7 modity Exchange Act, including any modification of the  
8 meanings under section 3101(b) of this Act.

9 (e)(1) Notwithstanding subsections (b) and (c), the  
10 Commodity Futures Trading Commission and the Securi-  
11 ties Exchange Commission shall jointly adopt rules to—

12 (A) define the terms “security-based swap  
13 agreement” in section 3(a)(76) of the Securities Ex-  
14 change Act of 1934 and “swap” in section  
15 1a(35)(A)(v) of the Commodity Exchange Act;

16 (B) require the maintenance of records of all  
17 activities related to transactions defined in subpara-  
18 graph (A) that are not cleared; and

19 (C) make available to the Securities and Ex-  
20 change Commission information relating to trans-  
21 actions defined in subparagraph (A) that are  
22 uncleared.

23 (2) In the event that the Commodity Futures Trading  
24 Commission and the Securities Exchange Commission fail  
25 to jointly prescribe rules pursuant to paragraph (1) in a

1 timely manner, at the request of either Commission, the  
2 Financial Services Oversight Council shall resolve the dis-  
3 pute—

4 (A) within a reasonable time after receiving the  
5 request;

6 (B) after consideration of relevant information  
7 provided by each Commission; and

8 (C) by agreeing with one of the Commissions  
9 regarding the entirety of the matter or by deter-  
10 mining a compromise position.

11 **SEC. 3003. INTERNATIONAL HARMONIZATION.**

12 (a) In order to promote effective and consistent global  
13 regulation of contracts of sale of swaps and security-based  
14 swaps, the Commodity Futures Trading Commission, the  
15 Securities and Exchange Commission, and the Prudential  
16 Regulators (as defined in section 1a(42) of the Commodity  
17 Exchange Act), as appropriate, shall consult and coordi-  
18 nate with foreign regulatory authorities on the establish-  
19 ment of consistent international standards with respect to  
20 the regulation of contracts of sale of swaps and security-  
21 based swaps, and may agree to such information-sharing  
22 arrangements as may be deemed to be necessary or appro-  
23 priate in the public interest or for the protection of inves-  
24 tors, swap counterparties, and security-based swap  
25 counterparties.



1 (b) In order to promote effective and consistent global  
2 regulation of contracts of sale of a commodity for future  
3 delivery, the Commodity Futures Trading Commission  
4 shall consult and coordinate with foreign regulatory au-  
5 thorities on the establishment of consistent international  
6 standards with respect to the regulation of contracts of  
7 sale of a commodity for future delivery, and may agree  
8 to such information-sharing arrangements as may be  
9 deemed necessary or appropriate in the public interest for  
10 the protection users of contracts of sale of a commodity  
11 for future delivery.

12 **SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSIST-**  
13 **ANCE.**

14 (a) **IN GENERAL.**—No provision of this title shall be  
15 construed to authorize Federal assistance to support clear-  
16 ing operations or liquidation of a derivatives clearing orga-  
17 nization described in the Commodity Exchange Act or a  
18 clearing agency described in the Securities Exchange Act  
19 of 1934, except where explicitly authorized by an Act of  
20 Congress.

21 (b) **DEFINITION.**—For the purposes of this section,  
22 the term “Federal assistance” means the use of public  
23 funds for the purposes of—

1 (1) making loans to, or purchasing any debt ob-  
2 ligation of, a derivatives clearing organization, a  
3 clearing agency, or a subsidiary of either;

4 (2) purchasing assets of a derivatives clearing  
5 organization, a clearing agency, or a subsidiary of ei-  
6 ther;

7 (3) assuming or guaranteeing the obligations of  
8 a derivatives clearing organization, a clearing agen-  
9 cy, or a subsidiary of either; or

10 (4) acquiring any type of equity interest or se-  
11 curity of a derivatives clearing organization, a clear-  
12 ing agency, or a subsidiary of either.

13 **SEC. 3005. STUDIES.**

14 (a) STUDY ON EFFECTS OF POSITION LIMITS ON  
15 TRADING ON EXCHANGES IN THE UNITED STATES.—

16 (1) STUDY.—The Commodity Futures Trading  
17 Commission, in consultation with each entity that is  
18 a designated contract market under the Commodity  
19 Exchange Act, shall conduct a study of the effects  
20 (if any) of the position limits imposed pursuant to  
21 the other provisions of this title on excessive specula-  
22 tion and on the movement of transactions from ex-  
23 changes in the United States to trading venues out-  
24 side the United States.

1           (2) REPORT TO THE CONGRESS.—Within 12  
2 months after the imposition of position limits pursu-  
3 ant to the other provisions of this title, the Com-  
4 modity Futures Trading Commission, in consultation  
5 with each entity that is a designated contract mar-  
6 ket under the Commodity Exchange Act, shall sub-  
7 mit to the Congress a report on the matters de-  
8 scribed in paragraph (1).

9           (3) Within 30 legislative days after the submis-  
10 sion to the Congress of the report described in para-  
11 graph (2), the Committee on Agriculture of the  
12 House of Representatives shall hold a hearing exam-  
13 ining the findings of the report.

14           (4) In addition to the study required in para-  
15 graph (1), the Chairman of the Commodity Futures  
16 Trading Commission shall prepare and submit to the  
17 Congress biennial reports on the growth or decline  
18 of the derivatives markets in the United States and  
19 abroad, which shall include assessments of the  
20 causes of any such growth or decline, the effective-  
21 ness of regulatory regimes in managing systemic  
22 risk, a comparison of the costs of compliance at the  
23 time of the report for market participants subject to  
24 regulation by the United States with the costs of  
25 compliance in December 2008 for the market par-

1 participants, and the quality of the available data. In  
2 preparing the report, the Chairman shall solicit the  
3 views of, consult with, and address the concerns  
4 raised by, market participants, regulators, legisla-  
5 tors, and other interested parties.

6 (b) STUDY ON FEASIBILITY OF REQUIRING USE OF  
7 STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FI-  
8 NANCIAL DERIVATIVES.—

9 (1) IN GENERAL.—The Securities and Ex-  
10 change Commission and the Commodity Futures  
11 Trading Commission shall conduct a joint study of  
12 the feasibility of requiring the derivatives industry to  
13 adopt standardized computer-readable algorithmic  
14 descriptions which may be used to describe complex  
15 and standardized financial derivatives.

16 (2) GOALS.—The algorithmic descriptions de-  
17 fined in the study shall be designed to facilitate com-  
18 puterized analysis of individual derivative contracts  
19 and to calculate net exposures to complex deriva-  
20 tives. The algorithmic descriptions shall be optimized  
21 for simultaneous use by:

22 (A) commercial users and traders of de-  
23 rivatives;

24 (B) derivative clearing houses, exchanges  
25 and electronic trading platforms;

1 (C) trade repositories and regulator inves-  
2 tigations of market activities; and

3 (D) systemic risk regulators.

4 The study will also examine the extent to which the  
5 algorithmic description, together with standardized  
6 and extensible legal definitions, may serve as the  
7 binding legal definition of derivative contracts. The  
8 study will examine the logistics of possible imple-  
9 mentations of standardized algorithmic descriptions  
10 for derivatives contracts. The study shall be limited  
11 to electronic formats for exchange of derivative con-  
12 tract descriptions and will not contemplate disclo-  
13 sure of proprietary valuation models.

14 (3) INTERNATIONAL COORDINATION.—In con-  
15 ducting the study, the Securities and Exchange  
16 Commission and the Commodity Futures Trading  
17 Commission shall coordinate the study with inter-  
18 national financial institutions and regulators as ap-  
19 propriate and practical.

20 (4) REPORT.—Within 8 months after the date  
21 of the enactment of this Act, the Securities and Ex-  
22 change Commission and the Commodity Futures  
23 Trading Commission shall jointly submit to the  
24 Committees on Agriculture and on Financial Serv-  
25 ices of the House of Representatives and the Com-

1 mittees on Agriculture, Nutrition, and Forestry and  
2 on Banking, Housing, and Urban Affairs of the Sen-  
3 ate a written report which contains the results of the  
4 study required by paragraphs (1) through (3).

5 (c) STUDY OF DESIRABILITY AND FEASIBILITY OF  
6 ESTABLISHING SINGLE REGULATOR FOR ALL TRANS-  
7 ACTIONS INVOLVING FINANCIAL DERIVATIVES.—

8 (1) IN GENERAL.—The Secretary of the Treas-  
9 ury, the Commodity Futures Trading Commission,  
10 and the Securities and Exchange Commission shall  
11 conduct a joint study of the desirability and feasi-  
12 bility of establishing, by January 1, 2012, a single  
13 regulator for all transactions involving financial de-  
14 rivatives.

15 (2) REPORT TO THE CONGRESS.—Not later  
16 than December 1, 2010, Secretary of the Treasury,  
17 the Commodity Futures Trading Commission, and  
18 the Securities and Exchange Commission shall joint-  
19 ly submit to the Committees on Agriculture and on  
20 Financial Services of the House of Representatives  
21 and the Committees on Agriculture, Nutrition, and  
22 Forestry and on Banking, Housing, and Urban Af-  
23 fairs of the Senate a written report that contains the  
24 results of the study required by paragraph (1).

1 **SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOL-**  
2 **VENCY LAWS.**

3 Not later than 180 days after the date of the enact-  
4 ment of this Act, the Securities and Exchange Commis-  
5 sion, the Commodity Futures Trading Commission, and  
6 the Prudential Regulators (as defined in section 1a of the  
7 Commodity Exchange Act, as amended by section 3111  
8 of this Act) shall transmit to Congress recommendations  
9 for legislative changes to the Federal insolvency laws—

10 (1) in order to enhance the legal certainty with  
11 respect to swap participants clearing non-proprietary  
12 swap positions with a swap clearinghouse, includ-  
13 ing—

14 (A) customer rights to recover margin de-  
15 posits or custodial property held at or through  
16 an insolvent swap clearinghouse, or clearing  
17 participant; and

18 (B) the enforceability of clearing rules re-  
19 lating to the portability of customer swap posi-  
20 tions (and associated margin) upon the insol-  
21 vency of a clearing participant;

22 (2) to clarify and harmonize the insolvency law  
23 framework applicable to entities that are both com-  
24 modity brokers (as defined in section 101(6) of title  
25 11, United States Code) and registered brokers or

1 dealers (as defined in section 3(a) of the Securities  
2 Exchange Act of 1934 (15 U.S.C. 78c(a))); and  
3 (3) to facilitate the portfolio margining of secu-  
4 rities and commodity futures and options positions  
5 held through entities that are both futures commis-  
6 sion merchants (as defined in section 1a of the Com-  
7 modity Exchange Act) and registered brokers or  
8 dealers (as defined in section 3 of the Securities Ex-  
9 change Act of 1934 (15 U.S.C. 78c(a))).

10 **SEC. 3007. ABUSIVE SWAPS.**

11 The Commodity Futures Trading Commission and  
12 the Securities and Exchange Commission may, by rule or  
13 order, jointly collect information as may be necessary con-  
14 cerning the markets for any types of swap (as defined in  
15 section 1a(35) of the Commodity Exchange Act) or secu-  
16 rity-based swap (as defined in section 1a(38) of such Act)  
17 and jointly issue a report with respect to any types of  
18 swaps or security-based swaps which the Commodity Fu-  
19 tures Trading Commission and the Securities and Ex-  
20 change Commission find are detrimental to the stability  
21 of a financial market or of participants in a financial mar-  
22 ket.



1 **SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN**  
2 **SWAP ACTIVITIES.**

3 If the Commodity Futures Trading Commission or  
4 the Securities and Exchange Commission determines that  
5 the regulation of swaps or security-based swaps markets  
6 in a foreign country undermines the stability of the United  
7 States financial system, either Commission, in consulta-  
8 tion with the Secretary of the Treasury, may prohibit an  
9 entity domiciled in that country from participating in the  
10 United States in any swap or security-based swap activi-  
11 ties.

12 **SEC. 3009. MEMORANDUM.**

13 (a)(1) The Commodity Futures Trading Commission  
14 and the Federal Energy Regulatory Commission shall, not  
15 later than 180 days after the date of the enactment of  
16 this section, negotiate a memorandum of understanding  
17 to establish procedures for—

18 (A) applying their respective authorities in a  
19 manner so as to ensure effective and efficient regula-  
20 tion in the public interest,

21 (B) resolving conflicts concerning overlapping  
22 jurisdiction between the two agencies, and

23 (C) avoiding, to the extent possible, conflicting  
24 or duplicative regulation.

1       (2) Such memorandum and any subsequent amend-  
2 ments to the memorandum shall be promptly submitted  
3 to the appropriate committees of Congress.

4       (b) The Commodity Futures Trading Commission  
5 and the Federal Energy Regulatory Commission shall, not  
6 later than 180 days after the date of the enactment of  
7 this section, negotiate a memorandum of understanding  
8 to share information that may be requested where either  
9 Commission is conducting an investigation into potential  
10 manipulation, fraud, or market power abuse in markets  
11 subject to such Commission's regulation or oversight.  
12 Shared information shall remain subject to the same re-  
13 strictions on disclosure applicable to the Commission ini-  
14 tially holding the information.

15       **Subtitle A—Regulation of Swap**  
16                                   **Markets**

17       **SEC. 3101. DEFINITIONS.**

18       (a) AMENDMENTS TO DEFINITIONS IN THE COM-  
19 MODITY EXCHANGE ACT.—Section 1a of the Commodity  
20 Exchange Act (7 U.S.C. 1a) is amended—

21               (1) in paragraph (12)(A)—

22                       (A) in clause (vii)(III), by striking  
23                       “\$25,000,000” and inserting “\$50,000,000”;  
24                       and

1 (B) in clause (xi), by striking “total assets  
2 in an amount” and inserting “amounts invested  
3 on a discretionary basis”;

4 (2) in paragraph (29)—

5 (A) in subparagraph (D), by striking  
6 “and”;

7 (B) by redesignating subparagraph (E) as  
8 subparagraph (G); and

9 (C) by inserting after subparagraph (D)  
10 the following:

11 “(E) a swap execution facility registered  
12 under section 5h;

13 “(F) a swap repository; and”; and  
14 (3) by adding at the end the following:

15 “(35) SWAP.—

16 “(A) IN GENERAL.—Except as provided in  
17 subparagraph (B), the term ‘swap’ means any  
18 agreement, contract, or transaction that—

19 “(i) is a put, call, cap, floor, collar, or  
20 similar option of any kind for the purchase  
21 or sale of, or based on the value of, 1 or  
22 more interest or other rates, currencies,  
23 commodities, securities, instruments of in-  
24 debtedness, indices, quantitative measures,

1 or other financial or economic interests or  
2 property of any kind;

3 “(ii) provides for any purchase, sale,  
4 payment, or delivery (other than a dividend  
5 on an equity security) that is dependent on  
6 the occurrence, non-occurrence, or the ex-  
7 tent of the occurrence of an event or con-  
8 tingency associated with a potential finan-  
9 cial, economic, or commercial consequence;

10 “(iii) provides on an executory basis  
11 for the exchange, on a fixed or contingent  
12 basis, of 1 or more payments based on the  
13 value or level of 1 or more interest or other  
14 rates, currencies, commodities, securities,  
15 instruments of indebtedness, indices, quan-  
16 titative measures, or other financial or eco-  
17 nomic interests or property of any kind, or  
18 any interest therein or based on the value  
19 thereof, and that transfers, as between the  
20 parties to the transaction, in whole or in  
21 part, the financial risk associated with a  
22 future change in any such value or level  
23 without also conveying a current or future  
24 direct or indirect ownership interest in an  
25 asset (including any enterprise or invest-

1           ment pool) or liability that incorporates the  
2           financial risk so transferred, and includes  
3           any agreement, contract, or transaction  
4           commonly known as an interest rate swap,  
5           a rate floor, rate cap, rate collar, cross-cur-  
6           rency rate swap, basis swap, currency  
7           swap, total return swap, equity index swap,  
8           equity swap, debt index swap, debt swap,  
9           credit spread, credit default swap, credit  
10          swap, weather swap, energy swap, metal  
11          swap, agricultural swap, emissions swap,  
12          or commodity swap;

13                 “(iv) is, or in the future becomes,  
14                 commonly known to the trade as a swap;

15                 “(v) meets the definition of ‘swap  
16                 agreement’ as defined in section 206A of  
17                 the Gramm-Leach-Bliley Act of which a  
18                 material term of which is based on the  
19                 price, yield, value, or volatility of any secu-  
20                 rity or any group or index of securities, or  
21                 any interest therein; or

22                 “(vi) is any combination or permuta-  
23                 tion of, or option on, any agreement, con-  
24                 tract, or transaction described in any of  
25                 clauses (i) through (v).

1           “(B) EXCLUSIONS.—The term ‘swap’ does  
2           not include—

3           “(i) any contract of sale of a com-  
4           modity for future delivery (or any option  
5           on such a contract) or security futures  
6           product traded on or subject to the rules  
7           of any board of trade designated as a con-  
8           tract market under section 5 or 5f;

9           “(ii) any sale of a nonfinancial com-  
10          modity or security for deferred shipment or  
11          delivery, so long as the transaction is in-  
12          tended to be physically settled;

13          “(iii) any put, call, straddle, option, or  
14          privilege on any security, certificate of de-  
15          posit, or group or index of securities, in-  
16          cluding any interest therein or based on  
17          the value thereof, that is subject to the Se-  
18          curities Act of 1933 (15 U.S.C. 77a et  
19          seq.) and the Securities Exchange Act of  
20          1934 (15 U.S.C. 78a et seq.);

21          “(iv) any put, call, straddle, option, or  
22          privilege relating to foreign currency en-  
23          tered into on a national securities exchange  
24          registered pursuant to section 6(a) of the

1 Securities Exchange Act of 1934 (15  
2 U.S.C. 78f(a));

3 “(v) any agreement, contract, or  
4 transaction providing for the purchase or  
5 sale of 1 or more securities on a fixed basis  
6 that is subject to the Securities Act of  
7 1933 (15 U.S.C. 77a et seq.) and the Se-  
8 curities Exchange Act of 1934 (15 U.S.C.  
9 78a et seq);

10 “(vi) any agreement, contract, or  
11 transaction providing for the purchase or  
12 sale of 1 or more securities on a contingent  
13 basis that is subject to the Securities Act  
14 of 1933 (15 U.S.C. 77a et seq) and the  
15 Securities Exchange Act of 1934 (15  
16 U.S.C. 78a et seq.), unless the agreement,  
17 contract, or transaction predicates the pur-  
18 chase or sale on the occurrence of a bona  
19 fide contingency that might reasonably be  
20 expected to affect or be affected by the  
21 creditworthiness of a party other than a  
22 party to the agreement, contract, or trans-  
23 action;

24 “(vii) any note, bond, or evidence of  
25 indebtedness that is a security as defined

1 in section 2(a)(1) of the Securities Act of  
2 1933 (15 U.S.C. 77b(a)(1));

3 “(viii) any agreement, contract, or  
4 transaction that is—

5 “(I) based on a security; and

6 “(II) entered into directly or  
7 through an underwriter (as defined in  
8 section 2(a)(11) of the Securities Act  
9 of 1933) (15 U.S.C. 77b(a)(11)) by  
10 the issuer of the security for the pur-  
11 poses of raising capital, unless the  
12 agreement, contract, or transaction is  
13 entered into to manage a risk associ-  
14 ated with capital-raising;

15 “(ix) any foreign exchange forward;

16 “(x) any foreign exchange swap;

17 “(xi) any agreement, contract, or  
18 transaction a counterparty of which is a  
19 Federal Reserve bank, the United States  
20 government or an agency of the United  
21 States government that is expressly backed  
22 by the full faith and credit of the United  
23 States; and

24 “(xii) any security-based swap.



1           “(C) RULE OF CONSTRUCTION REGARDING  
2           MASTER AGREEMENTS.—The term ‘swap’ shall  
3           be construed to include a master agreement  
4           that provides for an agreement, contract, or  
5           transaction that is a swap pursuant to subpara-  
6           graph (A), together with all supplements to any  
7           such master agreement, without regard to  
8           whether the master agreement contains an  
9           agreement, contract, or transaction that is not  
10          a swap pursuant to subparagraph (A), except  
11          that the master agreement shall be considered  
12          to be a swap only with respect to each agree-  
13          ment, contract, or transaction under the master  
14          agreement that is a swap pursuant to subpara-  
15          graph (A).

16          “(D) FOREIGN EXCHANGE SWAPS AND  
17          FORWARDS EXCEPTION.—

18                 “(i) IN GENERAL.—Notwithstanding  
19                 clauses (ix) and (x) of subparagraph (B),  
20                 foreign exchange swaps and foreign ex-  
21                 change forwards shall be considered swaps  
22                 under this paragraph if the Commission  
23                 makes a determination that either foreign  
24                 exchange swaps or foreign exchange for-  
25                 wards or both should be regulated as

1 swaps under this Act and the Secretary  
2 concurs with such determination.

3 “(ii) SCOPE OF AUTHORITY.—

4 “(I) The Commission and the  
5 Secretary shall jointly determine  
6 which of the authorities under this  
7 Act regarding swaps the Commission  
8 shall exercise over foreign exchange  
9 swaps and foreign exchange forwards.  
10 Such authorities shall subsequently be  
11 exercised solely by the Commission.  
12 The Commission and the Secretary  
13 may jointly amend any previously  
14 made determination under this sub-  
15 clause.

16 “(II) Notwithstanding clause (i),  
17 the Commission and the Secretary of  
18 the Treasury may determine that ei-  
19 ther foreign exchange swaps or for-  
20 eign exchange forwards or both should  
21 not be regulated as swaps under this  
22 Act if such determination is jointly  
23 made.

24 “(iii) REPORTING.—Notwithstanding  
25 clauses (ix) and (x) of subparagraph (B)

1 and subparagraph (D)(ii), all foreign ex-  
2 change swaps and foreign exchange for-  
3 wards shall be reported to either a swap  
4 repository, or, if there is no swap reposi-  
5 tory that would accept such swaps or for-  
6 wards, to the Commission pursuant to sec-  
7 tion 4r within such time period as the  
8 Commission may by rule or regulation pre-  
9 scribe.

10 “(iv) SECRETARY.—For purposes of  
11 this subparagraph only, the term ‘Sec-  
12 retary’ means the Secretary of the Treas-  
13 ury.

14 “(36) BOARD.—The term ‘Board’ means the  
15 Board of Governors of the Federal Reserve System.

16 “(37) SECURITY-BASED SWAP.—The term ‘se-  
17 curity-based swap’ has the same meaning as in sec-  
18 tion 3(a)(68) of the Securities and Exchange Act of  
19 1934.

20 “(38) SWAP DEALER.—

21 “(A) IN GENERAL.—The term ‘swap deal-  
22 er’ means any person who—

23 “(i) holds itself out as a dealer in  
24 swaps;

25 “(ii) makes a market in swaps;

1                   “(iii) regularly engages in the pur-  
2                   chase of swaps and their resale to cus-  
3                   tomers in the ordinary course of a busi-  
4                   ness; or

5                   “(iv) engages in any activity causing  
6                   the person to be commonly known in the  
7                   trade as a dealer or market maker in  
8                   swaps.

9                   “(B) A person may be designated a swap  
10                  dealer for a single type or single class or cat-  
11                  egory of swap and considered not a swap dealer  
12                  for other types, classes, or categories of swaps.

13                  “(C) DE MINIMUS EXCEPTION.—The Com-  
14                  mission shall make a determination to exempt  
15                  from designation as a swap dealer an entity  
16                  that engages in a de minimus amount of swap  
17                  dealing in connection with transactions with or  
18                  on the behalf of its customers.

19                  “(39) MAJOR SWAP PARTICIPANT.—

20                  “(A) IN GENERAL.—The term ‘major swap  
21                  participant’ means any person who is not a  
22                  swap dealer, and—

23                  “(i) maintains a substantial net posi-  
24                  tion in outstanding swaps, excluding posi-  
25                  tions held primarily for hedging, reducing

1 or otherwise mitigating its commercial  
2 risk, including operating and balance sheet  
3 risk; or

4 “(ii) whose outstanding swaps create  
5 substantial net counterparty exposure  
6 among the aggregate of its counterparties  
7 that could expose those counterparties to  
8 significant credit losses.

9 “(B) DEFINITION OF SUBSTANTIAL NET  
10 POSTION.—The Commission shall define by rule  
11 or regulation the terms ‘substantial net posi-  
12 tion’, ‘substantial net counterparty exposure’,  
13 and ‘significant credit losses’ at thresholds that  
14 the Commission determines prudent for the ef-  
15 fective monitoring, management and oversight  
16 of entities which are systemically important or  
17 can significantly impact the financial system  
18 through counterparty credit risk. In setting the  
19 definitions, the Commission shall consider the  
20 person’s relative position in uncleared as op-  
21 posed to cleared swaps.

22 “(C) A person may be designated a major  
23 swap participant for 1 or more individual types  
24 of swaps without being classified as a major  
25 swap participant for all classes of swaps.

1           “(40) MAJOR SECURITY-BASED SWAP PARTICI-  
2           PANT.—The term ‘major security-based swap partic-  
3           ipant’ has the same meaning as in section 3(a)(67)  
4           of the Securities Exchange Act of 1934.

5           “(41) APPROPRIATE FEDERAL BANKING AGEN-  
6           CY.—The term ‘appropriate Federal banking agency’  
7           has the same meaning as in section 3(q) of the Fed-  
8           eral Deposit Insurance Act (12 U.S.C. 1813(q)).

9           “(42) PRUDENTIAL REGULATOR.—The term  
10          ‘Prudential Regulator’ means—

11                 “(A) the Board in the case of a swap deal-  
12                 er, major swap participant, security-based swap  
13                 dealer, or major security-based swap participant  
14                 that is—

15                         “(i) a State-chartered bank that is a  
16                         member of the Federal Reserve System; or

17                         “(ii) a State-chartered branch or  
18                         agency of a foreign bank;

19                 “(B) the Office of the Comptroller of the  
20                 Currency in the case of a swap dealer, major  
21                 swap participant, security-based swap dealer, or  
22                 major security-based swap participant that is—

23                         “(i) a national bank; or

24                         “(ii) a federally chartered branch or  
25                         agency of a foreign bank; and

1           “(C) the Federal Deposit Insurance Cor-  
2           poration in the case of a swap dealer, major  
3           swap participant, security-based swap dealer, or  
4           major security-based swap participant that is a  
5           State-chartered bank that is not a member of  
6           the Federal Reserve System.

7           “(43) SECURITY-BASED SWAP DEALER.—The  
8           term ‘security-based swap dealer’ has the same  
9           meaning as in section 3(a)(71) of the Securities Ex-  
10          change Act of 1934.

11          “(44) FOREIGN EXCHANGE FORWARD.—The  
12          term ‘foreign exchange forward’ means a transaction  
13          that solely involves the exchange of 2 different cur-  
14          rencies on a specific future date at a fixed rate  
15          agreed at the inception of the contract.

16          “(45) FOREIGN EXCHANGE SWAP.—The term  
17          ‘foreign exchange swap’ means a transaction that  
18          solely involves the exchange of 2 different currencies  
19          on a specific date at a fixed rate agreed at the incep-  
20          tion of the contract, and a reverse exchange of the  
21          same 2 currencies at a date further in the future  
22          and at a fixed rate agreed at the inception of the  
23          contract.

24          “(46) PERSON ASSOCIATED WITH A SECURITY-  
25          BASED SWAP DEALER OR MAJOR SECURITY-BASED

1 SWAP PARTICIPANT.—The term ‘person associated  
2 with a security-based swap dealer or major security-  
3 based swap participant’ or ‘associated person of a  
4 security-based swap dealer or major security-based  
5 swap participant’ has the same meaning as in sec-  
6 tion 3(a)(70) of the Securities Exchange Act of  
7 1934.

8 “(47) PERSON ASSOCIATED WITH A SWAP  
9 DEALER OR MAJOR SWAP PARTICIPANT.—The term  
10 ‘person associated with a swap dealer or major swap  
11 participant’ or ‘associated person of a swap dealer or  
12 major swap participant’ means any partner, officer,  
13 director, or branch manager of a swap dealer or  
14 major swap participant (or any person occupying a  
15 similar status or performing similar functions), any  
16 person directly or indirectly controlling, controlled  
17 by, or under common control with a swap dealer or  
18 major swap participant, or any employee of a swap  
19 dealer or major swap participant, except that any  
20 person associated with a swap dealer or major swap  
21 participant whose functions are solely clerical or  
22 ministerial shall not be included in the meaning of  
23 the term other than for purposes of section 4s(b)(6).

24 “(48) SWAP REPOSITORY.—The term ‘swap re-  
25 pository’ means any person that collects, calculates,



1 prepares or maintains information or records with  
2 respect to transactions or positions in or the terms  
3 and conditions of swaps entered into by third par-  
4 ties.

5 “(49) SWAP EXECUTION FACILITY.—The term  
6 ‘swap execution facility’ means a person or entity  
7 that facilitates the execution or trading of swaps be-  
8 tween two persons through any means of interstate  
9 commerce, but which is not a designated contract  
10 market, including any electronic trade execution or  
11 voice brokerage facility.

12 “(50) DERIVATIVE.—The term ‘derivative’  
13 means—

14 “(A) a contract of sale of a commodity for  
15 future delivery; or

16 “(B) a swap.”

17 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The  
18 Commodity Futures Trading Commission shall adopt a  
19 rule further defining the terms “swap”, “swap dealer”,  
20 “major swap participant”, and “eligible contract partici-  
21 pant” for the purpose of including transactions and enti-  
22 ties that have been structured to evade this title.

23 (c) EXEMPTIONS.—Section 4(c) of the Commodity  
24 Exchange Act (7 U.S.C. 4(c)) is amended by adding at  
25 the end the following: “The Commission shall not have

1 the authority to grant exemptions from the provisions of  
2 sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109,  
3 3110, 3113, 3115, 3120, and 3121 of the Derivative Mar-  
4 kets Transparency and Accountability Act of 2009, except  
5 as expressly authorized under the provisions of that Act.  
6 Notwithstanding the preceding sentence, the Commodity  
7 Futures Trading Commission may exempt from any provi-  
8 sion of the Commodity Exchange Act, pursuant to this  
9 subsection, an agreement, contract, or transaction that is  
10 entered into pursuant to a tariff approved by the Federal  
11 Energy Regulatory Commission, if the Commodity Fu-  
12 tures Trading Commission determines that the exemption  
13 would be consistent with the public interest, and shall con-  
14 sider and not unreasonably deny any request made by the  
15 Federal Energy Regulatory Commission for such an ex-  
16 emption.”.

17 **SEC. 3102. JURISDICTION.**

18 (a) **EXCLUSIVE JURISDICTION.**—Section 2(a)(1) of  
19 the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is  
20 amended—

21 (1) in the 1st sentence of subparagraph (A)—

22 (A) by striking “(c) through (i)” and in-  
23 serting “(c) and (f)”;

24 (B) by inserting “swaps, or” before “con-  
25 tracts of sale”;

1 (C) by striking “derivatives transaction  
2 execution facility” and inserting “swap execu-  
3 tion facility”; and

4 (D) by striking “5a” and inserting “5h”;  
5 and

6 (2) by adding at the end the following:

7 “(G)(i) Nothing in this paragraph shall  
8 limit the jurisdiction conferred on the Securities  
9 and Exchange Commission by the Derivative  
10 Markets Transparency and Accountability Act  
11 of 2009 with regard to security-based swap  
12 agreements as defined pursuant to section  
13 3002(e) of such Act, and security-based swaps.

14 “(ii) In addition to the authority of the Se-  
15 curities Exchange Commission described in  
16 clause (i), nothing in this subparagraph shall  
17 limit or affect any statutory authority of the  
18 Commission with respect to an agreement, con-  
19 tract, or transaction described in clause (i).

20 “(H)(i) Nothing in this Act shall limit or  
21 affect any statutory authority of the Federal  
22 Energy Regulatory Commission with respect to  
23 an agreement, contract, or transaction that is—

1 “(I) not executed, traded, or cleared  
2 on a registered entity or trading facility;  
3 and

4 “(II) entered into pursuant to a tariff  
5 or rate schedule approved by the Federal  
6 Energy Regulatory Commission.

7 “(ii) In addition to the authority of the  
8 Federal Energy Regulatory Commission de-  
9 scribed in clause (i), nothing in this subpara-  
10 graph shall limit or affect any statutory author-  
11 ity of the Commission with respect to an agree-  
12 ment, contract, or transaction described in  
13 clause (i).”.

14 (b) ADDITIONS.—Section 2(c)(2)(A) of such Act (7  
15 U.S.C. 2(c)(2)(A)) is amended—

16 (1) in clause (i) by striking “or” at the end;  
17 (2) by redesignating clause (ii) as clause (iii);  
18 and  
19 (3) by inserting after clause (i) the following:

20 “(ii) a swap; or”.

21 (c) Section 12(e) of such Act (7 U.S.C. 16(e)) is  
22 amended—

23 (1) in paragraph (1)(B), by inserting “or (3)”  
24 after “paragraph (2)”;

1 (2) in paragraph (2), by striking subparagraphs  
2 (A) and (B) and inserting the following:

3 “(A) a swap; and

4 “(B) an agreement, contract, or trans-  
5 action that is excluded from this Act under sec-  
6 tion 2(c) or 2(f) of this Act or title IV of the  
7 Commodity Futures Modernization Act of 2000  
8 or exempted under section 4(c) of this Act (re-  
9 gardless of whether any such agreement, con-  
10 tract, or transaction is otherwise subject to this  
11 Act).”; and

12 (3) by adding at the end the following:

13 “(3) A swap may not be regulated as an insur-  
14 ance contract under State law.

15 “(4) The provisions of this Act relating to  
16 swaps that were enacted by the Derivative Markets  
17 Transparency and Accountability Act of 2009, in-  
18 cluding any rule or regulation thereunder, shall not  
19 apply to activities outside the United States unless  
20 those activities—

21 “(A) have a direct and significant connec-  
22 tion with activities in or effect on United States  
23 commerce; or

24 “(B) contravene such rules or regulations  
25 as the Commission may prescribe as necessary

1 or appropriate to prevent the evasion of any  
2 provision of this Act that was enacted by the  
3 Derivative Markets Transparency and Account-  
4 ability Act of 2009.”.

5 (d) Nothing in the Derivative Markets Transparency  
6 and Accountability Act of 2009 or the amendments to the  
7 Commodity Exchange Act made by such Act shall limit  
8 or affect any statutory enforcement authority of the Fed-  
9 eral Energy Regulatory Commission pursuant to Section  
10 222 of the Federal Power Act and Section 4A of the Nat-  
11 ural Gas Act that existed prior to the date of enactment  
12 of the Derivative Markets Transparency and Account-  
13 ability Act of 2009.

14 **SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.**

15 (a) CLEARING AND EXECUTION TRANSPARENCY RE-  
16 QUIREMENTS.—

17 (1) Section 2 of the Commodity Exchange Act  
18 (7 U.S.C. 2) is amended by striking subsections (d),  
19 (e), (g), and (h).

20 (2)(A) Prior to the final effective dates in this  
21 title, a person may petition the Commodity Futures  
22 Trading Commission to remain subject to para-  
23 graphs (3) through (7) of section 2(h) of the Com-  
24modity Exchange Act.

1           (B) The Commodity Futures Trading Commis-  
2           sion shall consider any petition submitted under sub-  
3           paragraph (A) in a prompt manner and may allow  
4           a person to continue operating subject to paragraphs  
5           (3) through (7) of section 2(h) of the Commodity  
6           Exchange Act for up to one year after the effective  
7           date of this subtitle.

8           (3) Section 2 of such Act (7 U.S.C. 2) is fur-  
9           ther amended by inserting after subsection (c) the  
10          following:

11       “(d) SWAPS.—Nothing in this Act (other than sub-  
12       sections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j),  
13       and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s,  
14       4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2),  
15       12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-  
16       sions of this Act as are applicable by their terms to reg-  
17       istered entities and Commission registrants) governs or  
18       applies to a swap.

19       “(e) LIMITATION ON PARTICIPATION.—It shall be  
20       unlawful for any person, other than an eligible contract  
21       participant, to enter into a swap unless the swap is en-  
22       tered into on or subject to the rules of a board of trade  
23       designated as a contract market under section 5.”.

1           (4) Section 2 of such Act (7 U.S.C. 2) is fur-  
2       ther amended by inserting after subsection (i) the  
3       following:

4       “(j) CLEARING REQUIREMENT.—

5           “(1) IN GENERAL.—

6           “(A) STANDARD FOR CLEARING.—A swap  
7       shall be submitted for clearing if a derivatives  
8       clearing organization that is registered under  
9       this Act will accept the swap for clearing, and  
10      the Commission has determined under para-  
11      graph (2)(B)(ii) that the swap is required to be  
12      cleared.

13          “(B) OPEN ACCESS.—The rules of a de-  
14      rivatives clearing organization described in sub-  
15      paragraph (A) shall—

16          “(i) prescribe that all swaps submitted  
17      to the derivatives clearing organization  
18      with the same terms and conditions are  
19      economically equivalent within the deriva-  
20      tives clearing organization and may be off-  
21      set with each other within the derivatives  
22      clearing organization; and

23          “(ii) provide for non-discriminatory  
24      clearing of a swap executed bilaterally or  
25      on or through the rules of an unaffiliated



1 designated contract market or swap execu-  
2 tion facility.

3 “(2) COMMISSION REVIEW.—

4 “(A) COMMISSION-INITIATED REVIEW.—

5 “(i) The Commission shall review each  
6 swap, or any group, category, type or class  
7 of swaps to make a determination as to  
8 whether the swap or group, category, type,  
9 or class of swaps should be required to be  
10 cleared.

11 “(ii) The Commission shall provide at  
12 least a 30-day public comment period re-  
13 garding any determination made under  
14 clause (i).

15 “(B) SWAP SUBMISSIONS.—

16 “(i) A derivatives clearing organiza-  
17 tion shall submit to the Commission each  
18 swap, or any group, category, type or class  
19 of swaps that it plans to accept for clear-  
20 ing, and provide notice to its members (in  
21 a manner to be determined by the Com-  
22 mission) of the submission.

23 “(ii) The Commission shall—

1                   “(I) make available to the public  
2                   any submission received under clause  
3                   (i);

4                   “(II) review each submission  
5                   made under clause (i), and determine  
6                   whether the swap, or group, category,  
7                   type, or class of swaps described in  
8                   the submission is required to be  
9                   cleared; and

10                  “(III) provide at least a 30-day  
11                  public comment period regarding its  
12                  determination as to whether the clear-  
13                  ing requirement under paragraph  
14                  (1)(A) shall apply to the submission.

15                  “(C) DEADLINE.—The Commission shall  
16                  make its determination under subparagraph  
17                  (B)(ii) not later than 90 days after receiving a  
18                  submission made under subparagraph (B)(i),  
19                  unless the submitting derivatives clearing orga-  
20                  nization agrees to an extension for the time lim-  
21                  itation established under this subparagraph.

22                  “(D) DETERMINATION.—

23                  “(i) In reviewing a submission made  
24                  under subparagraph (B), the Commission

1 shall review whether the submission is con-  
2 sistent with section 5b(c)(2),

3 “(ii) In reviewing a swap, group of  
4 swaps, or class of swaps pursuant to sub-  
5 paragraph (A) or a submission made under  
6 subparagraph (B), the Commission shall  
7 take into account the following factors:

8 “(I) The existence of significant  
9 outstanding notional exposures, trad-  
10 ing liquidity and adequate pricing  
11 data.

12 “(II) The availability of rule  
13 framework, capacity, operational ex-  
14 pertise and resources, and credit sup-  
15 port infrastructure to clear the con-  
16 tract on terms that are consistent  
17 with the material terms and trading  
18 conventions on which the contract is  
19 then traded.

20 “(III) The effect on the mitiga-  
21 tion of systemic risk, taking into ac-  
22 count the size of the market for such  
23 contract and the resources of the de-  
24 rivatives clearing organization avail-  
25 able to clear the contract.

1                   “(IV) The effect on competition,  
2                   including appropriate fees and charges  
3                   applied to clearing.

4                   “(V) The existence of reasonable  
5                   legal certainty in the event of the in-  
6                   solveny of the relevant derivatives  
7                   clearing organization or 1 or more of  
8                   its clearing members with regard to  
9                   the treatment of customer and swap  
10                  counterparty positions, funds, and  
11                  property.

12                  “(iii) In making a determination  
13                  under subparagraph (B)(ii) that the clear-  
14                  ing requirement shall apply, the Commis-  
15                  sion may require such terms and condi-  
16                  tions to the requirement as the Commis-  
17                  sion determines to be appropriate.

18                  “(E) RULES.—Not later than 1 year after  
19                  the date of the enactment of the Derivative  
20                  Markets Transparency and Accountability Act  
21                  of 2009, the Commission shall adopt rules for  
22                  a derivatives clearing organization’s submission  
23                  for review, pursuant to this paragraph, of a  
24                  swap, or a group, category, type or class of  
25                  swaps, that it seeks to accept for clearing.

1           “(3) STAY OF CLEARING REQUIREMENT.—

2           “(A) After a determination pursuant to  
3 paragraph (2)(B), the Commission, on applica-  
4 tion of a counterparty to a swap or on its own  
5 initiative, may stay the clearing requirement of  
6 paragraph (1) until the Commission completes  
7 a review of the terms of the swap (or the group,  
8 category, type or class of swaps) and the clear-  
9 ing arrangement.

10           “(B) DEADLINE.—The Commission shall  
11 complete a review undertaken pursuant to sub-  
12 paragraph (A) not later than 90 days after  
13 issuance of the stay, unless the derivatives  
14 clearing organization that clears the swap, or  
15 group, category, type or class of swaps, agrees  
16 to an extension of the time limitation estab-  
17 lished under this subparagraph.

18           “(C) DETERMINATION.—Upon completion  
19 of the review undertaken pursuant to subpara-  
20 graph (A), the Commission may—

21           “(i) determine, unconditionally or sub-  
22 ject to such terms and conditions as the  
23 Commission determines to be appropriate,  
24 that the swap, or group, category, type or  
25 class of swaps, must be cleared pursuant

1 to this subsection if it finds that such  
2 clearing is consistent with paragraph  
3 (2)(D); or

4 “(ii) determine that the clearing re-  
5 quirement of paragraph (1) shall not apply  
6 to the swap, or group, category, type or  
7 class of swaps.

8 “(D) RULES.—Not later than 1 year after  
9 the date of the enactment of the Derivative  
10 Markets Transparency and Accountability Act  
11 of 2009, the Commission shall adopt rules for  
12 reviewing, pursuant to this paragraph, a deriva-  
13 tives clearing organization’s clearing of a swap,  
14 or a group, category, type or class of swaps,  
15 that it has accepted for clearing.

16 “(4) PREVENTION OF EVASION.—The Commis-  
17 sion may prescribe rules under this subsection, or  
18 issue interpretations of the rules, as necessary to  
19 prevent evasions of this subsection.

20 “(5) REQUIRED REPORTING.—

21 “(A) IN GENERAL.—All swaps that are not  
22 accepted for clearing by any derivatives clearing  
23 organization shall be reported either to a swap  
24 repository described in section 21 or, if there is  
25 no repository that would accept the swap, to the

1 Commission pursuant to section 4r within such  
2 time period as the Commission may by rule or  
3 regulation prescribe. Counterparties to a swap  
4 may agree which counterparty will report the  
5 swap as required by this paragraph.

6 “(B) SWAP DEALER DESIGNATION.—With  
7 regard to swaps where only 1 counterparty is a  
8 swap dealer, the swap dealer shall report the  
9 swap as required by this paragraph.

10 “(6) REPORTING TRANSITION RULES.—Rules  
11 adopted by the Commission under this section shall  
12 provide for the reporting of data, as follows:

13 “(A) Swaps entered into before the date of  
14 the enactment of this subsection shall be re-  
15 ported to a registered swap repository or the  
16 Commission no later than 180 days after the  
17 effective date of this subsection; and

18 “(B) Swaps entered into on or after such  
19 date of enactment shall be reported to a reg-  
20 istered swap repository or the Commission no  
21 later than the later of—

22 “(i) 90 days after such effective date;

23 or

1                   “(ii) such other time after entering  
2                   into the swap as the Commission may pre-  
3                   scribe by rule or regulation.

4                   “(7) CLEARING TRANSITION RULES.—

5                   “(A) Swaps entered into before the date of  
6                   the enactment of this subsection are exempt  
7                   from the clearing requirements of this sub-  
8                   section if reported pursuant to paragraph  
9                   (6)(A).

10                  “(B) Swaps entered into before application  
11                  of the clearing requirement pursuant to this  
12                  subsection are exempt from the clearing re-  
13                  quirements of this subsection if reported pursu-  
14                  ant to paragraph (6)(B).

15                  “(8) EXCEPTIONS.—

16                  “(A) IN GENERAL.—The requirements of  
17                  paragraph (1) shall not apply to a swap if one  
18                  of the counterparties to the swap—

19                         “(i) is not a swap dealer or major  
20                         swap participant;

21                         “(ii) is using swaps to hedge or miti-  
22                         gate commercial risk, including operating  
23                         or balance sheet risk; and

24                         “(iii) notifies the Commission, in a  
25                         manner set forth by the Commission, how



1           it generally meets its financial obligations  
2           associated with entering into non-cleared  
3           swaps.

4           “(B) ABUSE OF EXCEPTION.—The Com-  
5           mission may prescribe rules under this sub-  
6           section, or issue interpretations of the rules, as  
7           necessary to prevent abuse of the exemption in  
8           subparagraph (A) by swap dealers and major  
9           swap participants.

10          “(C) OPTION TO CLEAR.—The application  
11          of the clearing exception in subparagraph (A) is  
12          solely at the discretion of the counterparty to  
13          the swap that meets the conditions of clauses  
14          (i) through (iii) of subparagraph (A).

15          “(k) EXECUTION TRANSPARENCY.—

16          “(1) REQUIREMENT.—A swap that is subject to  
17          the clearing requirement of subsection (j) shall not  
18          be traded except on or through a board of trade des-  
19          ignated as a contract market under section 5, or on  
20          or through a swap execution facility registered under  
21          section 5h, that makes the swap available for trad-  
22          ing.

23          “(2) EXCEPTIONS.—The requirement of para-  
24          graph (1) shall not apply to a swap if no designated

1 contract market or swap execution facility makes the  
2 swap available for trading.

3 “(3) AGRICULTURAL SWAPS.—No person shall  
4 offer to enter into, enter into or confirm the execu-  
5 tion of, any swap in an agricultural commodity (as  
6 defined by the Commission) that is subject to para-  
7 graphs (1) and (2) except pursuant to a rule or reg-  
8 ulation of the Commission allowing the swap under  
9 such terms and conditions as the Commission shall  
10 prescribe.

11 “(4) REQUIRED REPORTING.—If the exception  
12 of paragraph (2) applies and there is no facility that  
13 makes the swap available to trade, the counterpar-  
14 ties shall comply with any recordkeeping and trans-  
15 action reporting requirements that may be pre-  
16 scribed by the Commission with respect to swaps  
17 subject to the requirements of paragraph (1).

18 “(5) EXCHANGE TRADING.—In adopting rules  
19 and regulations, the Commission shall endeavor to  
20 eliminate unnecessary impediments to the trading on  
21 boards of trade designated as contract markets  
22 under section 5 of contracts, agreements, or trans-  
23 actions that would be security-based swaps but for  
24 the trading of such contracts, agreements or trans-  
25 actions on such a designated contract market.”

1 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

2 (1) Subsections (a) and (b) of section 5b of  
3 such Act (7 U.S.C. 7a-1) are amended to read as  
4 follows:

5 “(a) REGISTRATION REQUIREMENT.—

6 “(1) IN GENERAL.—It shall be unlawful for any  
7 entity, unless registered with the Commission, di-  
8 rectly or indirectly to make use of the mails or any  
9 means or instrumentality of interstate commerce to  
10 perform the functions of a derivatives clearing orga-  
11 nization described in section 1a(10) of this Act with  
12 respect to—

13 “(A) a contract of sale of a commodity for  
14 future delivery (or option on such a contract) or  
15 option on a commodity, in each case unless the  
16 contract or option is—

17 “(i) excluded from this Act by section  
18 2(a)(1)(C)(i), 2(c), or 2(f); or

19 “(ii) a security futures product  
20 cleared by a clearing agency registered  
21 with the Securities and Exchange Commis-  
22 sion under the Securities Exchange Act of  
23 1934 (15 U.S.C. 78a et seq.); or

24 “(B) a swap.

1           “(2) EXISTING BANKS AND CLEARING AGEN-  
2           CIES.—A bank or a clearing agency registered with  
3           the Securities and Exchange Commission under the  
4           Securities Exchange Act of 1934 required to be reg-  
5           istered as a derivatives clearing organization under  
6           this section is deemed to be registered under this  
7           section to the extent that the bank cleared swaps, as  
8           defined in this Act, as a multilateral clearing organi-  
9           zation or the clearing agency cleared swaps, as de-  
10          fined in this Act, before the enactment of this sub-  
11          section. A bank to which this paragraph applies  
12          may, by the vote of the shareholders owning not less  
13          than 51 percent of the voting interests of the bank,  
14          be converted into a State corporation, partnership,  
15          limited liability company, or other similar legal form  
16          pursuant to a plan of conversion, if the conversion  
17          is not in contravention of applicable State law.

18          “(b) VOLUNTARY REGISTRATION.—A person that  
19          clears agreements, contracts, or transactions that are not  
20          required to be cleared under this Act may register with  
21          the Commission as a derivatives clearing organization.”.

22                (2) Section 5b of such Act (7 U.S.C. 7a-1) is  
23          amended by adding at the end the following:

24          “(g) RULES.—Not later than 1 year after the date  
25          of the enactment of the Derivative Markets Transparency

1 and Accountability Act of 2009, the Commission shall  
2 adopt rules governing persons that are registered as de-  
3 rivatives clearing organizations for swaps under this sub-  
4 section.

5 “(h) EXEMPTIONS.—

6 “(1) IN GENERAL.—The Commission may ex-  
7 empt, conditionally or unconditionally, a derivatives  
8 clearing organization from registration under this  
9 section for the clearing of swaps if the Commission  
10 finds that the derivatives clearing organization is  
11 subject to comparable, comprehensive supervision  
12 and regulation on a consolidated basis by a Pruden-  
13 tial Regulator or the appropriate governmental au-  
14 thorities in the organization’s home country.

15 “(2) A person that is required to be registered  
16 as a derivatives clearing organization under this sec-  
17 tion, whose principal business is clearing securities  
18 and options on securities and which is a clearing  
19 agency registered with the Securities Exchange  
20 Commission under the Securities Exchange Act of  
21 1934 (15 U.S.C. 78a et seq.), shall be uncondition-  
22 ally exempt from registration under this section sole-  
23 ly for the purpose of clearing swaps, unless the Com-  
24 mission finds that the clearing agency is not subject

1 to comparable, comprehensive supervision and regu-  
2 lation by the Securities and Exchange Commission.

3 “(i) DESIGNATION OF COMPLIANCE OFFICER.—

4 “(1) IN GENERAL.—Each derivatives clearing  
5 organization shall designate an individual to serve as  
6 a compliance officer.

7 “(2) DUTIES.—The compliance officer—

8 “(A) shall report directly to the board or  
9 to the senior officer of the derivatives clearing  
10 organization; and

11 “(B) shall—

12 “(i) review compliance with the core  
13 principles in section 5b(c)(2).

14 “(ii) in consultation with the board of  
15 the derivatives clearing organization, a  
16 body performing a function similar to that  
17 of a board, or the senior officer of the de-  
18 rivatives clearing organization, resolve any  
19 conflicts of interest that may arise;

20 “(iii) be responsible for administering  
21 the policies and procedures required to be  
22 established pursuant to this section; and

23 “(iv) ensure compliance with this Act  
24 and the rules and regulations issued under  
25 this Act; and

1           “(C) shall establish procedures for remedi-  
2           ation of non-compliance issues found during  
3           compliance office reviews, lookbacks, internal or  
4           external audit findings, self-reported errors, or  
5           through validated complaints. The procedures  
6           shall establish the handling, management re-  
7           sponse, remediation, re-testing, and closing of  
8           non-compliant issues.

9           “(3) ANNUAL REPORTS REQUIRED.—The com-  
10          pliance officer shall annually prepare and sign a re-  
11          port on the compliance of the derivatives clearing or-  
12          ganization with this Act and the policies and proce-  
13          dures of the derivatives clearing organization, includ-  
14          ing the code of ethics and conflict of interest policies  
15          of the derivatives clearing organization, in accord-  
16          ance with rules prescribed by the Commission. The  
17          compliance report shall accompany the financial re-  
18          ports of the derivatives clearing organization that  
19          are required to be furnished to the Commission pur-  
20          suant to this section and shall include a certification  
21          that, under penalty of law, the report is accurate  
22          and complete.”.

23          (3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-  
24          1(c)(2)) is amended to read as follows:

1           “(2) CORE PRINCIPLES FOR DERIVATIVES  
2       CLEARING ORGANIZATIONS.—

3           “(A) IN GENERAL.—To be registered and  
4       to maintain registration as a derivatives clear-  
5       ing organization, a derivatives clearing organi-  
6       zation shall comply with the core principles  
7       specified in this paragraph and any requirement  
8       that the Commission may impose by rule or  
9       regulation pursuant to section 8a(5). Except  
10      where the Commission determines otherwise by  
11      rule or regulation, a derivatives clearing organi-  
12      zation shall have reasonable discretion in estab-  
13      lishing the manner in which the organization  
14      complies with the core principles.

15           “(B) FINANCIAL RESOURCES.—

16           “(i) The derivatives clearing organiza-  
17       tion shall have adequate financial, oper-  
18       ational, and managerial resources to dis-  
19       charge the responsibilities of the organiza-  
20       tion.

21           “(ii) The financial resources of the de-  
22       rivatives clearing organization shall at a  
23       minimum exceed the total amount that  
24       would—



1                   “(I) enable the organization to  
2                   meet the financial obligations of the  
3                   organization to the members of, and  
4                   participants in, the organization, not-  
5                   withstanding a default by the member  
6                   or participant creating the largest fi-  
7                   nancial exposure for the organization  
8                   in extreme but plausible market condi-  
9                   tions; and

10                   “(II) enable the organization to  
11                   cover the operating costs of the orga-  
12                   nization for a period of 1 year, cal-  
13                   culated on a rolling basis.

14                   “(C) PARTICIPANT AND PRODUCT ELIGI-  
15                   BILITY.—

16                   “(i) The derivatives clearing organiza-  
17                   tion shall establish—

18                   “(I) appropriate admission and  
19                   continuing eligibility standards (in-  
20                   cluding sufficient financial resources  
21                   and operational capacity to meet obli-  
22                   gations arising from participation in  
23                   the organization) for members of and  
24                   participants in the organization; and

1                   “(II) appropriate standards for  
2                   determining eligibility of agreements,  
3                   contracts, or transactions submitted  
4                   to the organization for clearing.

5                   “(ii) The derivatives clearing organi-  
6                   zation shall have procedures in place to  
7                   verify that participation and membership  
8                   requirements are met on an ongoing basis.

9                   “(iii) The participation and member-  
10                  ship requirements of the derivatives clear-  
11                  ing organization shall be objective, publicly  
12                  disclosed, and permit fair and open access.

13                 “(D) RISK MANAGEMENT.—

14                 “(i) The derivatives clearing organiza-  
15                 tion shall have the ability to manage the  
16                 risks associated with discharging the re-  
17                 sponsibilities of a derivatives clearing orga-  
18                 nization through the use of appropriate  
19                 tools and procedures.

20                 “(ii) The derivatives clearing organi-  
21                 zation shall measure the credit exposures  
22                 of the organization to the members of, and  
23                 participants in, the organization at least  
24                 once each business day and shall monitor  
25                 the exposures throughout the business day.

1           “(iii) Through margin requirements  
2           and other risk control mechanisms, a de-  
3           rivatives clearing organization shall limit  
4           the exposures of the organization to poten-  
5           tial losses from defaults by the members  
6           of, and participants in, the organization so  
7           that the operations of the organization  
8           would not be disrupted and non-defaulting  
9           members or participants would not be ex-  
10          posed to losses that they cannot anticipate  
11          or control.

12           “(iv) Margin required from all mem-  
13          bers and participants shall be sufficient to  
14          cover potential exposures in normal market  
15          conditions.

16           “(v) The models and parameters used  
17          in setting margin requirements shall be  
18          risk-based and reviewed regularly.

19          “(E) SETTLEMENT PROCEDURES.—The  
20          derivatives clearing organization shall—

21           “(i) complete money settlements on a  
22          timely basis, and not less than once each  
23          business day;

24           “(ii) employ money settlement ar-  
25          rangements that eliminate or strictly limit

1 the exposure of the organization to settle-  
2 ment bank risks, such as credit and liquid-  
3 ity risks from the use of banks to effect  
4 money settlements;

5 “(iii) ensure money settlements are  
6 final when effected;

7 “(iv) maintain an accurate record of  
8 the flow of funds associated with each  
9 money settlement;

10 “(v) have the ability to comply with  
11 the terms and conditions of any permitted  
12 netting or offset arrangements with other  
13 clearing organizations; and

14 “(vi) for physical settlements, estab-  
15 lish rules that clearly state the obligations  
16 of the organization with respect to physical  
17 deliveries, including how risks from these  
18 obligations shall be identified and man-  
19 aged.

20 “(F) TREATMENT OF FUNDS.—

21 “(i) The derivatives clearing organiza-  
22 tion shall have standards and procedures  
23 designed to protect and ensure the safety  
24 of member and participant funds and as-  
25 sets.

1           “(ii) The derivatives clearing organi-  
2           zation shall hold member and participant  
3           funds and assets in a manner whereby risk  
4           of loss or of delay in the access of the or-  
5           ganization to the assets and funds is mini-  
6           mized.

7           “(iii) Assets and funds invested by the  
8           derivatives clearing organization shall be  
9           held in instruments with minimal credit,  
10          market, and liquidity risks.

11          “(G)   DEFAULT   RULES   AND   PROCE-  
12          DURES.—

13               “(i) The derivatives clearing organiza-  
14               tion shall have rules and procedures de-  
15               signed to allow for the efficient, fair, and  
16               safe management of events when members  
17               or participants become insolvent or other-  
18               wise default on their obligations to the or-  
19               ganization.

20               “(ii) The default procedures of the de-  
21               rivatives clearing organization shall be  
22               clearly stated, and they shall ensure that  
23               the organization can take timely action to  
24               contain losses and liquidity pressures and

1 to continue meeting the obligations of the  
2 organization.

3 “(iii) The default procedures shall be  
4 publicly available.

5 “(H) RULE ENFORCEMENT.—The deriva-  
6 tives clearing organization shall—

7 “(i) maintain adequate arrangements  
8 and resources for the effective monitoring  
9 and enforcement of compliance with rules  
10 of the organization and for resolution of  
11 disputes; and

12 “(ii) have the authority and ability to  
13 discipline, limit, suspend, or terminate the  
14 activities of a member or participant for  
15 violations of rules of the organization.

16 “(I) SYSTEM SAFEGUARDS.—The deriva-  
17 tives clearing organization shall—

18 “(i) establish and maintain a program  
19 of risk analysis and oversight to identify  
20 and minimize sources of operational risk  
21 through the development of appropriate  
22 controls and procedures, and the develop-  
23 ment of automated systems, that are reli-  
24 able, secure, and have adequate scalable  
25 capacity;

1                   “(ii) establish and maintain emer-  
2                   gency procedures, backup facilities, and a  
3                   plan for disaster recovery that allows for  
4                   the timely recovery and resumption of op-  
5                   erations and the fulfillment of the respon-  
6                   sibilities and obligations of the organiza-  
7                   tion; and

8                   “(iii) periodically conduct tests to  
9                   verify that backup resources are sufficient  
10                  to ensure continued order processing and  
11                  trade matching, price reporting, market  
12                  surveillance, and maintenance of a com-  
13                  prehensive and accurate audit trail.

14               “(J) REPORTING.—The derivatives clear-  
15               ing organization shall provide to the Commis-  
16               sion all information necessary for the Commis-  
17               sion to conduct oversight of the organization.

18               “(K) RECORDKEEPING.—The derivatives  
19               clearing organization shall maintain records of  
20               all activities related to the business of the orga-  
21               nization as a derivatives clearing organization  
22               in a form and manner acceptable to the Com-  
23               mission for a period of 5 years.

24               “(L) PUBLIC INFORMATION.—

1           “(i) The derivatives clearing organiza-  
2           tion shall provide market participants with  
3           sufficient information to identify and  
4           evaluate accurately the risks and costs as-  
5           sociated with using the services of the or-  
6           ganization.

7           “(ii) The derivatives clearing organi-  
8           zation shall make information concerning  
9           the rules and operating procedures gov-  
10          erning the clearing and settlement systems  
11          (including default procedures) of the orga-  
12          nization available to market participants.

13          “(iii) The derivatives clearing organi-  
14          zation shall disclose publicly and to the  
15          Commission information concerning—

16               “(I) the terms and conditions of  
17               contracts, agreements, and trans-  
18               actions cleared and settled by the or-  
19               ganization;

20               “(II) clearing and other fees that  
21               the organization charges the members  
22               of, and participants in, the organiza-  
23               tion;

24               “(III) the margin-setting method-  
25               ology and the size and composition of



1 the financial resource package of the  
2 organization;

3 “(IV) other information relevant  
4 to participation in the settlement and  
5 clearing activities of the organization;  
6 and

7 “(V) daily settlement prices, vol-  
8 ume, and open interest for all con-  
9 tracts settled or cleared by the organi-  
10 zation.

11 “(M) INFORMATION-SHARING.—The de-  
12 rivatives clearing organization shall—

13 “(i) enter into and abide by the terms  
14 of all appropriate and applicable domestic  
15 and international information-sharing  
16 agreements; and

17 “(ii) use relevant information obtained  
18 from the agreements in carrying out the  
19 risk management program of the organiza-  
20 tion.

21 “(N) ANTITRUST CONSIDERATIONS.—The  
22 derivatives clearing organization shall avoid—

23 “(i) adopting any rule or taking any  
24 action that results in any unreasonable re-  
25 straint of trade; or

1                   “(ii) imposing any material anti-  
2                   competitive burden.

3                   “(O) GOVERNANCE FITNESS STAND-  
4                   ARDS.—

5                   “(i) The derivatives clearing organiza-  
6                   tion shall establish governance arrange-  
7                   ments that are transparent in order to ful-  
8                   fill public interest requirements and to  
9                   support the objectives of the owners of,  
10                  and participants in, the organization.

11                  “(ii) The derivatives clearing organi-  
12                  zation shall establish and enforce appro-  
13                  priate fitness standards for the directors,  
14                  members of any disciplinary committee,  
15                  and members of the organization, and any  
16                  other persons with direct access to the set-  
17                  tlement or clearing activities of the organi-  
18                  zation, including any parties affiliated with  
19                  any of the persons described in this sub-  
20                  paragraph.

21                  “(P) CONFLICTS OF INTEREST.—The de-  
22                  rivatives clearing organization shall establish  
23                  and enforce rules to minimize conflicts of inter-  
24                  est in the decision-making process of the orga-

1           nization and establish a process for resolving  
2           the conflicts of interest.

3           “(Q) COMPOSITION OF THE BOARDS.—The  
4           derivatives clearing organization shall ensure  
5           that the composition of the governing board or  
6           committee includes market participants.

7           “(R) LEGAL RISK.—The derivatives clear-  
8           ing organization shall have a well founded,  
9           transparent, and enforceable legal framework  
10          for each aspect of its activities.”.

11          (4) Section 5b of such Act (7 U.S.C. 7a-1) is  
12          further amended by adding after subsection (i), as  
13          added by this section, the following:

14          “(j) REPORTING.—

15                 “(1) IN GENERAL.—A derivatives clearing orga-  
16          nization that clears swaps shall provide to the Com-  
17          mission all information determined by the Commis-  
18          sion to be necessary to perform the responsibilities  
19          of the Commission under this Act. The Commission  
20          shall adopt data collection and maintenance require-  
21          ments for swaps cleared by derivatives clearing orga-  
22          nizations that are comparable to the corresponding  
23          requirements for swaps accepted by swap reposi-  
24          tories and swaps traded on swap execution facilities.  
25          The Commission shall share the information, upon

1 request, with the Board, the Securities and Ex-  
2 change Commission, the appropriate Federal bank-  
3 ing agencies, the Financial Services Oversight Coun-  
4 cil, and the Department of Justice or other persons  
5 the Commission deems appropriate, including for-  
6 eign financial supervisors (including foreign futures  
7 authorities), foreign central banks, and foreign min-  
8 istries that comply with the provisions of section 8.

9 “(2) PUBLIC INFORMATION.—A derivatives  
10 clearing organization that clears swaps shall provide  
11 to the Commission, or its designee, such information  
12 as is required by, and in a form and at a frequency  
13 to be determined by, the Commission, in order to  
14 comply with the public reporting requirements con-  
15 tained in section 8(j).

16 “(3) A derivatives clearing organization shall  
17 keep any such books and records relating to swaps  
18 defined in section 1a(35)(A)(v) open to inspection  
19 and examination by the Securities and Exchange  
20 Commission.”.

21 (5) Section 8(e) of such Act (7 U.S.C. 12(e))  
22 is amended in the last sentence by inserting “central  
23 bank and ministries” after “department” each place  
24 it appears.

1 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING  
2 PRODUCTS.—

3 (1) REPEAL.—Sections 402(d), 404, 407,  
4 408(b), and 408(c)(2) of the Legal Certainty for  
5 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,  
6 27e, 27f(b), and 27f(c)(2)) are repealed.

7 (2) LEGAL CERTAINTY.—Section 403 of the  
8 Legal Certainty for Bank Products Act of 2000 (7  
9 U.S.C. 27a) is amended to read as follows:

10 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

11 “(a) EXCLUSION.—Except as provided in subsection  
12 (b) or (c)—

13 “(1) the Commodity Exchange Act shall not  
14 apply to, and the Commodity Futures Trading Com-  
15 mission shall not exercise regulatory authority under  
16 such Act with respect to, an identified banking prod-  
17 uct; and

18 “(2) the definitions of ‘security-based swap’ in  
19 section 3(a)(68) of the Securities Exchange Act of  
20 1934 and ‘security-based swap agreement’ in section  
21 3(a)(76) of the Securities Exchange Act of 1934 do  
22 not include any identified banking product.

23 “(b) EXCEPTION.—An appropriate Federal banking  
24 agency may except an identified banking product of a  
25 bank under its regulatory jurisdiction from the exclusions

1 in subsection (a) if the agency determines, in consultation  
2 with the Commodity Futures Trading Commission and the  
3 Securities and Exchange Commission, that the product—

4 “(1) would meet the definition of swap in sec-  
5 tion 1a(35) of the Commodity Exchange Act (7  
6 U.S.C. 1a(35)) or security-based swap in section  
7 3(a)(68) of the Securities and Exchange Act of  
8 1934; and

9 “(2) has become known to the trade as a swap  
10 or security-based swap, or otherwise has been struc-  
11 tured as an identified banking product for the pur-  
12 pose of evading the provisions of the Commodity Ex-  
13 change Act (7 U.S.C. 1 et seq.), the Securities Act  
14 of 1933 (15 U.S.C. 77a et seq.), or the Securities  
15 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

16 “(c) EXCEPTION.—The exclusions in subsection (a)  
17 shall not apply to an identified banking product that—

18 “(1) is a product of a bank that is not under  
19 the regulatory jurisdiction of an appropriate Federal  
20 banking agency;

21 “(2) meets the definition of swap in section  
22 1a(35) of the Commodity Exchange Act or security-  
23 based swap in section 3(a)(68) of the Securities and  
24 Exchange Act of 1934; and

1           “(3) has become known to the trade as a swap  
2           or security-based swap, or otherwise has been struc-  
3           tured as an identified banking product for the pur-  
4           pose of evading the provisions of the Commodity Ex-  
5           change Act (7 U.S.C. 1 et seq.), the Securities Act  
6           of 1933 (15 U.S.C. 77a et seq.), or the Securities  
7           Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

8   **SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP**  
9           **DATA.**

10          Section 8 of the Commodity Exchange Act (7 U.S.C.  
11 12) is amended by adding at the end the following:

12          “(j) **PUBLIC REPORTING OF AGGREGATE SWAP**  
13 **DATA.—**

14           “(1) **IN GENERAL.**—The Commission, or a per-  
15           son designated by the Commission pursuant to para-  
16           graph (2), shall make available to the public, in a  
17           manner that does not disclose the business trans-  
18           actions and market positions of any person, aggre-  
19           gate data on swap trading volumes and positions  
20           from the sources set forth in paragraph (3).

21           “(2) **DESIGNEE OF THE COMMISSION.**—The  
22           Commission may designate a derivatives clearing or-  
23           ganization or a swap repository to carry out the  
24           public reporting described in paragraph (1).

1           “(3) SOURCES OF INFORMATION.—The sources  
2           of the information to be publicly reported as de-  
3           scribed in paragraph (1) are—

4                   “(A) derivatives clearing organizations  
5                   pursuant to section 5b(j)(2);

6                   “(B) swap repositories pursuant to section  
7                   21(e)(3); and

8                   “(C) reports received by the Commission  
9                   pursuant to section 4r.”.

10 **SEC. 3105. SWAP REPOSITORIES.**

11           The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
12 is amended by inserting after section 20 the following:

13 **“SEC. 21. SWAP REPOSITORIES.**

14           “(a) REGISTRATION REQUIREMENT.—

15                   “(1) IN GENERAL.—It shall be unlawful for any  
16                   person, unless registered with the Commission, di-  
17                   rectly or indirectly to make use of the mails or any  
18                   means or instrumentality of interstate commerce to  
19                   perform the functions of a swap repository.

20                   “(2) INSPECTION AND EXAMINATION.—Reg-  
21                   istered swap repositories shall be subject to inspec-  
22                   tion and examination by any representative of the  
23                   Commission.

24                   “(b) STANDARD SETTING.—



1           “(1) DATA IDENTIFICATION.—The Commission  
2           shall prescribe standards that specify the data ele-  
3           ments for each swap that shall be collected and  
4           maintained by each registered swap repository.

5           “(2) DATA COLLECTION AND MAINTENANCE.—  
6           The Commission shall prescribe data collection and  
7           data maintenance standards for swap repositories.

8           “(3) COMPARABILITY.—The standards pre-  
9           scribed by the Commission under this subsection  
10          shall be comparable to the data standards imposed  
11          by the Commission on derivatives clearing organiza-  
12          tions that clear swaps.

13          “(c) DUTIES.—A swap repository shall—

14               “(1) accept data prescribed by the Commission  
15               for each swap under subsection (b);

16               “(2) maintain the data in such form and man-  
17               ner and for such period as may be required by the  
18               Commission;

19               “(3) provide to the Commission, or its designee,  
20               such information as is required by, and in a form  
21               and at a frequency to be determined by, the Com-  
22               mission, in order to comply with the public reporting  
23               requirements contained in section 8(j); and

24               “(4) make available, on a confidential basis  
25               pursuant to section 8, all data obtained by the swap

1 repository, including individual counterparty trade  
2 and position data, to the Commission, the appro-  
3 priate Federal banking agencies, the Financial Serv-  
4 ices Oversight Council, the Securities and Exchange  
5 Commission, and the Department of Justice or to  
6 other persons the Commission deems appropriate,  
7 including foreign financial supervisors (including for-  
8 eign futures authorities), foreign central banks, and  
9 foreign ministries.

10 “(d) RULES.—Not later than 1 year after the date  
11 of the enactment of the Derivative Markets Transparency  
12 and Accountability Act of 2009, the Commission shall  
13 adopt rules governing persons that are registered under  
14 this section, including rules that specify the data elements  
15 that shall be collected and maintained.

16 “(e) EXEMPTIONS.—The Commission may exempt,  
17 conditionally or unconditionally, a swap repository from  
18 the requirements of this section if the Commission finds  
19 that the swap repository is subject to comparable, com-  
20 prehensive supervision and regulation on a consolidated  
21 basis by the Securities and Exchange Commission, a Pru-  
22 dential Regulator or the appropriate governmental au-  
23 thorities in the organization’s home country.”.

1 **SEC. 3106. REPORTING AND RECORDKEEPING.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
3 is amended by inserting after section 4q the following:

4 **"SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**  
5 **SWAPS.**

6 "(a) IN GENERAL.—Any person who enters into a  
7 swap and—

8 "(1) did not have the swap cleared in accord-  
9 ance with section 2(j)(1); and

10 "(2) did not have data regarding the swap ac-  
11 cepted by a swap repository in accordance with rules  
12 (including timeframes) adopted by the Commission  
13 under section 21,

14 shall meet the requirements in subsection (b).

15 "(b) REPORTS.—Any person described in subsection  
16 (a) shall—

17 "(1) make such reports in such form and man-  
18 ner and for such period as the Commission shall pre-  
19 scribe by rule or regulation regarding the swaps held  
20 by the person; and

21 "(2) keep books and records pertaining to the  
22 swaps held by the person in such form and manner  
23 and for such period as may be required by the Com-  
24 mission, which books and records shall be open to  
25 inspection by any representative of the Commission,  
26 an appropriate Federal banking agency, the Securi-

1 ties and Exchange Commission, the Financial Serv-  
2 ices Oversight Council, and the Department of Jus-  
3 tice.

4 “(c) IDENTICAL DATA.—In adopting rules under this  
5 section, the Commission shall require persons described in  
6 subsection (a) to report the same or a more comprehensive  
7 set of data than the Commission requires swap reposi-  
8 tories to collect under section 21.”.

9 **SEC. 3107. REGISTRATION AND REGULATION OF SWAP**  
10 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
12 is amended by inserting after section 4r (as added by sec-  
13 tion 3106) the following:

14 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**  
15 **ERS AND MAJOR SWAP PARTICIPANTS.**

16 “(a) REGISTRATION.—

17 “(1) It shall be unlawful for any person to act  
18 as a swap dealer unless the person is registered as  
19 a swap dealer with the Commission.

20 “(2) It shall be unlawful for any person to act  
21 as a major swap participant unless the person is  
22 registered as a major swap participant with the  
23 Commission.

24 “(b) REQUIREMENTS.—

1           “(1) IN GENERAL.—A person shall register as  
2       a swap dealer or major swap participant by filing a  
3       registration application with the Commission.

4           “(2) CONTENTS.—The application shall be  
5       made in such form and manner as prescribed by the  
6       Commission, giving any information and facts as the  
7       Commission may deem necessary concerning the  
8       business in which the applicant is or will be engaged.  
9       The person, when registered as a swap dealer or  
10      major swap participant, shall continue to report and  
11      furnish to the Commission such information per-  
12      taining to the person’s business as the Commission  
13      may require.

14          “(3) EXPIRATION.—Each registration shall ex-  
15      pire at such time as the Commission may by rule or  
16      regulation prescribe.

17          “(4) RULES.—Except as provided in sub-  
18      sections (c), (d) and (e), the Commission may pre-  
19      scribe rules applicable to swap dealers and major  
20      swap participants, including rules that limit the ac-  
21      tivities of swap dealers and major swap participants.  
22      Except with regard to subsection (d)(1)(A), the  
23      Commission may provide conditional or uncondi-  
24      tional exemptions from some or all of the rules or

1 requirements prescribed under this section for swap  
2 dealers and major swap participants.

3 “(5) TRANSITION.—Rules adopted under this  
4 section shall provide for the registration of swap  
5 dealers and major swap participants no later than 1  
6 year after the effective date of the Derivative Mar-  
7 kets Transparency and Accountability Act of 2009.

8 “(6) STATUTORY DISQUALIFICATION.—Except  
9 to the extent otherwise specifically provided by rule,  
10 regulation, or order, it shall be unlawful for a swap  
11 dealer or a major swap participant to permit any  
12 person associated with a swap dealer or a major  
13 swap participant who is subject to a statutory dis-  
14 qualification to effect or be involved in effecting  
15 swaps on behalf of the swap dealer or major swap  
16 participant, if the swap dealer or major swap partici-  
17 pant knew, or in the exercise of reasonable care  
18 should have known, of the statutory disqualification.

19 “(c) RULES.—

20 “(1) IN GENERAL.—Not later than 1 year after  
21 the date of the enactment of this section, the Com-  
22 mission shall adopt rules for persons that are reg-  
23 istered as swap dealers or major swap participants  
24 under this section.

1           “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
2           MENTS.—The Commission shall not prescribe rules  
3           imposing prudential requirements on swap dealers or  
4           major swap participants for which there is a Pru-  
5           dential Regulator. This provision shall not be con-  
6           strued as limiting the authority of the Commission  
7           to prescribe appropriate business conduct, reporting,  
8           and recordkeeping requirements to protect investors.

9           “(d) CAPITAL AND MARGIN REQUIREMENTS.—

10          “(1) IN GENERAL.—

11               “(A) BANK SWAP DEALERS AND MAJOR  
12               SWAP PARTICIPANTS.—Each registered swap  
13               dealer and major swap participant for which  
14               there is a Prudential Regulator shall meet such  
15               minimum capital requirements and minimum  
16               initial and variation margin requirements as the  
17               Prudential Regulators shall by rule or regula-  
18               tion jointly prescribe that:

19                       “(i) help ensure the safety and sound-  
20                       ness of the swap dealer or major swap par-  
21                       ticipant; and

22                       “(ii) are appropriate for the risk asso-  
23                       ciated with the non-cleared swaps held as  
24                       a swap dealer or major swap participant.

1           “(B) NON-BANK SWAP DEALERS AND  
2           MAJOR SWAP PARTICIPANTS.—Each registered  
3           swap dealer and major swap participant for  
4           which there is not a Prudential Regulator shall  
5           meet such minimum capital requirements and  
6           minimum initial and variation margin require-  
7           ments as the Commission shall by rule or regu-  
8           lation prescribe that—

9                     “(i) help ensure the safety and sound-  
10           ness of the swap dealer or major swap par-  
11           ticipant; and

12                    “(ii) are appropriate for the risk asso-  
13           ciated with the non-cleared swaps held as  
14           a swap dealer or major swap participant.

15           “(2) RULES.—

16                    “(A) BANK SWAP DEALERS AND MAJOR  
17           SWAP PARTICIPANTS.—No later than 1 year  
18           after the date of the enactment of the Deriva-  
19           tive Markets Transparency and Accountability  
20           Act of 2009, the Prudential Regulators, in con-  
21           sultation with the Commission, shall jointly  
22           adopt rules imposing capital and margin re-  
23           quirements under this subsection for swap deal-  
24           ers and major swap participants, with respect  
25           to their activities as a swap dealer or major



1 swap participant for which there is a Prudential  
2 Regulator

3 “(B) NON-BANK SWAP DEALERS AND  
4 MAJOR SWAP PARTICIPANTS.—No later than 1  
5 year after the date of the enactment of the De-  
6 rivative Markets Transparency and Account-  
7 ability Act of 2009, the Commission shall adopt  
8 rules imposing capital and margin requirements  
9 under this subsection for swap dealers and  
10 major swap participants for which there is no  
11 Prudential Regulator.

12 “(3) AUTHORITY.—Nothing in this section shall  
13 limit the authority of the Commission to set capital  
14 requirements for a registered futures commission  
15 merchant or introducing broker in accordance with  
16 section 4f.

17 “(e) REPORTING AND RECORDKEEPING.—

18 “(1) IN GENERAL.—Each registered swap deal-  
19 er and major swap participant—

20 “(A) shall make such reports as are pre-  
21 scribed by the Commission by rule or regulation  
22 regarding the transactions and positions and fi-  
23 nancial condition of the person;

24 “(B) for which—

1           “(i) there is a Prudential Regulator,  
2           shall keep books and records of all activi-  
3           ties related to its business as a swap dealer  
4           or major swap participant in such form  
5           and manner and for such period as may be  
6           prescribed by the Commission by rule or  
7           regulation;

8           “(ii) there is no Prudential Regulator,  
9           shall keep books and records in such form  
10          and manner and for such period as may be  
11          prescribed by the Commission by rule or  
12          regulation;

13          “(C) shall keep the books and records open  
14          to inspection and examination by any represent-  
15          ative of the Commissionl and

16          “(D) shall keep any such books and  
17          records relating to swaps defined in section  
18          1a(35)(A)(v) open to inspection and examina-  
19          tion by the Securities and Exchange Commis-  
20          sion.

21          “(2) RULES.—No later than 1 year after the  
22          date of the enactment of the Derivative Markets  
23          Transparency and Accountability Act of 2009, the  
24          Commission shall adopt rules governing reporting

1 and recordkeeping for swap dealers and major swap  
2 participants.

3 “(f) DAILY TRADING RECORDS.—

4 “(1) IN GENERAL.—Each registered swap deal-  
5 er and major swap participant shall maintain daily  
6 trading records of its swaps and all related records  
7 (including related cash or forward transactions) and  
8 recorded communications including but not limited  
9 to electronic mail, instant messages, and recordings  
10 of telephone calls, for such period as may be pre-  
11 scribed by the Commission by rule or regulation.

12 “(2) INFORMATION REQUIREMENTS.—The daily  
13 trading records shall include such information as the  
14 Commission shall prescribe by rule or regulation.

15 “(3) CUSTOMER RECORDS.—Each registered  
16 swap dealer and major swap participant shall main-  
17 tain daily trading records for each customer or  
18 counterparty in such manner and form as to be  
19 identifiable with each swap transaction.

20 “(4) AUDIT TRAIL.—Each registered swap deal-  
21 er and major swap participant shall maintain a com-  
22 plete audit trail for conducting comprehensive and  
23 accurate trade reconstructions.

24 “(5) RULES.—No later than 1 year after the  
25 date of the enactment of the Derivative Markets

1 Transparency and Accountability Act of 2009, the  
2 Commission shall adopt rules governing daily trad-  
3 ing records for swap dealers and major swap partici-  
4 pants.

5 “(g) BUSINESS CONDUCT STANDARDS.—

6 “(1) IN GENERAL.—Each registered swap deal-  
7 er and major swap participant shall conform with  
8 business conduct standards as may be prescribed by  
9 the Commission by rule or regulation addressing—

10 “(A) fraud, manipulation, and other abu-  
11 sive practices involving swaps (including swaps  
12 that are offered but not entered into);

13 “(B) diligent supervision of its business as  
14 a swap dealer;

15 “(C) adherence to all applicable position  
16 limits; and

17 “(D) such other matters as the Commis-  
18 sion shall determine to be necessary or appro-  
19 priate.

20 “(2) BUSINESS CONDUCT REQUIREMENTS.—

21 Business conduct requirements adopted by the Com-  
22 mission shall—

23 “(A) establish the standard of care for a  
24 swap dealer or major swap participant to verify

1           that any counterparty meets the eligibility  
2           standards for an eligible contract participant;

3           “(B) require disclosure by the swap dealer  
4           or major swap participant to any counterparty  
5           to the transaction (other than a swap dealer or  
6           major swap participant) of—

7           “(i) information about the material  
8           risks and characteristics of the swap;

9           “(ii) for cleared swaps, upon the re-  
10          quest of the counterparty, the daily mark  
11          from the appropriate derivatives clearing  
12          organization, and for non-cleared swaps,  
13          upon request of the counterparty, the daily  
14          mark of the swap dealer or major swap  
15          participant; and

16          “(iii) any other material incentives or  
17          conflicts of interest that the swap dealer or  
18          major swap participant may have in con-  
19          nection with the swap; and

20          “(C) establish such other standards and  
21          requirements as the Commission may determine  
22          are necessary or appropriate in the public inter-  
23          est, for the protection of investors, or otherwise  
24          in furtherance of the purposes of this Act.

1           “(3) RULES.—The Commission shall prescribe  
2           rules under this subsection governing business con-  
3           duct standards for swap dealers and major swap  
4           participants no later than 1 year after the date of  
5           the enactment of the Derivative Markets Trans-  
6           parency and Accountability Act of 2009.

7           “(h) DOCUMENTATION STANDARDS.—

8           “(1) IN GENERAL.—Each registered swap deal-  
9           er and major swap participant shall conform with  
10          standards, as may be prescribed by the Commission  
11          by rule or regulation, addressing timely and accurate  
12          confirmation, processing, netting, documentation,  
13          and valuation of all swaps.

14          “(2) RULES.—No later than 1 year after the  
15          date of the enactment of the Derivative Markets  
16          Transparency and Accountability Act of 2009, the  
17          Commission shall adopt rules governing the stand-  
18          ards described in paragraph (1) for swap dealers  
19          and major swap participants.

20          “(i) DEALER RESPONSIBILITIES.—Each registered  
21          swap dealer and major swap participant at all times shall  
22          comply with the following requirements:

23                 “(1) MONITORING OF TRADING.—The swap  
24                 dealer or major swap participant shall monitor its

1 trading in swaps to prevent violations of applicable  
2 position limits.

3 “(2) DISCLOSURE OF GENERAL INFORMA-  
4 TION.—The swap dealer or major swap participant  
5 shall disclose to the Commission or to the Prudential  
6 Regulator for the swap dealer or major swap partici-  
7 pant, as applicable, information concerning—

8 “(A) terms and conditions of its swaps;

9 “(B) swap trading operations, mechanisms,  
10 and practices;

11 “(C) financial integrity protections relating  
12 to swaps; and

13 “(D) other information relevant to its trad-  
14 ing in swaps.

15 “(3) ABILITY TO OBTAIN INFORMATION.—The  
16 swap dealer or major swap participant shall—

17 “(A) establish and enforce internal systems  
18 and procedures to obtain any necessary infor-  
19 mation to perform any of the functions de-  
20 scribed in this section; and

21 “(B) provide the information to the Com-  
22 mission or to the Prudential Regulator for the  
23 swap dealer or major swap participant, as ap-  
24 plicable, upon request.

1           “(4) CONFLICTS OF INTEREST.—The swap  
2 dealer and major swap participant shall implement  
3 conflict-of-interest systems and procedures that—

4           “(A) establish structural and institutional  
5 safeguards to assure that the activities of any  
6 person within the firm relating to research or  
7 analysis of the price or market for any com-  
8 modity are separated by appropriate informa-  
9 tional partitions within the firm from the re-  
10 view, pressure, or oversight of those whose in-  
11 volvement in trading or clearing activities might  
12 potentially bias their judgment or supervision;  
13 and

14           “(B) address such other issues as the  
15 Commission determines appropriate.

16           “(5) ANTITRUST CONSIDERATIONS.—The swap  
17 dealer or major swap participant shall avoid—

18           “(A) adopting any processes or taking any  
19 actions that result in any unreasonable re-  
20 straints of trade; or

21           “(B) imposing any material anticompeti-  
22 tive burden on trading.”.

23 **SEC. 3108. CONFLICTS OF INTEREST.**

24           Section 4d of the Commodity Exchange Act (7 U.S.C.  
25 6d) is amended by—



1 (1) redesignating subsection (c) as subsection  
2 (d); and

3 (2) inserting after subsection (b) the following:

4 “(c) CONFLICTS OF INTEREST.—The Commission  
5 shall require that futures commission merchants and in-  
6 troducing brokers implement conflict-of-interest systems  
7 and procedures that—

8 “(1) establish structural and institutional safe-  
9 guards to assure that the activities of any person  
10 within the firm relating to research or analysis of  
11 the price or market for any commodity are separated  
12 by appropriate informational partitions within the  
13 firm from the review, pressure, or oversight of those  
14 whose involvement in trading or clearing activities  
15 might potentially bias their judgment or supervision;  
16 and

17 “(2) address such other issues as the Commis-  
18 sion determines appropriate.”.

19 **SEC. 3109. SWAP EXECUTION FACILITIES.**

20 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
21 is amended by inserting after section 5g the following:

22 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

23 “(a) REGISTRATION.—A person may not operate a  
24 swap execution facility unless the facility is registered  
25 under this section or is registered with the Commission

1 as a designated contract market under section 5 or a swap  
2 execution facility under section 5.

3 “(b) REQUIREMENTS FOR TRADING.—

4 “(1) A swap execution facility that is registered  
5 under subsection (a) may make available for trading  
6 any swap.

7 “(2) RULES FOR TRADING THROUGH THE FA-  
8 CILITY.—Not later than 1 year after the date of the  
9 enactment of the Derivative Markets Transparency  
10 and Accountability Act of 2009, the Commission  
11 shall adopt rules to allow a swap to be traded  
12 through the facilities of a designated contract mar-  
13 ket or a swap execution facility. Such rules shall  
14 permit an intermediary, acting as principal or agent,  
15 to enter into or execute a swap, notwithstanding sec-  
16 tion 2(k), if the swap is executed, reported, recorded,  
17 or confirmed in accordance with the rules of the des-  
18 ignated contract market or swap execution facility.

19 “(3) AGRICULTURAL SWAPS.—A swap execution  
20 facility may not list for trading or confirm the exe-  
21 cution of any swap in an agricultural commodity (as  
22 defined by the Commission) except pursuant to a  
23 rule or regulation of the Commission allowing the  
24 swap under such terms and conditions as the Com-  
25 mission shall prescribe.

1       “(c) TRADING BY CONTRACT MARKETS.—A board of  
2 trade that operates a contract market shall, to the extent  
3 that the board of trade also operates a swap execution fa-  
4 cility and uses the same electronic trade execution system  
5 for trading on the contract market and the swap execution  
6 facility, identify whether the electronic trading is taking  
7 place on the contract market or the swap execution facil-  
8 ity.

9       “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-  
10 CILITIES.—

11           “(1) IN GENERAL.—To be registered as, and to  
12 maintain its registration as, a swap execution facil-  
13 ity, the facility shall comply with the core principles  
14 specified in this subsection and any requirement that  
15 the Commission may impose by rule or regulation  
16 pursuant to section 8a(5). Except where the Com-  
17 mission determines otherwise by rule or regulation,  
18 the facility shall have reasonable discretion in estab-  
19 lishing the manner in which it complies with these  
20 core principles.

21           “(2) COMPLIANCE WITH RULES.—The swap  
22 execution facility shall—

23           “(A) monitor and enforce compliance with  
24 any of the rules of the facility, including the  
25 terms and conditions of the swaps traded on or

1 through the facility and any limitations on ac-  
2 cess to the facility; and

3 “(B) establish and enforce trading and  
4 participation rules that will deter abuses and  
5 have the capacity to detect, investigate, and en-  
6 force those rules, including means to—

7 “(i) provide market participants with  
8 impartial access to the market; and

9 “(ii) capture information that may be  
10 used in establishing whether rule violations  
11 have occurred.

12 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-  
13 NIPULATION.—The swap execution facility shall per-  
14 mit trading only in swaps that are not readily sus-  
15 ceptible to manipulation.

16 “(4) MONITORING OF TRADING.—The swap  
17 execution facility shall—

18 “(A) establish and enforce rules or terms  
19 and conditions defining, or specifications detail-  
20 ing, trading procedures to be used in entering  
21 and executing orders traded on or through its  
22 facilities; and

23 “(B) monitor trading in swaps to prevent  
24 manipulation, price distortion, and disruptions  
25 of the delivery or cash settlement process

1 through surveillance, compliance, and discipli-  
2 nary practices and procedures, including meth-  
3 ods for conducting real-time monitoring of trad-  
4 ing and comprehensive and accurate trade re-  
5 constructions.

6 “(5) ABILITY TO OBTAIN INFORMATION.—The  
7 swap execution facility shall—

8 “(A) establish and enforce rules that will  
9 allow the facility to obtain any necessary infor-  
10 mation to perform any of the functions de-  
11 scribed in this section;

12 “(B) provide the information to the Com-  
13 mission upon request; and

14 “(C) have the capacity to carry out such  
15 international information-sharing agreements as  
16 the Commission may require.

17 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

18 “(A) To reduce the potential threat of  
19 market manipulation or congestion, especially  
20 during trading in the delivery month, a swap  
21 execution facility that is a trading facility shall  
22 adopt for each of its contracts made available  
23 for trading on the trading facility, where nec-  
24 essary and appropriate, position limitations or

1 position accountability for speculators who es-  
2 tablish positions in the contract.

3 “(B) For any contract of a swap execution  
4 facility that is subject to a position limitation  
5 established by the Commission pursuant to sec-  
6 tion 4a(a), the swap execution facility—

7 “(i) may set a position limitation at a  
8 level that is lower than the Commission  
9 limitation; and

10 “(ii) shall monitor positions estab-  
11 lished on or through the swap execution fa-  
12 cility for compliance with the limit set by  
13 the Commission and the limit, if any, set  
14 by the swap execution facility.

15 “(7) FINANCIAL INTEGRITY OF TRANS-  
16 ACTIONS.—The swap execution facility shall estab-  
17 lish and enforce rules and procedures for ensuring  
18 the financial integrity of swaps entered on or  
19 through its facilities, including the clearance and  
20 settlement of the swaps pursuant to section 2(j)(1).

21 “(8) EMERGENCY AUTHORITY.—The swap exe-  
22 cution facility shall adopt rules to provide for the ex-  
23 ercise of emergency authority, in consultation or co-  
24 operation with the Commission, where necessary and  
25 appropriate, including the authority to liquidate or

1 transfer open positions in any swap or to suspend or  
2 curtail trading in a swap.

3 “(9) TIMELY PUBLICATION OF TRADING INFOR-  
4 MATION.—The swap execution facility shall make  
5 public timely information on price, trading volume,  
6 and other trading data on swaps to the extent pre-  
7 scribed by the Commission. The Commission shall  
8 evaluate the impact of public disclosure on market  
9 liquidity in the relevant market, and shall seek to  
10 avoid public disclosure of information in a manner  
11 that would significantly reduce market liquidity. The  
12 Commission shall not disclose information related to  
13 the internal business decisions of particular market  
14 participants.

15 “(10) RECORDKEEPING AND REPORTING.—The  
16 swap execution facility shall maintain records of all  
17 activities related to the business of the facility, in-  
18 cluding a complete audit trail, in a form and manner  
19 acceptable to the Commission for a period of 5  
20 years, and report to the Commission all information  
21 determined by the Commission to be necessary or  
22 appropriate for the Commission to perform its re-  
23 sponsibilities under this Act in a form and manner  
24 acceptable to the Commission. The swap execution  
25 facility shall keep any such records relating to swaps

1 defined in section 1a(35)(A)(v) open to inspection  
2 and examination by the Securities and Exchange  
3 Commission. The Commission shall adopt data col-  
4 lection and reporting requirements for swap execu-  
5 tion facilities that are comparable to corresponding  
6 requirements for derivatives clearing organizations  
7 and swap repositories.

8 “(11) ANTITRUST CONSIDERATIONS.—The  
9 swap execution facility shall avoid—

10 “(A) adopting any rules or taking any ac-  
11 tions that result in any unreasonable restraints  
12 of trade; or

13 “(B) imposing any material anticompeti-  
14 tive burden on trading on the swap execution  
15 facility.

16 “(12) CONFLICTS OF INTEREST.—The swap  
17 execution facility shall—

18 “(A) establish and enforce rules to mini-  
19 mize conflicts of interest in its decision-making  
20 process; and

21 “(B) establish a process for resolving the  
22 conflicts of interest.

23 “(13) FINANCIAL RESOURCES.—



1           “(A) The swap execution facility shall have  
2           adequate financial, operational, and managerial  
3           resources to discharge its responsibilities.

4           “(B) The financial resources of the swap  
5           execution facility shall be considered adequate if  
6           their value exceeds the total amount that would  
7           enable the facility to cover its operating costs  
8           for a period of 1 year, calculated on a rolling  
9           basis.

10          “(14) SYSTEM SAFEGUARDS.—The swap execu-  
11          tion facility shall—

12               “(A) establish and maintain a program of  
13               risk analysis and oversight to identify and mini-  
14               mize sources of operational risk, through the  
15               development of appropriate controls and proce-  
16               dures, and the development of automated sys-  
17               tems, that are reliable, secure, and have ade-  
18               quate scalable capacity;

19               “(B) establish and maintain emergency  
20               procedures, backup facilities, and a plan for dis-  
21               aster recovery that allow for the timely recovery  
22               and resumption of operations and the fulfill-  
23               ment of the swap execution facility’s respon-  
24               sibilities and obligation; and

1           “(C) periodically conduct tests to verify  
2           that backup resources are sufficient to ensure  
3           continued order processing and trade matching,  
4           price reporting, market surveillance, and main-  
5           tenance of a comprehensive and accurate audit  
6           trail.

7           “(15) DESIGNATION OF COMPLIANCE OFFI-  
8           CER.—

9           “(A) IN GENERAL.—Each swap execution  
10          facility shall designate an individual to serve as  
11          a compliance officer.

12          “(B) DUTIES.—The compliance officer—

13                 “(i) shall report directly to the board  
14                 or to the senior officer of the facility;

15                 “(ii) shall—

16                         “(I) review compliance with the  
17                         core principles in this subsection;

18                         “(II) in consultation with the  
19                         board of the facility, a body per-  
20                         forming a function similar to that of  
21                         a board, or the senior officer of the  
22                         facility, resolve any conflicts of inter-  
23                         est that may arise;

24                         “(III) be responsible for admin-  
25                         istering the policies and procedures

1 required to be established pursuant to  
2 this section; and

3 “(IV) ensure compliance with  
4 this Act and the rules and regulations  
5 issued under this Act, including rules  
6 prescribed by the Commission pursu-  
7 ant to this section; and

8 “(iii) shall establish procedures for re-  
9 mediation of non-compliance issues found  
10 during compliance office reviews,  
11 lookbacks, internal or external audit find-  
12 ings, self-reported errors, or through vali-  
13 dated complaints, and for the handling,  
14 management response, remediation, re-  
15 testing, and closing of non-compliant  
16 issues.

17 “(C) ANNUAL REPORTS REQUIRED.—The  
18 compliance officer shall annually prepare and  
19 sign a report on the compliance of the facility  
20 with this Act and its policies and procedures,  
21 including its code of ethics and conflict of inter-  
22 est policies, in accordance with rules prescribed  
23 by the Commission. The compliance report shall  
24 accompany the financial reports of the facility  
25 that are required to be furnished to the Com-

1 mission pursuant to this section and shall in-  
2 clude a certification that, under penalty of law,  
3 the report is accurate and complete.

4 “(e) EXEMPTIONS.—The Commission may exempt,  
5 conditionally or unconditionally, a swap execution facility  
6 from registration under this section if the Commission  
7 finds that the facility is subject to comparable, comprehen-  
8 sive supervision and regulation on a consolidated basis by  
9 the Securities and Exchange Commission, a Prudential  
10 Regulator or the appropriate governmental authorities in  
11 the organization’s home country.

12 “(f) RULES.—No later than 1 year after the date of  
13 the enactment of the Derivative Markets Transparency  
14 and Accountability Act of 2009, the Commission shall pre-  
15 scribe rules governing the regulation of swap execution fa-  
16 cilities under this section.”.

17 **SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
18 **TIES AND EXEMPT BOARDS OF TRADE.**

19 (a) Sections 5a and 5d of the Commodity Exchange  
20 Act (7 U.S.C. 1 et seq.) are repealed.

21 (b)(1) Prior to the final effective dates in this title,  
22 a person may petition the Commodity Futures Trading  
23 Commission to remain subject to the provisions of section  
24 5d of the Commodity Exchange Act, as such provisions  
25 existed prior to the effective date of this subtitle.

1       (2) The Commodity Futures Trading Commission  
2 shall consider any petition submitted under paragraph (1)  
3 in a prompt manner and may allow a person to continue  
4 operating subject to the provisions of section 5d of the  
5 Commodity Exchange Act for up to 1 year after the effec-  
6 tive date of this subtitle.

7 **SEC. 3111. DESIGNATED CONTRACT MARKETS.**

8       (a) Section 5(d) of the Commodity Exchange Act (7  
9 U.S.C. 7(d)) is amended by striking paragraphs (1) and  
10 (2) and inserting the following:

11               “(1) IN GENERAL.—To be designated as, and  
12 to maintain the designation of a board of trade as  
13 a contract market, the board of trade shall comply  
14 with the core principles specified in this subsection  
15 and any requirement that the Commission may im-  
16 pose by rule or regulation pursuant to section 8a(5).  
17 Except where the Commission determines otherwise  
18 by rule or regulation, the board of trade shall have  
19 reasonable discretion in establishing the manner in  
20 which it complies with the core principles.

21               “(2) COMPLIANCE WITH RULES.—

22                       “(A) The board of trade shall monitor and  
23 enforce compliance with the rules of the con-  
24 tract market, including access requirements, the  
25 terms and conditions of any contracts to be

1           traded on the contract market and the contract  
2           market's abusive trade practice prohibitions.

3           “(B) The board of trade shall have the ca-  
4           pacity to detect, investigate, and apply appro-  
5           priate sanctions to, any person or entity that  
6           violates the rules.

7           “(C) The rules shall provide the board of  
8           trade with the ability and authority to obtain  
9           any necessary information to perform any of  
10          the functions described in this subsection, in-  
11          cluding the capacity to carry out such inter-  
12          national information-sharing agreements as the  
13          Commission may require.”.

14          (b) Section 5(d) of such Act (7 U.S.C. 7(d)) is  
15          amended by striking paragraphs (4) and (5) and inserting  
16          the following:

17          “(4) PREVENTION OF MARKET DISRUPTION.—  
18          The board of trade shall have the capacity and re-  
19          sponsibility to prevent manipulation, price distortion,  
20          and disruptions of the delivery or cash-settlement  
21          process through market surveillance, compliance,  
22          and enforcement practices and procedures, including  
23          methods for conducting real-time monitoring of trad-  
24          ing and comprehensive and accurate trade recon-  
25          structions.

1           “(5) POSITION LIMITATIONS OR ACCOUNT-  
2 ABILITY.—

3           “(A) To reduce the potential threat of  
4 market manipulation or congestion, especially  
5 during trading in the delivery month, the board  
6 of trade shall adopt for each of its contracts,  
7 where necessary and appropriate, position limi-  
8 tations or position accountability for specu-  
9 lators.

10           “(B) For any contract that is subject to a  
11 position limitation established by the Commis-  
12 sion pursuant to section 4a(a), the board of  
13 trade shall set its position limitation at a level  
14 no higher than the Commission-established limi-  
15 tation.”.

16       (c) Section 5(d) of such Act (7 U.S.C. 7(d)) is  
17 amended by striking paragraph (7) and inserting the fol-  
18 lowing:

19       “(7) AVAILABILITY OF GENERAL INFORMA-  
20 TION.—The board of trade shall make available to  
21 market authorities, market participants, and the  
22 public accurate information concerning—

23           “(A) the terms and conditions of the con-  
24 tracts of the contract market; and

1           “(B) the rules, regulations and mecha-  
2           nisms for executing transactions on or through  
3           the facilities of the contract market, and the  
4           rules and specifications describing the operation  
5           of the board of trade’s electronic matching plat-  
6           form or other trade execution facility.”.

7           (d) Section 5(d) of such Act (7 U.S.C. 7(d)) is  
8           amended by striking paragraph (9) and inserting the fol-  
9           lowing:

10           “(9) EXECUTION OF TRANSACTIONS.—

11           “(A) The board of trade shall provide a  
12           competitive, open, and efficient market and  
13           mechanism for executing transactions that pro-  
14           tects the price discovery process of trading in  
15           the board of trade’s centralized market.

16           “(B) The rules may authorize, for bona  
17           fide business purposes—

18                   “(i) transfer trades or office trades;

19                   “(ii) an exchange of—

20                           “(I) futures in connection with a  
21                           cash commodity transaction;

22                           “(II) futures for cash commod-  
23                           ities; or

24                           “(III) futures for swaps; or



1                   “(iii) A futures commission merchant,  
2                   acting as principal or agent, to enter into  
3                   or confirm the execution of a contract for  
4                   the purchase or sale of a commodity for fu-  
5                   ture delivery if the contract is reported, re-  
6                   corded, or cleared in accordance with the  
7                   rules of the contract market or a deriva-  
8                   tives clearing organization.”.

9           (e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17))  
10   is amended by adding at the end the following: “The board  
11   of trade shall keep any such records relating to swaps de-  
12   fined in section 1a(35)(A)(v) open to inspection and exam-  
13   ination by the Securities and Exchange Commission.”.

14           (f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amend-  
15   ed by adding at the end the following:

16                   “(19) FINANCIAL RESOURCES.—The board of  
17                   trade shall have adequate financial, operational, and  
18                   managerial resources to discharge the responsibil-  
19                   ities of a contract market. For the financial re-  
20                   sources of a board of trade to be considered ade-  
21                   quate, their value shall exceed the total amount that  
22                   would enable the contract market to cover its oper-  
23                   ating costs for a period of 1 year, calculated on a  
24                   rolling basis.

1           “(20) SYSTEM SAFEGUARDS.—The board of  
2 trade shall—

3           “(A) establish and maintain a program of  
4 risk analysis and oversight to identify and mini-  
5 mize sources of operational risk through the de-  
6 velopment of appropriate controls and proce-  
7 dures, and the development of automated sys-  
8 tems, that are reliable, secure, and give ade-  
9 quate scalable capacity;

10           “(B) establish and maintain emergency  
11 procedures, backup facilities, and a plan for dis-  
12 aster recovery that allow for the timely recovery  
13 and resumption of operations and the fulfill-  
14 ment of the board of trade’s responsibilities and  
15 obligations; and

16           “(C) periodically conduct tests to verify  
17 that back-up resources are sufficient to ensure  
18 continued order processing and trade matching,  
19 price reporting, market surveillance, and main-  
20 tenance of a comprehensive and accurate audit  
21 trail.

22           “(21) DIVERSITY OF BOARDS OF DIRECTORS.—  
23 The board of trade, if a publicly traded company,  
24 shall endeavor to recruit individuals to serve on the  
25 board of directors and the other decision-making

1 bodies (as determined by the Commission) of the  
2 board of trade from among, and to have the com-  
3 position of the bodies reflect, a broad and culturally  
4 diverse pool of qualified candidates.

5 “(22) DISCIPLINARY PROCEDURES.—The board  
6 of trade shall establish and enforce disciplinary pro-  
7 cedures that authorize the board of trade to dis-  
8 cipline, suspend, or expel members or market par-  
9 ticipants that violate the rules of the board of trade,  
10 or similar methods for performing the same func-  
11 tions, including delegation of the functions to third  
12 parties.”.

13 (g) Section 5 of such Act (7 U.S.C. 7) is amended  
14 by striking subsection (b).

15 **SEC. 3112. MARGIN.**

16 (a) Section 8a(7)(C) of the Commodity Exchange Act  
17 (7 U.S.C. 12a(7)(C)) is amended by striking “, excepting  
18 the setting of levels of margin”.

19 (b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is  
20 amended by redesignating subparagraphs (D) through (F)  
21 as subparagraphs (E) through (G), respectively, and in-  
22 serting after subparagraph (C) the following:

23 “(D) margin requirements, provided that  
24 such rules, regulations, or orders shall—

1 “(i) be limited to protecting the finan-  
2 cial integrity of the derivatives clearing or-  
3 ganization;

4 “(ii) be designed for risk management  
5 purposes in order to protect the financial  
6 integrity of transactions; and

7 “(iii) not set specific margin  
8 amounts.”.

9 **SEC. 3113. POSITION LIMITS.**

10 (a) Section 4a(a) of the Commodity Exchange Act (7  
11 U.S.C. 6a(a)) is amended by—

12 (1) inserting “(1)” after “(a)”;

13 (2) striking “on electronic trading facilities with  
14 respect to a significant price discovery contract” in  
15 the first sentence and inserting “swaps that perform  
16 or affect a significant price discovery function with  
17 respect to registered entities”;

18 (3) inserting “, including any group or class of  
19 traders,” in the second sentence after “held by any  
20 person”;

21 (4) striking “on an electronic trading facility  
22 with respect to a significant price discovery con-  
23 tract,” in the second sentence and inserting “swaps  
24 that perform or affect a significant price discovery  
25 function with respect to registered entities,”; and

1 (5) inserting at the end the following:

2 “(2)(A) In accordance with the standards set  
3 forth in paragraph (1) of this subsection and con-  
4 sistent with the good faith exception cited in sub-  
5 section (b)(2), with respect to physical commodities  
6 other than excluded commodities as defined by the  
7 Commission, the Commission shall by rule, regula-  
8 tion, or order establish limits on the amount of posi-  
9 tions, as appropriate, other than bona fide hedge po-  
10 sitions, that may be held by any person with respect  
11 to contracts of sale for future delivery or with re-  
12 spect to options on the contracts or commodities  
13 traded on or subject to the rules of a designated  
14 contract market.

15 “(B)(i) For exempt commodities, the limits  
16 shall be established within 180 days after the date  
17 of the enactment of this paragraph.

18 “(ii) For agricultural commodities, the limits  
19 shall be established within 270 days after the date  
20 of the enactment of this paragraph.

21 “(C) In establishing the limits, the Commission  
22 shall strive to ensure that trading on foreign boards  
23 of trade in the same commodity will be subject to  
24 comparable limits and that any limits to be imposed  
25 by the Commission will not cause price discovery in

1 the commodity to shift to trading on the foreign  
2 boards of trade.

3 “(3) In establishing the limits required in para-  
4 graph (2), the Commission, as appropriate, shall set  
5 limits—

6 “(A) on the number of positions that may  
7 be held by any person for the spot month, each  
8 other month, and the aggregate number of posi-  
9 tions that may be held by any person for all  
10 months; and

11 “(B) to the maximum extent practicable,  
12 in its discretion—

13 “(i) to diminish, eliminate, or prevent  
14 excessive speculation as described under  
15 this section;

16 “(ii) to deter and prevent market ma-  
17 nipulation, squeezes, and corners;

18 “(iii) to ensure sufficient market li-  
19 quidity for bona fide hedgers; and

20 “(iv) to ensure that the price dis-  
21 covery function of the underlying market is  
22 not disrupted.

23 “(4)(A) Not later than 150 days after the es-  
24 tablishment of position limits pursuant to paragraph  
25 (2), and biannually thereafter, the Commission shall

1 hold 2 public hearings, 1 for agriculture commodities  
2 and 1 for energy commodities as such terms are de-  
3 fined by the Commission, in order to receive rec-  
4 ommendations regarding the position limits to be es-  
5 tablished in paragraph (2).

6 “(B) Each public hearing held pursuant to sub-  
7 paragraph (A) shall, at a minimum providing there  
8 is sufficient interest, receive recommendations  
9 from—

10 “(i) 7 predominantly commercial short  
11 hedgers of the actual physical commodity for  
12 future delivery;

13 “(ii) 7 predominantly commercial long  
14 hedgers of the actual physical commodity for  
15 future delivery;

16 “(iii) 4 non-commercial participants in  
17 markets for commodities for future delivery;  
18 and

19 “(iv) each designated contract market  
20 upon which a contract in the commodity for fu-  
21 ture delivery is traded.

22 “(C) Within 60 days after each public hearing  
23 held pursuant to subparagraph (A), the Commission  
24 shall publish in the Federal Register its response to

1 the recommendations regarding position limits heard  
2 at the hearing.

3 “(5) SIGNIFICANT PRICE DISCOVERY FUNC-  
4 TION.—In making a determination whether a swap  
5 performs or affects a significant price discovery  
6 function with respect to regulated markets, the Com-  
7 mission shall consider, as appropriate:

8 “(A) PRICE LINKAGE.—The extent to  
9 which the swap uses or otherwise relies on a  
10 daily or final settlement price, or other major  
11 price parameter, of another contract traded on  
12 a regulated market based upon the same under-  
13 lying commodity, to value a position, transfer or  
14 convert a position, financially settle a position,  
15 or close out a position;

16 “(B) ARBITRAGE.—The extent to which  
17 the price for the swap is sufficiently related to  
18 the price of another contract traded on a regu-  
19 lated market based upon the same underlying  
20 commodity so as to permit market participants  
21 to effectively arbitrage between the markets by  
22 simultaneously maintaining positions or exe-  
23 cuting trades in the swaps on a frequent and  
24 recurring basis;



1           “(C) MATERIAL PRICE REFERENCE.—The  
2           extent to which, on a frequent and recurring  
3           basis, bids, offers, or transactions in a contract  
4           traded on a regulated market are directly based  
5           on, or are determined by referencing, the price  
6           generated by the swap;

7           “(D) MATERIAL LIQUIDITY.—The extent  
8           to which the volume of swaps being traded in  
9           the commodity is sufficient to have a material  
10          effect on another contract traded on a regulated  
11          market; and

12          “(E) OTHER MATERIAL FACTORS.—Such  
13          other material factors as the Commission speci-  
14          fies by rule or regulation as relevant to deter-  
15          mine whether a swap serves a significant price  
16          discovery function with respect to a regulated  
17          market.

18          “(6) ECONOMICALLY EQUIVALENT CON-  
19          TRACTS.—

20                 “(A) Notwithstanding any other provision  
21                 of this section, the Commission shall establish  
22                 limits on the amount of positions, including ag-  
23                 gregate position limits, as appropriate, other  
24                 than bona fide hedge positions, that may be  
25                 held by any person with respect to swaps that

1 are economically equivalent to contracts of sale  
2 for future delivery or to options on the con-  
3 tracts or commodities traded on or subject to  
4 the rules of a designated contract market sub-  
5 ject to paragraph (2).

6 “(B) In establishing limits pursuant to  
7 subparagraph (A), the Commission shall—

8 “(i) develop the limits concurrently  
9 with limits established under paragraph  
10 (2), and the limits shall have similar re-  
11 quirements as under paragraph (3)(B);  
12 and

13 “(ii) establish the limits simulta-  
14 neously with limits established under para-  
15 graph (2).

16 “(7) AGGREGATE POSITION LIMITS.—The Com-  
17 mission shall, by rule or regulation, establish limits  
18 (including related hedge exemption provisions) on  
19 the aggregate number or amount of positions in con-  
20 tracts based upon the same underlying commodity  
21 (as defined by the Commission) that may be held by  
22 any person, including any group or class of traders,  
23 for each month across—

24 “(A) contracts listed by designated con-  
25 tract markets;

1           “(B) with respect to an agreement con-  
2           tract, or transaction that settles against any  
3           price (including the daily or final settlement  
4           price) of 1 or more contracts listed for trading  
5           on a registered entity, contracts traded on a  
6           foreign board of trade that provides members or  
7           other participants located in the United States  
8           with direct access to its electronic trading and  
9           order matching system; and

10           “(C) swap contracts that perform or affect  
11           a significant price discovery function with re-  
12           spect to regulated entities.

13           “(8) EXEMPTIONS.—The Commission, by rule,  
14           regulation, or order, may exempt, conditionally or  
15           unconditionally, any person or class of persons, any  
16           swap or class of swaps, any contract of sale of a  
17           commodity for future delivery or class of such con-  
18           tracts, any option or class of options, or any trans-  
19           action or class of transactions from any requirement  
20           it may establish under this section with respect to  
21           position limits.”.

22           (b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is  
23           amended—

24           (1) in paragraph (1), by striking “or derivatives  
25           transaction execution facility or facilities or elec-

1       tronic trading facility” and inserting “or swap exe-  
2       cution facility or facilities”; and

3           (2) in paragraph (2), by striking “or derivatives  
4       transaction execution facility or facilities or elec-  
5       tronic trading facility” and inserting “or swap exe-  
6       cution facility”.

7       (c) Section 4a(c) of such Act is amended—

8           (1) by inserting “(1)” after “(c)”; and

9           (2) by adding after and below the end the fol-  
10      lowing:

11           “(2) For the purposes of implementation of  
12      subsection (a)(2) for contracts of sale for future de-  
13      livery or options on the contracts or commodities,  
14      the Commission shall define what constitutes a bona  
15      fide hedging transaction or position as a transaction  
16      or position that—

17           “(A)(i) represents a substitute for trans-  
18      actions made or to be made or positions taken  
19      or to be taken at a later time in a physical mar-  
20      keting channel;

21           “(ii) is economically appropriate to the re-  
22      duction of risks in the conduct and manage-  
23      ment of a commercial enterprise; and

24           “(iii) arises from the potential change in  
25      the value of—

1 “(I) assets that a person owns, pro-  
2 duces, manufactures, processes, or mer-  
3 chandises or anticipates owning, producing,  
4 manufacturing, processing, or merchan-  
5 dising;

6 “(II) liabilities that a person owns or  
7 anticipates incurring; or

8 “(III) services that a person provides,  
9 purchases, or anticipates providing or pur-  
10 chasing; or

11 “(B) reduces risks attendant to a position  
12 resulting from a swap that—

13 “(i) was executed opposite a  
14 counterparty for which the transaction  
15 would qualify as a bona fide hedging trans-  
16 action pursuant to subparagraph (A); or

17 “(ii) meets the requirements of sub-  
18 paragraph (A).”.

19 (d) This section shall become effective on the date  
20 of its enactment.

21 **SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED EN-**  
22 **TITIES.**

23 (a) Section 5c(a) of the Commodity Exchange Act (7  
24 U.S.C. 7a-2(a)) is amended—

1 (1) in paragraph (1), by striking “5a(d) and  
2 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

3 (2) in paragraph (2), by striking “shall not”  
4 and inserting “may”.

5 (b) Section 5c(b) of such Act (7 U.S.C. 7a-2(b)) is  
6 amended in each of paragraphs (1), (2), and (3) by insert-  
7 ing “or swap execution facility” after “contract market”  
8 each place it appears.

9 (c) Section 5c(c)(1) of such Act (7 U.S.C. 7a-2(c)(1))  
10 is amended—

11 (1) by inserting “(A)” after “IN GENERAL.—”;  
12 and

13 (2) by adding at the end the following:

14 “(B) The new rule or rule amendment shall be-  
15 come effective, pursuant to the registered entity’s  
16 certification and notice of such certification to its  
17 members (in a manner to be determined by the  
18 Commission), 10 business days after the Commis-  
19 sion’s receipt of the certification (or such shorter pe-  
20 riod determined by the Commission by rule or regu-  
21 lation) unless the Commission notifies the registered  
22 entity within such time that it is staying the certifi-  
23 cation because there exist novel or complex issues  
24 that require additional time to analyze, an inad-  
25 equate explanation by the submitting registered enti-

1 ty, or a potential inconsistency with this Act (includ-  
2 ing regulations under this Act).

3 “(C)(i) A notification by the Commission pursu-  
4 ant to subparagraph (B) shall stay the certification  
5 of the new contract or instrument or clearing of the  
6 new contract or instrument, new rule or new amend-  
7 ment for up to an additional 90 days from the date  
8 of the notification.

9 “(ii) The Commission shall provide at least a  
10 30-day public comment period, within the 90-day pe-  
11 riod in which the stay is in effect described in clause  
12 (i), whenever it reviews a rule or rule amendment  
13 pursuant to a notification by the Commission under  
14 this paragraph.”.

15 (d) Section 5c(d) of such Act (7 U.S.C. 7a-2(d)) is  
16 repealed.

17 **SEC. 3115. FOREIGN BOARDS OF TRADE.**

18 (a) IN GENERAL.—Section 4 of the Commodity Ex-  
19 change Act (7 U.S.C. 6) is amended by adding at the end  
20 the following:

21 “(e) FOREIGN BOARDS OF TRADE.—

22 “(1) IN GENERAL.—The Commission may not  
23 permit a foreign board of trade to provide to the  
24 members of the foreign board of trade or other par-  
25 ticipants located in the United States direct access

1 to the electronic trading and order-matching system  
2 of the foreign board of trade with respect to an  
3 agreement, contract, or transaction that settles  
4 against any price (including the daily or final settle-  
5 ment price) of 1 or more contracts listed for trading  
6 on a registered entity, unless the Commission deter-  
7 mines that—

8 “(A) the foreign board of trade makes pub-  
9 lic daily trading information regarding the  
10 agreement, contract, or transaction that is com-  
11 parable to the daily trading information pub-  
12 lished by the registered entity for the 1 or more  
13 contracts against which the agreement, con-  
14 tract, or transaction traded on the foreign  
15 board of trade settles; and

16 “(B) the foreign board of trade (or the for-  
17 eign futures authority that oversees the foreign  
18 board of trade)—

19 “(i) adopts position limits (including  
20 related hedge exemption provisions) for the  
21 agreement, contract, or transaction that  
22 are comparable, taking into consideration  
23 the relative sizes of the respective markets,  
24 to the position limits (including related  
25 hedge exemption provisions) adopted by



1 the registered entity for the 1 or more con-  
2 tracts against which the agreement, con-  
3 tract, or transaction traded on the foreign  
4 board of trade settles;

5 “(ii) has the authority to require or  
6 direct market participants to limit, reduce,  
7 or liquidate any position the foreign board  
8 of trade (or the foreign futures authority  
9 that oversees the foreign board of trade)  
10 determines to be necessary to prevent or  
11 reduce the threat of price manipulation,  
12 excessive speculation as described in sec-  
13 tion 4a, price distortion, or disruption of  
14 delivery or the cash settlement process;

15 “(iii) agrees to promptly notify the  
16 Commission, with regard to the agreement,  
17 contract, or transaction that settles against  
18 any price (including the daily or final set-  
19 tlement price) of 1 or more contracts listed  
20 for trading on a registered entity, of any  
21 change regarding—

22 “(I) the information that the for-  
23 eign board of trade will make publicly  
24 available;

1                   “(II) the position limits that the  
2                   foreign board of trade or foreign fu-  
3                   tures authority will adopt and enforce;

4                   “(III) the position reductions re-  
5                   quired to prevent manipulation, exces-  
6                   sive speculation as described in sec-  
7                   tion 4a, price distortion, or disruption  
8                   of delivery or the cash settlement  
9                   process; and

10                   “(IV) any other area of interest  
11                   expressed by the Commission to the  
12                   foreign board of trade or foreign fu-  
13                   tures authority;

14                   “(iv) provides information to the  
15                   Commission regarding large trader posi-  
16                   tions in the agreement, contract, or trans-  
17                   action that is comparable to the large trad-  
18                   er position information collected by the  
19                   Commission for the 1 or more contracts  
20                   against which the agreement, contract, or  
21                   transaction traded on the foreign board of  
22                   trade settles; and

23                   “(v) provides the Commission with in-  
24                   formation necessary to publish reports on  
25                   aggregate trader positions for the agree-

1           ment, contract, or transaction traded on  
2           the foreign board of trade that are com-  
3           parable to the reports on aggregate trader  
4           positions for the 1 or more contracts  
5           against which the agreement, contract, or  
6           transaction traded on the foreign board of  
7           trade settles.

8           “(2) EXISTING FOREIGN BOARDS OF TRADE.—

9           Paragraph (1) shall not be effective with respect to  
10          any foreign board of trade to which the Commission  
11          has granted direct access permission before the date  
12          of the enactment of this subsection until the date  
13          that is 180 days after such date of enactment.

14          “(3) PERSONS LOCATED IN THE UNITED  
15          STATES.—”.

16          (b) LIABILITY OF REGISTERED PERSONS TRADING  
17          ON A FOREIGN BOARD OF TRADE.—

18               (1) Section 4(a) of such Act (7. U.S.C. 6(a)) is  
19               amended by inserting “or by subsection (f)” after  
20               “Unless exempted by the Commission pursuant to  
21               subsection (c)”; and

22               (2) Section 4 of such Act (7 U.S.C 6) is further  
23               amended by adding at the end the following:

24               “(f)(1) A person registered with the Commission, or  
25               exempt from registration by the Commission, under this

1 Act may not be found to have violated subsection (a) with  
2 respect to a transaction in, or in connection with, a con-  
3 tract of sale of a commodity for future delivery if the per-  
4 son—

5 “(A) has reason to believe that the transaction  
6 and the contract is made on or subject to the rules  
7 of a foreign board of trade that is—

8 “(i) legally organized under the laws of a  
9 foreign country;

10 “(ii) authorized to act as a board of trade  
11 by a foreign futures authority; and

12 “(iii) subject to regulation by the foreign  
13 futures authority; and

14 “(B) has not been determined by the Commis-  
15 sion to be operating in violation of subsection (a).

16 “(2) Nothing in this subsection shall be construed as  
17 implying or creating any presumption that a board of  
18 trade, exchange, or market is located outside the United  
19 States, or its territories or possessions, for purposes of  
20 subsection (a).”.

21 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-  
22 TURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.  
23 25(a)) is amended by adding at the end the following:

24 “(5) CONTRACT ENFORCEMENT FOR FOREIGN  
25 FUTURES CONTRACTS.—A contract of sale of a com-

1       modity for future delivery traded or executed on or  
2       through the facilities of a board of trade, exchange,  
3       or market located outside the United States for pur-  
4       poses of section 4(a) shall not be void, voidable, or  
5       unenforceable, and a party to such a contract shall  
6       not be entitled to rescind or recover any payment  
7       made with respect to the contract, based on the fail-  
8       ure of the foreign board of trade to comply with any  
9       provision of this Act.”.

10   **SEC. 3116. LEGAL CERTAINTY FOR SWAPS.**

11       Section 22(a)(4) of the Commodity Exchange Act (7  
12   U.S.C. 25(a)(4)) is amended to read as follows:

13           “(4) CONTRACT ENFORCEMENT BETWEEN ELI-  
14   GIBLE COUNTERPARTIES.—

15           “(A) A hybrid instrument sold to any in-  
16   vestor shall not be void, voidable, or unenforce-  
17   able, and a party to such a hybrid instrument  
18   shall not be entitled to rescind, or recover any  
19   payment made with respect to, such a hybrid  
20   instrument under this section or any other pro-  
21   vision of Federal or State law, based solely on  
22   the failure of the hybrid instrument to comply  
23   with the terms or conditions of section 2(f) or  
24   regulations of the Commission; and

1           “(B) An agreement, contract, or trans-  
2           action between eligible contract participants or  
3           persons reasonably believed to be eligible con-  
4           tract participants shall not be void, voidable, or  
5           unenforceable, and a party thereto shall not be  
6           entitled to rescind, or recover any payment  
7           made with respect to, such an agreement, con-  
8           tract, or transaction under this section or any  
9           other provision of Federal or State law, based  
10          solely on the failure of the agreement, contract,  
11          or transaction to meet the definition of a swap  
12          set forth in section 1a, be traded in the manner  
13          set forth in section 2(k)(1), or be cleared pursu-  
14          ant to 2(j)(1) or regulations of the Commission  
15          pursuant thereto.”.

16 **SEC. 3117. FDICIA AMENDMENTS.**

17          Sections 408 and 409 of the Federal Deposit Insur-  
18          ance Corporation Improvement Act of 1991 (12 U.S.C.  
19          4421 and 4422) are repealed.

20 **SEC. 3118. ENFORCEMENT AUTHORITY.**

21          (a) The Commodity Exchange Act (7 U.S.C. 1 et  
22          seq.) is amended by inserting after section 4b the fol-  
23          lowing:

1 **“SEC. 4b-1. ENFORCEMENT AUTHORITY.**

2 “(a) CFTC.—Except as provided in subsection (b),  
3 the Commission shall have exclusive authority to enforce  
4 the provisions of subtitle A of the Derivative Markets  
5 Transparency and Accountability Act of 2009 with respect  
6 to any person.

7 “(b) PRUDENTIAL REGULATORS.—The Prudential  
8 Regulators shall have exclusive authority to enforce the  
9 provisions of section 4s(d) and other prudential require-  
10 ments of this Act with respect to banks, and branches or  
11 agencies of foreign banks that are swap dealers or major  
12 swap participants.

13 “(c) REFERRAL.—(1) If the Prudential Regulator for  
14 a swap dealer or major swap participant has cause to be-  
15 lieve that the swap dealer or major swap participant may  
16 have engaged in conduct that constitutes a violation of the  
17 nonprudential requirements of section 4s or rules adopted  
18 by the Commission thereunder, that Prudential Regulator  
19 may recommend in writing to the Commission that the  
20 Commission initiate an enforcement proceeding as author-  
21 ized under this Act. The recommendation shall be accom-  
22 panied by a written explanation of the concerns giving rise  
23 to the recommendation.

24 “(2) If the Commission has cause to believe that a  
25 swap dealer or major swap participant that has a Pruden-  
26 tial Regulator may have engaged in conduct that con-

stitutes a violation of the prudential requirements of section 4s or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns given rise to the recommendation.”.

(b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

“(3) DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading or practice on or subject to the rules of a registered entity that—

“(A) violates bids and offers (intentionally bidding at a price higher than the lowest offer, or offering at a price lower than the highest bid);

“(B) is, is of the character of, or is commonly known to the trade as ‘marking the close’ (bidding or offering during or near the market’s closing period with the intent to influence the settlement price);

“(C) is, is of the character of, or is commonly known to the trade as ‘spoofing’ (bidding



1 or offering with the intent to cancel the bid or  
2 offer before execution); or

3 “(D) constitutes uneconomic trading (trad-  
4 ing that has no legitimate economic purpose but  
5 for the effect on price).

6 “(4) The Commission may make and promul-  
7 gate such rules and regulations as, in the judgment  
8 of the Commission, are reasonably necessary to pro-  
9 hibit any other trading practice that is disruptive of  
10 fair and equitable trading.”.

11 (2) The amendment made by paragraph (1) shall be-  
12 come effective upon enactment.

13 **SEC. 3119. ENFORCEMENT.**

14 (a) Section 4b(a)(2) of the Commodity Exchange Act  
15 (7 U.S.C. 6b(a)(2)) is amended by striking “or other  
16 agreement, contract, or transaction subject to paragraphs  
17 (1) and (2) of section 5a(g),” and inserting “or swap,”.

18 (b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is  
19 amended by striking “or other agreement, contract or  
20 transaction subject to paragraphs (1) and (2) of section  
21 5a(g),” and inserting “or swap,”.

22 (c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is  
23 amended by inserting “or swap” before “if the transaction  
24 is used or may be used”.

1 (d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2))  
2 is amended by inserting “or of any swap,” before “or to  
3 corner”.

4 (e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4))  
5 is amended by inserting “swap repository,” before “or fu-  
6 tures association”.

7 (f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1))  
8 is amended by inserting “swap repository,” before “or reg-  
9 istered futures association” and by inserting “, or swaps,”  
10 before “on the basis”.

11 (g) Section 8(b) of the Federal Deposit Insurance Act  
12 (12 U.S.C. 1818(b)) is amended by redesignating para-  
13 graphs (6) through (10) as paragraphs (7) through (11),  
14 respectively, and inserting after paragraph (5) the fol-  
15 lowing:

16 “(6) This section shall apply to any swap deal-  
17 er, major swap participant, security-based swap  
18 dealer, major security-based swap participant, de-  
19 rivatives clearing organization, swap repository, se-  
20 curity-based swap repository, or swap execution fa-  
21 cility, whether or not it is an insured depository in-  
22 stitution, for which the Board, the Corporation, or  
23 the Office of the Comptroller of the Currency is the  
24 appropriate Federal banking agency or Prudential

1 Regulator for purposes of the Derivative Markets  
2 Transparency and Accountability Act of 2009.”.

3 **SEC. 3120. RETAIL COMMODITY TRANSACTIONS.**

4 (a) Section 2(c) of the Commodity Exchange Act (7  
5 U.S.C. 2(c)) is amended—

6 (1) in paragraph (1), by striking “(other than  
7 section 5a (to the extent provided in section 5a(g)),  
8 5b, 5d, or 12(e)(2)(B))” and inserting “(other than  
9 section 5b or 12(e)(2)(B))”; and

10 (2) in paragraph (2), by inserting after sub-  
11 paragraph (C) the following:

12 “(D) RETAIL COMMODITY TRANS-  
13 ACTIONS.—

14 “(i) This subparagraph shall apply to,  
15 and the Commission shall have jurisdiction  
16 over, any agreement, contract, or trans-  
17 action in any commodity that is—

18 “(I) entered into with, or offered  
19 to (even if not entered into with), a  
20 person that is not an eligible contract  
21 participant or eligible commercial en-  
22 tity; and

23 “(II) entered into, or offered  
24 (even if not entered into), on a lever-  
25 aged or margined basis, or financed

1 by the offeror, the counterparty, or a  
2 person acting in concert with the of-  
3 feror or counterparty on a similar  
4 basis.

5 “(ii) Clause (i) shall not apply to—

6 “(I) an agreement, contract, or  
7 transaction described in paragraph (1)  
8 or subparagraphs (A), (B), or (C), in-  
9 cluding any agreement, contract, or  
10 transaction specifically excluded from  
11 subparagraph (A), (B), or (C);

12 “(II) any security;

13 “(III) a contract of sale that—

14 “(aa) results in actual deliv-  
15 ery within 28 days or such other  
16 longer period as the Commission  
17 may determine by rule or regula-  
18 tion based upon the typical com-  
19 mercial practice in cash or spot  
20 markets for the commodity in-  
21 volved; or

22 “(bb) creates an enforceable  
23 obligation to deliver between a  
24 seller and a buyer that have the  
25 ability to deliver and accept deliv-

1                   ery, respectively, in connection  
2                   with their line of business.

3                   “(IV) an agreement, contract, or  
4                   transaction that is listed on a national  
5                   securities exchange registered under  
6                   section 6(a) of the Securities Ex-  
7                   change Act of 1934 (15 U.S.C.  
8                   78f(a)); or

9                   “(V) an identified banking prod-  
10                  uct, as defined in section 402(b) of  
11                  the Legal Certainty for Bank Prod-  
12                  ucts Act of 2000 (7 U.S.C. 27(b)).

13                  “(iii) Sections 4(a), 4(b) and 4b shall  
14                  apply to any agreement, contract or trans-  
15                  action described in clause (i), that is not  
16                  excluded from clause (i) by clause (ii), as  
17                  if the agreement, contract, or transaction  
18                  were a contract of sale of a commodity for  
19                  future delivery.

20                  “(iv) This subparagraph shall not be  
21                  construed to limit any jurisdiction that the  
22                  Commission may otherwise have under any  
23                  other provision of this Act over an agree-  
24                  ment, contract, or transaction that is a

1 contract of sale of a commodity for future  
2 delivery;

3 “(v) This subparagraph shall not be  
4 construed to limit any jurisdiction that the  
5 Commission or the Securities and Ex-  
6 change Commission may otherwise have  
7 under any other provisions of this Act with  
8 respect to security futures products and  
9 persons effecting transactions in security  
10 futures products;

11 “(vi) For the purposes of this sub-  
12 paragraph, an agricultural producer, pack-  
13 er, or handler shall be considered an eligi-  
14 ble commercial entity for any agreement,  
15 contract, or transaction for a commodity in  
16 connection with its line of business.”

17 (b) The amendments made by subsection (a) shall be-  
18 come effective on the date of the enactment of this section.

19 **SEC. 3121. LARGE SWAP TRADER REPORTING.**

20 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
21 is amended by inserting after section 4s (as added by sec-  
22 tion 3107 of this Act) the following:

1 **"SEC. 4t. LARGE SWAP TRADER REPORTING.**

2       “(a) It shall be unlawful for any person to enter into  
3 any swap that performs or affects a significant price dis-  
4 covery function with respect to registered entities if—

5           “(1) the person directly or indirectly enters into  
6 such swaps during any 1 day in an amount equal to  
7 or in excess of such amount as shall be fixed from  
8 time to time by the Commission; and

9           “(2) such person directly or indirectly has or  
10 obtains a position in such swaps equal to or in ex-  
11 cess of such amount as shall be fixed from time to  
12 time by the Commission,

13 unless the person files or causes to be filed with the prop-  
14 erly designated officer of the Commission such reports re-  
15 garding any transactions or positions described in para-  
16 graphs (1) and (2) as the Commission may by rule or reg-  
17 ulation require and unless, in accordance with the rules  
18 and regulations of the Commission, the person keeps  
19 books and records of all such swaps and any transactions  
20 and positions in any related commodity traded on or sub-  
21 ject to the rules of any board of trade, and of cash or  
22 spot transactions in, inventories of, and purchase and sale  
23 commitments of, such a commodity.

24       “(b) The books and records shall show complete de-  
25 tails concerning all transactions and positions as the Com-  
26 mission may by rule or regulation prescribe.

1       “(c) The books and records shall be open at all times  
2 to inspection and examination by any representative of the  
3 Commission.

4       “(d) For the purpose of this subsection, the swaps,  
5 futures and cash or spot transactions and positions of any  
6 person shall include the transactions and positions of any  
7 persons directly or indirectly controlled by the person.

8       “(e) In making a determination whether a swap per-  
9 forms or affects a significant price discovery function with  
10 respect to regulated markets, the Commission shall con-  
11 sider the factors set forth in section 4a(a)(3).”.

12 **SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLAT-**  
13 **ERAL IN SWAP TRANSACTIONS.**

14       The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
15 is further amended by inserting after section 4t the fol-  
16 lowing:

17 **“SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
18 **IN OVER-THE-COUNTER SWAP TRANS-**  
19 **ACTIONS.**

20       “(a) SEGREGATION.—At the request of a swap  
21 counterparty who provides funds or other property to a  
22 swap dealer initial margin or collateral to secure the obli-  
23 gations of the counterparty under a swap between the  
24 counterparty and the swap dealer that is not submitted  
25 for clearing to a derivatives clearing organization, the



1 swap dealer shall segregate the funds or other property  
2 for the benefit of the counterparty, and maintain the ini-  
3 tial margin or collateral in an account which is carried  
4 by an independent third-party custodian and designated  
5 as a segregated account for the counterparty, in accord-  
6 ance with such rules and regulations as the Commission  
7 or Prudential Regulator may prescribe. If a swap  
8 counterparty is a swap dealer or major swap participant  
9 who owns more than 20 percent of, or has more than 50  
10 percent representation on the board of directors of a cus-  
11 todian, the custodian shall not be considered independent  
12 from the swap counterparties for purposes of the pre-  
13 ceding sentence. This subsection shall not be interpreted  
14 to preclude commercial arrangements regarding the in-  
15 vestment of the segregated funds or other property and  
16 the related allocation of gains and losses resulting from  
17 any such investment.

18 “(b) FURTHER AUDIT REPORTING.—If a swap dealer  
19 does not segregate funds pursuant to the request of a  
20 swap counterparty in accordance with subsection (a), the  
21 swap dealer shall report to its counterparty on a quarterly  
22 basis that its procedures relating to margin and collateral  
23 requirements are in compliance with the agreement of the  
24 counterparties.”.

1 **SEC. 3123. OTHER AUTHORITY.**

2 Unless otherwise provided by its terms, this subtitle  
3 does not divest any appropriate Federal banking agency,  
4 the Commission, the Securities and Exchange Commis-  
5 sion, or other Federal or State agency, of any authority  
6 derived from any other applicable law.

7 **SEC. 3124. ANTITRUST.**

8 Nothing in the amendments made by this subtitle  
9 shall be construed to modify, impair, or supersede the op-  
10 eration of any of the antitrust laws. For purposes of this  
11 subtitle, the term "antitrust laws" has the same meaning  
12 given the term in subsection (a) of the first section of the  
13 Clayton Act, except that the term includes section 5 of  
14 the Federal Trade Commission Act to the extent that such  
15 section 5 applies to unfair methods of competition.

16 **SEC. 3125. REVIEW OF PRIOR ACTIONS.**

17 Notwithstanding any other provision of the Com-  
18 modity Exchange Act, the Commodity Futures Trading  
19 Commission shall review, as appropriate, all regulations,  
20 rules, exemptions, exclusions, guidance, no action letters,  
21 orders, other actions taken by or on behalf of the Commis-  
22 sion, and any action taken pursuant to the Commodity  
23 Exchange Act by an exchange, self-regulatory organiza-  
24 tion, or any other registered entity, that are currently in  
25 effect, to ensure that such prior actions are in compliance  
26 with the provisions of this title.

1 **SEC. 3126. EXPEDITED PROCESS.**

2 The Commodity Futures Trading Commission may  
3 use emergency and expedited procedures (including any  
4 administrative or other procedure as appropriate) to carry  
5 out this title if, in its discretion, it deems it necessary to  
6 do so.

7 **SEC. 3127. EFFECTIVE DATE.**

8 (a) Unless otherwise provided, the provisions of this  
9 subtitle shall become effective the later of 270 days after  
10 the date of the enactment of this subtitle or, to the extent  
11 a provision of this subtitle requires rulemaking, no less  
12 than 60 days after publication of a final rule or regulation  
13 implementing such provision of this subtitle.

14 (b) Subsection (a) shall not preclude the Commodity  
15 Futures Trading Commission from any rulemaking re-  
16 quired or directed under this subtitle to implement the  
17 provisions of this subtitle.

18 **Subtitle B—Regulation of Security-**  
19 **Based Swap Markets**

20 **SEC. 3201. DEFINITIONS UNDER THE SECURITIES EX-**  
21 **CHANGE ACT OF 1934.**

22 (a) **DEFINITIONS.**—Section 3(a) of the Securities Ex-  
23 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

24 (1) in paragraph (5)(A) and (B), by inserting  
25 “(but not security-based swaps, other than security-  
26 based swaps with or for persons that are not eligible

1 contract participants)” after the word “securities”  
2 in each place it appears;

3 (2) in paragraph (10), by inserting “security-  
4 based swap,” after “security future,”;

5 (3) in paragraph (13), by adding at the end the  
6 following: “For security-based swaps, such terms in-  
7 clude the execution, termination (prior to its sched-  
8 uled maturity date), assignment, exchange, or simi-  
9 lar transfer or conveyance of, or extinguishing of  
10 rights or obligations under, a security-based swap,  
11 as the context may require.”;

12 (4) in paragraph (14), by adding at the end the  
13 following: “For security-based swaps, such terms in-  
14 clude the execution, termination (prior to its sched-  
15 uled maturity date); assignment, exchange, or simi-  
16 lar transfer or conveyance of, or extinguishing of  
17 rights or obligations under, a security-based swap,  
18 as the context may require.”;

19 (5) in paragraph (39)—

20 (A) by striking “or government securities  
21 dealer” and adding “government securities  
22 dealer, security-based swap dealer or major se-  
23 curity-based swap participant” in its place in  
24 subparagraph (B)(i)(I);

1 (B) by adding “security-based swap dealer,  
2 major security-based swap participant,” after  
3 “government securities dealer,” in subpara-  
4 graph (B)(i)(II);

5 (C) by striking “or government securities  
6 dealer” and adding “government securities  
7 dealer, security-based swap dealer or major se-  
8 curity-based swap participant” in its place in  
9 subparagraph (C); and

10 (D) by adding “security-based swap dealer,  
11 major security-based swap participant,” after  
12 “government securities dealer,” in subpara-  
13 graph (D); and

14 (6) by adding at the end the following:

15 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The  
16 term ‘eligible contract participant’ has the same  
17 meaning as in section 1a(12) of the Commodity Ex-  
18 change Act (7 U.S.C. 1a(12)).

19 “(66) MAJOR SWAP PARTICIPANT.—The term  
20 ‘major swap participant’ has the same meaning as in  
21 section 1a(39) of the Commodity Exchange Act (7  
22 U.S.C. 1a(39)).

23 “(67) MAJOR SECURITY-BASED SWAP PARTICI-  
24 PANT.—

1           “(A) IN GENERAL.—The term ‘major secu-  
2           rity-based swap participant’ means any person  
3           who is not a security-based swap dealer, and—

4                   “(i) maintains a substantial net posi-  
5                   tion in outstanding security-based swaps,  
6                   excluding positions held primarily for hedg-  
7                   ing, reducing or otherwise mitigating its  
8                   commercial risk, including operating and  
9                   balance sheet risk; or

10                   “(ii) whose outstanding security-based  
11                   swaps create substantial net counterparty  
12                   exposure among the aggregate of its  
13                   counterparties that could expose those  
14                   counterparties to significant credit losses.

15           “(B) DEFINITION OF ‘SUBSTANTIAL NET  
16           POSITION’.—The Commission shall define by  
17           rule or regulation the terms ‘substantial net po-  
18           sition’, ‘substantial net counterparty exposure’,  
19           and ‘significant credit losses’ at thresholds that  
20           the Commission determines prudent for the ef-  
21           fective monitoring, management and oversight  
22           of entities which are systemically important or  
23           can significantly impact the financial system  
24           through counterparty credit risk. In setting the  
25           definitions, the Commission shall consider the

1 person's relative position in uncleared as op-  
2 posed to cleared swaps.

3 "(C) A person may be designated a major  
4 security-based swap participant for 1 or more  
5 individual types of security-based swaps without  
6 being classified as a major security-based swap  
7 participant for all classes of security-based  
8 swaps.

9 "(68) SECURITY-BASED SWAP.—

10 "(A) IN GENERAL.—Except as provided in  
11 subparagraph (B), the term 'security-based  
12 swap' means any agreement, contract, or trans-  
13 action that would be a swap under section  
14 1a(35) of the Commodity Exchange Act, and  
15 that—

16 "(i) is primarily based on an index  
17 that is a narrow-based security index, in-  
18 cluding any interest therein or based on  
19 the value thereof;

20 "(ii) is primarily based on a single se-  
21 curity or loan, including any interest there-  
22 in or based on the value thereof; or

23 "(iii) is primarily based on the occur-  
24 rence, non-occurrence, or extent of the oc-  
25 currence of an event relating to a single

1 issuer of a security or the issuers of securi-  
2 ties in a narrow-based security index, pro-  
3 vided that such event must directly affect  
4 the financial statements, financial condi-  
5 tion, or financial obligations of the issuer.

6 “(B) RULE OF CONSTRUCTION REGARDING  
7 MASTER AGREEMENTS.—The term ‘security-  
8 based swap’ shall be construed to include a  
9 master agreement that provides for an agree-  
10 ment, contract, or transaction that is a secu-  
11 rity-based swap pursuant to subparagraph (A),  
12 together with all supplements to any such mas-  
13 ter agreement, without regard to whether the  
14 master agreement contains an agreement, con-  
15 tract, or transaction that is not a security-based  
16 swap pursuant to subparagraph (A), except  
17 that the master agreement shall be considered  
18 to be a security-based swap only with respect to  
19 each agreement, contract, or transaction under  
20 the master agreement that is a security-based  
21 swap pursuant to subparagraph (A).

22 “(C) EXCLUSION.—The term ‘security-  
23 based swap’ does not include any agreement,  
24 contract, or transaction that meets the defini-  
25 tion of a security-based swap only because it



1 references, is based upon, or settles through the  
2 transfer, delivery, or receipt of an exempted se-  
3 curity under section 3(a)(12) of the Securities  
4 Exchange Act of 1934 as in effect on the date  
5 of enactment of the Futures Trading Act of  
6 1982 (other than any municipal security as de-  
7 fined in section 3(a)(29) as in effect on the date  
8 of enactment of the Futures Trading Act of  
9 1982), unless such agreement, contract, or  
10 transaction is of the character of, or is com-  
11 monly known in the trade as, a put, call, or  
12 other option.

13 “(69) SWAP.—The term ‘swap’ has the same  
14 meaning as in section 1a(35) of the Commodity Ex-  
15 change Act (7 U.S.C. 1a(35)).

16 “(70) PERSON ASSOCIATED WITH A SECURITY-  
17 BASED SWAP DEALER OR MAJOR SECURITY-BASED  
18 SWAP PARTICIPANT.—The term ‘person associated  
19 with a security-based swap dealer or major security-  
20 based swap participant’ or ‘associated person of a  
21 security-based swap dealer or major security-based  
22 swap participant’ means any partner, officer, direc-  
23 tor, or branch manager of such security-based swap  
24 dealer or major security-based swap participant (or  
25 any person occupying a similar status or performing

1 similar functions), any person directly or indirectly  
2 controlling, controlled by, or under common control  
3 with such security-based swap dealer or major secu-  
4 rity-based swap participant, or any employee of such  
5 security-based swap dealer or major security-based  
6 swap participant, except that any person associated  
7 with a security-based swap dealer or major security-  
8 based swap participant whose functions are solely  
9 clerical or ministerial shall not be included in the  
10 meaning of such term other than for purposes of  
11 section 15F(e)(2).

12 “(71) SECURITY-BASED SWAP DEALER.—

13 “(A) IN GENERAL.—The term ‘security-  
14 based swap dealer’ means any person that—

15 “(i) holds itself out as a dealer in se-  
16 curity-based swaps;

17 “(ii) makes a market in security-based  
18 swaps;

19 “(iii) regularly engages in the pur-  
20 chase of security-based swaps and their re-  
21 sale to customers in the ordinary course of  
22 a business; or

23 “(iv) engages in any activity causing  
24 it to be commonly known in the trade as

1 a dealer or market maker in security-based  
2 swaps.

3 “(B) DESIGNATION BY TYPE OR CLASS.—

4 A person may be designated a security-based  
5 swap dealer for a single type or single class or  
6 category of security-based swap and considered  
7 not a security-based swap dealer for other  
8 types, classes, or categories of security-based  
9 swaps.

10 “(C) DE MINIMUS EXCEPTION.—The Com-  
11 mission shall make a determination to exempt  
12 from designation as a security-based swap deal-  
13 er an entity that engages in a de minimus  
14 amount of security-based swap dealing in con-  
15 nection with transactions with or on the behalf  
16 of its customers.

17 “(72) APPROPRIATE FEDERAL BANKING AGEN-  
18 CY.—The term ‘appropriate Federal banking agency’  
19 has the same meaning as in section 3(q) of the Fed-  
20 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

21 “(73) BOARD.—The term ‘Board’ means the  
22 Board of Governors of the Federal Reserve System.

23 “(74) PRUDENTIAL REGULATOR.—The term  
24 ‘Prudential Regulator’ means—

1           “(A) the Board in the case of a swap deal-  
2           er, major swap participant, security-based swap  
3           dealer or major security-based swap participant  
4           that is—

5                   “(i) a State-chartered bank that is a  
6                   member of the Federal Reserve System; or

7                   “(ii) a State-chartered branch or  
8                   agency of a foreign bank;

9           “(B) the Office of the Comptroller of the  
10          Currency in the case of a swap dealer, major  
11          swap participant, security-based swap dealer or  
12          major security-based swap participant that is—

13                   “(i) a national bank; or

14                   “(ii) a federally chartered branch or  
15                   agency of a foreign bank; and

16          “(C) the Federal Deposit Insurance Cor-  
17          poration in the case of a swap dealer, major  
18          swap participant, security-based swap dealer or  
19          major security-based swap participant that is a  
20          state-chartered bank that is not a member of  
21          the Federal Reserve System.

22          “(75) SWAP DEALER.—The term ‘swap dealer’  
23          has the same meaning as in section 1a(38) of the  
24          Commodity Exchange Act (7 U.S.C. 1a(38)).

25          “(76) SECURITY-BASED SWAP AGREEMENT.—

1           “(A) IN GENERAL.—For purposes of sec-  
2           tions 10, 16, 20, and 21A of this Act, and sec-  
3           tion 17 of the Securities Act of 1933 (15  
4           U.S.C. 77q), the term ‘security-based swap  
5           agreement’ means a swap agreement as defined  
6           in section 206A of the Gramm-Leach-Bliley Act  
7           (15 U.S.C. 78c note) of which a material term  
8           is based on the price, yield, value, or volatility  
9           of any security or any group or index of securi-  
10          ties, or any interest therein.

11          “(B) EXCLUSIONS.—The term ‘security-  
12          based swap agreement’ does not include any se-  
13          curity-based swap.

14          “(76) SECURITY-BASED SWAP REPOSITORY.—  
15          The term ‘security-based swap repository’ means any  
16          person that collects, calculates, prepares or main-  
17          tains information or records with respect to trans-  
18          actions or positions in, or the terms and conditions  
19          of, security-based swaps entered into by third par-  
20          ties.

21          “(77) SWAP EXECUTION FACILITY.—The term  
22          ‘swap execution facility’ means a person or entity  
23          that facilitates the execution or trading of security-  
24          based swaps between two persons through any  
25          means of interstate commerce, but which is not a

1 national securities exchange, including any electronic  
2 trade execution or voice brokerage facility.”’”’.

3 (b) **AUTHORITY TO FURTHER DEFINE TERMS.**—The  
4 Securities and Exchange Commission may adopt a rule  
5 further defining the terms “security-based swap”, “secu-  
6 rity-based swap dealer”, “major security-based swap par-  
7 ticipant”, and “eligible contract participant” with regard  
8 to security-based swaps (as such terms are defined in the  
9 amendments made by subsection (a)) for the purpose of  
10 including transactions and entities that have been struc-  
11 tured to evade this title.

12 **SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF**  
13 **SECURITY-BASED SWAPS.**

14 (a) **REPEAL OF LAW.**—Section 206B of the Gramm-  
15 Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

16 (b) **CONFORMING AMENDMENTS TO THE SECURITIES**  
17 **ACT OF 1933.**—

18 (1) Section 2A(b) of the Securities Act of 1933  
19 (15 U.S.C. 77b–1) is amended by striking “(as de-  
20 fined in section 206B of the Gramm-Leach-Bliley  
21 Act)” each place that such term appears.

22 (2) Section 17 of the Securities Act of 1933 (15  
23 U.S.C. 77q) is amended—

24 (A) in subsection (a)—

1 (i) by inserting “(including security-  
2 based swaps)” after “securities”; and

3 (ii) by striking “206B of the Gramm-  
4 Leach-Bliley Act” and inserting “3(a)(76)  
5 of the Securities Exchange Act of 1934”;  
6 and

7 (B) in subsection (d), by striking “206B of  
8 the Gramm-Leach-Bliley Act” and inserting  
9 “3(a)(76) of the Securities Exchange Act of  
10 1934”.

11 (c) CONFORMING AMENDMENTS TO THE SECURITIES  
12 EXCHANGE ACT OF 1934.—The Securities Exchange Act  
13 of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

14 (1) Section 3A (15 U.S.C. 78c–1) is amended  
15 by striking “(as defined in section 206B of the  
16 Gramm-Leach-Bliley Act)” each place that the term  
17 appears.

18 (2) Section 9(a) (15 U.S.C. 78i(a)) is amended  
19 by striking paragraphs (2) through (5) and insert-  
20 ing:

21 “(2) To effect, alone or with one or more other per-  
22 sons, a series of transactions in any security registered  
23 on a national securities exchange or in connection with  
24 any security-based swap or security-based swap agreement  
25 with respect to such security creating actual or apparent

1 active trading in such security, or raising or depressing  
2 the price of such security, for the purpose of inducing the  
3 purchase or sale of such security by others.

4 “(3) If a dealer, broker, security-based swap dealer,  
5 major security-based swap participant or other person sell-  
6 ing or offering for sale or purchasing or offering to pur-  
7 chase the security, or a security-based swap or security-  
8 based swap agreement with respect to such security, to  
9 induce the purchase or sale of any security registered on  
10 a national securities exchange or any security-based swap  
11 or security-based swap agreement with respect to such se-  
12 curity by the circulation or dissemination in the ordinary  
13 course of business of information to the effect that the  
14 price of any such security will or is likely to rise or fall  
15 because of market operations of any one or more persons  
16 conducted for the purpose of raising or depressing the  
17 price of such security.

18 “(4) If a dealer, broker, security-based swap dealer,  
19 major security-based swap participant or other person sell-  
20 ing or offering for sale or purchasing or offering to pur-  
21 chase the security, or a security-based swap or security-  
22 based swap agreement with respect to such security, to  
23 make, regarding any security registered on a national se-  
24 curities exchange or any security-based swap or security-  
25 based swap agreement with respect to such security, for



1 the purpose of inducing the purchase or sale of such secu-  
2 rity or such security-based swap or security-based swap  
3 agreement, any statement which was at the time and in  
4 the light of the circumstances under which it was made,  
5 false or misleading with respect to any material fact, and  
6 which he knew or had reasonable ground to believe was  
7 so false or misleading.

8 “(5) For a consideration, received directly or indi-  
9 rectly from a dealer, broker, security-based swap dealer,  
10 major security-based swap participant or other person sell-  
11 ing or offering for sale or purchasing or offering to pur-  
12 chase the security, or a security-based swap or security-  
13 based swap agreement with respect to such security, to  
14 induce the purchase of any security registered on a na-  
15 tional securities exchange or any security-based swap or  
16 security-based swap agreement with respect to such secu-  
17 rity by the circulation or dissemination of information to  
18 the effect that the price of any such security will or is  
19 likely to rise or fall because of the market operations of  
20 any one or more persons conducted for the purpose of rais-  
21 ing or depressing the price of such security.”

22 (3) Section 9(i) (15 U.S.C. 78i(i)) is amended  
23 by striking “(as defined in section 206B of the  
24 Gramm-Leach-Bliley Act)”;

1           (4) Section 10 (15 U.S.C. 78j) is amended by  
2       striking “(as defined in section 206B of the Gramm-  
3       Leach-Bliley Act)” each place that the term appears.

4           (5) Section 15(c)(1) is amended—

5               (A) in subparagraph (A), by striking “, or  
6       any security-based swap agreement (as defined  
7       in section 206B of the Gramm-Leach-Bliley  
8       Act),”; and

9               (B) in subparagraphs (B) and (C), by  
10       striking “agreement (as defined in section 206B  
11       of the Gramm-Leach-Bliley Act)” in each place  
12       that the term appears.

13          (6) Section 15(i) (15 U.S.C. 78o(i), as added  
14       by section 303(f) of the Commodity Futures Mod-  
15       ernization Act of 2000 (Public Law 106–554; 114  
16       Stat. 2763A–455) is amended by striking “(as de-  
17       fined in section 206B of the Gramm-Leach-Bliley  
18       Act)”.

19          (7) Section 16 (15 U.S.C. 78p) is amended—

20               (A) in subsection (a)(2)(C), by striking  
21       “(as defined in section 206(b) of the Gramm-  
22       Leach-Bliley Act (15 U.S.C. 78c note))”;

23               (B) in subsection (b), by striking “(as de-  
24       fined in section 206B of the Gramm-Leach-Bli-

1           ley Act)” in each place that the term appears;  
2           and

3           (C) in subsection (g), by striking “(as de-  
4           fined in section 206B of the Gramm-Leach-Bli-  
5           ley Act)”;

6           (8) Section 20 (15 U.S.C. 78t) is amended—

7           (A) in subsection (d), by striking “(as de-  
8           fined in section 206B of the Gramm-Leach-Bli-  
9           ley Act)”;

10          (B) in subsection (f), by striking “(as de-  
11          fined in section 206B of the Gramm-Leach-Bli-  
12          ley Act)”;

13          (9) Section 21A (15 U.S.C. 78u-1) is amend-  
14          ed—

15          (A) in subsection (a)(1), by striking “(as  
16          defined in section 206B of the Gramm-Leach-  
17          Bliley Act)”;

18          (B) in subsection (g), by striking “(as de-  
19          fined in section 206B of the Gramm-Leach-Bli-  
20          ley Act)”.

21   **SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE**

22           **ACT OF 1934.**

23          (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The  
24          Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)

1 is amended by adding the following section after section

2 3A:

3 **"SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

4 "(a) IN GENERAL.—

5 "(1) STANDARD FOR CLEARING.—A security-  
6 based swap shall be submitted for clearing if a clear-  
7 ing agency that is registered under this Act will ac-  
8 cept the security-based swap for clearing, and the  
9 Commission has determined under paragraph  
10 (2)(B)(ii) of subsection (b) that the security-based  
11 swap is required to be cleared.

12 "(2) OPEN ACCESS.—The rules of a clearing  
13 agency described in paragraph (1) shall—

14 "(A) prescribe that all security-based  
15 swaps submitted to the clearing agency with the  
16 same terms and conditions are economically  
17 equivalent within the clearing agency and may  
18 be offset with each other within the clearing  
19 agency; and

20 "(B) provide for non-discriminatory clear-  
21 ing of a security-based swap executed bilaterally  
22 or on or through the rules of an unaffiliated na-  
23 tional securities exchange or swap execution fa-  
24 cility.

25 "(b) COMMISSION REVIEW.—

1 “(1) COMMISSION-INITIATED REVIEW.—

2 “(A) The Commission shall review each se-  
3 curity-based swap, or any group, category, type  
4 or class of security-based swaps to make a de-  
5 termination that such security-based swap, or  
6 group, category, type or class of security-based  
7 swaps should be required to be cleared.

8 “(B) The Commission shall provide at  
9 least a 30-day public comment period regarding  
10 any determination under subparagraph (A).

11 “(2) SWAP SUBMISSIONS.—

12 “(A) A clearing agency shall submit to the  
13 Commission each security-based swap, or any  
14 group, category, type or class of security-based  
15 swaps that it plans to accept for clearing and  
16 provide notice to its members (in a manner to  
17 be determined by the Commission) of such sub-  
18 mission.

19 “(B) The Commission shall—

20 “(i) make available to the public any  
21 submission received under subparagraph  
22 (A);

23 “(ii) review each submission made  
24 under subparagraph (A), and determine  
25 whether the security-based swap, or group,

1 category, type, or class of security-based  
2 swaps, described in the submission is re-  
3 quired to be cleared; and

4 “(iii) provide at least a 30-day public  
5 comment period regarding its determina-  
6 tion whether the clearing requirement  
7 under subsection (a)(1) shall apply to the  
8 submission.

9 “(3) DEADLINE.—The Commission shall make  
10 its determination under paragraph (2)(B) not later  
11 than 90 days after receiving a submission made  
12 under paragraph (2)(A), unless the submitting clear-  
13 ing agency agrees to an extension for the time limi-  
14 tation established under this paragraph.

15 “(4) DETERMINATION.—

16 “(A) In reviewing a submission made  
17 under paragraph (2), the Commission shall re-  
18 view whether the submission is consistent with  
19 section 5b(c)(2).

20 “(B) In reviewing a security-based swap,  
21 group of security-based swaps or class of secu-  
22 rity-based swaps pursuant to paragraph (1) or  
23 a submission made under paragraph (2), the  
24 Commission shall take into account the fol-  
25 lowing factors:

1           “(i) The existence of significant out-  
2           standing notional exposures, trading liquid-  
3           ity and adequate pricing data.

4           “(ii) The availability of rule frame-  
5           work, capacity, operational expertise and  
6           resources, and credit support infrastruc-  
7           ture to clear the contract on terms that are  
8           consistent with the material terms and  
9           trading conventions on which the contract  
10          is then traded.

11          “(iii) The effect on the mitigation of  
12          systemic risk, taking into account the size  
13          of the market for such contract and the re-  
14          sources of the clearing agency available to  
15          clear the contract.

16          “(iv) The effect on competition, in-  
17          cluding appropriate fees and charges ap-  
18          plied to clearing.

19          “(v) The existence of reasonable legal  
20          certainty in the event of the insolvency of  
21          the relevant clearing agency or 1 or more  
22          of its clearing members with regard to the  
23          treatment of customer and security-based  
24          swap counterparty positions, funds, and  
25          property.

1           “(C) In making a determination under  
2           paragraph (2)(B) that the clearing requirement  
3           shall apply, the Commission may require such  
4           terms and conditions to the requirement as the  
5           Commission determines to be appropriate.

6           “(5) RULES.—Not later than 1 year after the  
7           date of the enactment of the Derivative Markets  
8           Transparency and Accountability Act of 2009, the  
9           Commission shall adopt rules for a clearing agency’s  
10          submission for review, pursuant to this subsection,  
11          of a security-based swap, or a group, category, type  
12          or class of security-based swaps, that it seeks to ac-  
13          cept for clearing.

14          “(c) STAY OF CLEARING REQUIREMENT.—

15          “(1) After an determination pursuant to sub-  
16          section (b)(2), the Commission, on application of a  
17          counterparty to a security-based swap or on its own  
18          initiative, may stay the clearing requirement of sub-  
19          section (a)(1) until the Commission completes a re-  
20          view of the terms of the security-based swap (or the  
21          group, category, type or class of security-based  
22          swaps) and the clearing arrangement.

23          “(2) DEADLINE.—The Commission shall com-  
24          plete a review undertaken pursuant to paragraph (1)  
25          not later than 90 days after issuance of the stay, un-



1 less the clearing agency that clears the security-  
2 based swap, or group, category, type or class of se-  
3 curity-based swaps, agrees to an extension of the  
4 time limitation established under this paragraph.

5 “(3) DETERMINATION.—Upon completion of  
6 the review undertaken pursuant to paragraph (1),  
7 the Commission may—

8 “(A) determine, unconditionally or subject  
9 to such terms and conditions as the Commis-  
10 sion determines to be appropriate, that the se-  
11 curity-based swap, or group, category, type or  
12 class of security-based swaps, must be cleared  
13 pursuant to this subsection if it finds that such  
14 clearing is consistent with subsection (b)(4); or

15 “(B) determine that the clearing require-  
16 ment of subsection (a)(1) shall not apply to the  
17 security-based swap, or group, category, type or  
18 class of security-based swaps.

19 “(4) RULES.—Not later than 1 year after the  
20 date of the enactment of the Derivative Markets  
21 Transparency and Accountability Act of 2009, the  
22 Commission shall adopt rules for reviewing, pursu-  
23 ant to this subsection, a clearing agency’s clearing of  
24 a security-based swap, or a group, category, type or

1 class of security-based swaps, that it has accepted  
2 for clearing.

3 “(d) PREVENTION OF EVASION.—The Commission  
4 may prescribe rules under this subsection, or issue inter-  
5 pretations of the rules, as necessary to prevent evasions  
6 of this section.

7 “(e) REQUIRED REPORTING.—

8 “(1) IN GENERAL.—All security-based swaps  
9 that are not accepted for clearing by any clearing  
10 agency shall be reported either to a security-based  
11 swap repository described in subsection 13(n) or, if  
12 there is no security-based swap repository that  
13 would accept the security-based swap, to the Com-  
14 mission pursuant to section 13A within such time  
15 period as the Commission may by rule or regulation  
16 prescribe. Counterparties to a security-based swap  
17 may agree which counterparty will report the secu-  
18 rity-based swap as required by this paragraph.

19 “(2) SWAP DEALER DESIGNATION.—With re-  
20 gard to security-based swaps where only 1  
21 counterparty is a security-based swap dealer, the se-  
22 curity-based swap dealer shall report the security-  
23 based swap as required by this subsection.

1       “(f) REPORTING TRANSITION RULES.—Rules adopt-  
2   ed by the Commission under this section shall provide for  
3   the reporting of data, as follows:

4       “(1) Security-based swaps entered into before  
5   the date of the enactment of this section shall be re-  
6   ported to a registered security-based swap repository  
7   or the Commission no later than 180 days after the  
8   effective date of this section; and

9       “(2) Security-based swaps entered into on or  
10   after such date of enactment shall be reported to a  
11   registered security-based swap repository or the  
12   Commission no later than the later of—

13               “(A) 90 days after such effective date; or

14               “(B) such other time after entering into  
15   the security-based swap as the Commission may  
16   prescribe by rule or regulation.

17       “(g) CLEARING TRANSITION RULES.—

18       “(1) Security-based swaps entered into before  
19   the date of the enactment of this section are exempt  
20   from the clearing requirements of this subsection if  
21   reported pursuant to subsection (f)(1).

22       “(2) Security-based swaps entered into before  
23   application of the clearing requirement pursuant to  
24   this section are exempt from the clearing require-

1       ments of this section if reported pursuant to sub-  
2       section (f)(2).

3       “(h) EXCEPTIONS.—

4               “(1) IN GENERAL.—The requirements of sub-  
5       section (a)(1) shall not apply to a security-based  
6       swap if one of the counterparties to the security-  
7       based swap—

8               “(A) is not a security-based swap dealer or  
9       major security-based swap participant; and

10              “(B) is using security-based swaps to  
11       hedge or mitigate commercial risk, including  
12       operating or balance sheet risk; and

13              “(C) notifies the Commission, in a manner  
14       set forth by the Commission, how it generally  
15       meets its financial obligations associated with  
16       entering into non-cleared security-based swaps.

17              “(2) ABUSE OF EXCEPTION.—The Commission  
18       may prescribe rules under this subsection, or issue  
19       interpretations of the rules, as necessary to prevent  
20       abuse of the exemption in paragraph (1) by security-  
21       based swap dealers and major security-based swap  
22       participants.

23              “(3) OPTION TO CLEAR.—The application of  
24       the clearing exception in paragraph (1) is solely at  
25       the discretion the counterparty to the swap that

1 meets the conditions of subparagraphs (A) through  
2 (C) of paragraph (1).”.

3 (b) CLEARING AGENCY REQUIREMENTS.—Section  
4 17A of the Securities Exchange Act of 1934 (15 U.S.C.  
5 78q) is amended by adding at the end the following new  
6 subsections:

7 “(g) REGISTRATION REQUIREMENT.—It shall be un-  
8 lawful for a clearing agency, unless registered with the  
9 Commission, directly or indirectly to make use of the mails  
10 or any means or instrumentality of interstate commerce  
11 to perform the functions of a clearing agency with respect  
12 to a swap.

13 “(h) VOLUNTARY REGISTRATION.—A person that  
14 clears agreements, contracts, or transactions that are not  
15 required to be cleared under this Act may register with  
16 the Commission as a clearing agency.

17 “(i) EXISTING BANKS AND DERIVATIVES CLEARING  
18 ORGANIZATIONS.—A bank or a derivatives clearing orga-  
19 nization registered with the Commodity Futures Trading  
20 Commission under the Commodity Exchange Act required  
21 to be a registered as a clearing agency under this title,  
22 solely because it clears security-based swaps, is deemed to  
23 be a registered clearing agency under this title solely for  
24 the purpose of clearing security-based swaps to the extent  
25 that the bank cleared security-based swaps, as defined in

1 this Act, as a multilateral clearing organization or the de-  
2 rivatives clearing organization cleared security-based  
3 swaps, as defined in this title pursuant to an exemption  
4 from registration as a clearing agency, before the enact-  
5 ment of this section. A bank or derivative clearing organi-  
6 zation to which this subsection applies shall continue to  
7 comply with the requirements in section 17A(b)(3) of this  
8 title. A bank to which this subsection applies may, by the  
9 vote of the shareholders owning not less than 51 percent  
10 of the voting interests of such bank, be converted into a  
11 State corporation, partnership, limited liability company,  
12 or other similar legal form pursuant to a plan of conver-  
13 sion, if the conversion is not in contravention of applicable  
14 State law.

15 “(j) REPORTING.—

16 “(1) IN GENERAL.—A clearing agency that  
17 clears security-based swaps shall provide to the  
18 Commission all information determined by the Com-  
19 mission to be necessary to perform its responsibil-  
20 ities under this Act. The Commission shall adopt  
21 data collection and maintenance requirements for se-  
22 curity-based swaps cleared by clearing agencies that  
23 are comparable to the corresponding requirements  
24 for security-based swaps accepted by security-based  
25 swap repositories and security-based swaps traded

1 on swap execution facilities. Subject to section 24,  
2 the Commission shall share such information, upon  
3 request, with the Board, the Commodity Futures  
4 Trading Commission, the appropriate Federal bank-  
5 ing agencies, the Financial Services Oversight Coun-  
6 cil, and the Department of Justice or to other per-  
7 sons the Commission deems appropriate, including  
8 foreign financial supervisors (including foreign fu-  
9 tures authorities), foreign central banks, and foreign  
10 ministries.

11 “(2) PUBLIC INFORMATION.—A clearing agency  
12 that clears security-based swaps shall provide to the  
13 Commission, or its designee, such information as is  
14 required by, and in a form and at a frequency to be  
15 determined by, the Commission, in order to comply  
16 with the public reporting requirements contained in  
17 section 13.

18 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

19 “(1) IN GENERAL.—Each clearing agency that  
20 clears security-based swaps shall designate an indi-  
21 vidual to serve as a compliance officer.

22 “(2) DUTIES.—The compliance officer shall—

23 “(A) report directly to the board or to the  
24 senior officer of the clearing agency;

1           “(B) in consultation with the board of the  
2 clearing agency, a body performing a function  
3 similar to that of a board, or the senior officer  
4 of the clearing agency, resolve any conflicts of  
5 interest that may arise;

6           “(C) be responsible for administering the  
7 policies and procedures required to be estab-  
8 lished pursuant to this section;

9           “(D) ensure compliance with securities  
10 laws and the rules and regulations issued there-  
11 under, including rules prescribed by the Com-  
12 mission pursuant to this section; and

13           “(E) establish procedures for remediation  
14 of non-compliance issues found during compli-  
15 ance office reviews, lookbacks, internal or exter-  
16 nal audit findings, self-reported errors, or  
17 through validated complaints. Procedures will  
18 establish the handling, management response,  
19 remediation, re-testing, and closing of non-com-  
20 pliant issues.

21           “(3) ANNUAL REPORTS REQUIRED.—The com-  
22 pliance officer shall annually prepare and sign a re-  
23 port on the compliance of the clearing agency with  
24 the securities laws and its policies and procedures,  
25 including its code of ethics and conflict of interest



1 policies, in accordance with rules prescribed by the  
2 Commission. Such compliance report shall accom-  
3 pany the financial reports of the clearing agency  
4 that are required to be furnished to the Commission  
5 pursuant to this section and shall include a certifi-  
6 cation that, under penalty of law, the report is accu-  
7 rate and complete.

8 “(l) STANDARDS FOR CLEARING AGENCIES CLEAR-  
9 ING SWAP TRANSACTIONS.—To be registered and to main-  
10 tain registration as a clearing agency that clears swap  
11 transactions, a clearing agency shall comply with such  
12 standards as the Commission may establish by rule. In  
13 establishing any such standards, and in the exercise of its  
14 oversight of such a clearing agency pursuant to this title,  
15 the Commission may conform such standards or oversight  
16 to reflect evolving United States and international stand-  
17 ards. Except where the Commission determines otherwise  
18 by rule or regulation, a clearing agency shall have reason-  
19 able discretion in establishing the manner in which it com-  
20 plies with any such standards.

21 “(m) RULES.—Not later than 1 year after the date  
22 of the enactment of the Derivative Markets Transparency  
23 and Accountability Act of 2009, the Commission shall  
24 adopt rules governing persons that are registered as clear-  
25 ing agencies for security-based swaps under this Act.

1       “(n) EXEMPTIONS.—

2               “(1) IN GENERAL.—The Commission may ex-  
3       empt, conditionally or unconditionally, a clearing  
4       agency from registration under this section for the  
5       clearing of security-based swaps if the Commission  
6       finds that such clearing agency is subject to com-  
7       parable, comprehensive supervision and regulation  
8       on a consolidated basis by the Commodity Futures  
9       Trading Commission, a Prudential Regulator, or the  
10      appropriate governmental authorities in the organi-  
11      zation’s home country or if necessary or appropriate  
12      in the public interest and consistent with the pur-  
13      pose of this Act.

14              “(2) A person that is required to be registered  
15      as clearing agency under this section, whose prin-  
16      cipal business is clearing commodity futures and op-  
17      tions on commodity futures transactions and which  
18      is a derivatives clearing organization registered with  
19      the Commodity Futures Trading Commission under  
20      the Commodity Exchange Act (7 U.S.C. 1, et seq.),  
21      shall be unconditionally exempt from registration  
22      under this section solely for the purpose of clearing  
23      security-based swaps, unless the Commission finds  
24      that such derivatives clearing organization is not  
25      subject to comparable, comprehensive supervision.

1 and regulation by the Commodity Futures Trading  
2 Commission.”.

3 (c) EXECUTION OF SECURITY-BASED SWAPS.—The  
4 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)  
5 is amended by inserting after section 5 the following:

6 **“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**

7 **“(a) EXECUTION TRANSPARENCY.—**

8 **“(1) REQUIREMENT.—**A security-based swap  
9 that is subject to the clearing requirement of section  
10 3B shall not be traded except on or through a na-  
11 tional securities exchange or on or through an swap  
12 execution facility registered under section 5h, that  
13 makes the security-based swap available for trading.

14 **“(2) EXCEPTIONS.—**The requirement of para-  
15 graph (1) shall not apply to a security-based swap  
16 if no national securities exchange or swap execution  
17 facility makes the security-based swap available for  
18 trading.

19 **“(3) REQUIRED REPORTING.—**If the exception  
20 of paragraph (2) applies and there is no national se-  
21 curities exchange or swap execution facility that  
22 makes the security-based swap available to trade,  
23 the counterparties shall comply with any record-  
24 keeping and transaction reporting requirements as  
25 may be prescribed by the Commission with respect

1 to security-based swaps subject to the requirements  
2 of paragraph (1).

3 “(b) EXCHANGE TRADING.—In adopting rules and  
4 regulations, the Commission shall endeavor to eliminate  
5 unnecessary impediments to the trading on national secu-  
6 rities exchanges of contracts, agreements, or transactions  
7 that would be swaps but for the trading of such contracts,  
8 agreements or transactions on such a national securities  
9 exchange.”.

10 (d) SWAP EXECUTION FACILITIES.—The Securities  
11 Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended  
12 by adding after section 3B (as added by subsection (a))  
13 the following:

14 **“SEC. 3C. SWAP EXECUTION FACILITIES.**

15 “(a) REGISTRATION.—No person may operate a facil-  
16 ity for the trading of security-based swaps unless the facil-  
17 ity is registered as a swap execution facility under this  
18 section.

19 “(b) REQUIREMENTS FOR TRADING.—

20 “(1) IN GENERAL.—A swap execution facility  
21 that is registered under subsection (a) may list for  
22 trading any security-based swap.

23 “(2) RULES FOR TRADING THROUGH THE FA-  
24 CILITY.—Not later than 1 year after the date of the  
25 enactment of the Derivative Markets Transparency

1 and Accountability Act of 2009, the Commission  
2 shall adopt rules to allow a security-based swap to  
3 be traded through the facilities of an exchange or a  
4 swap execution facility. Such rules shall permit an  
5 intermediary, acting as principal or agent, to enter  
6 into or execute a security-based swap, notwith-  
7 standing section 3B(b), if the security-based swap is  
8 reported, recorded, or confirmed in accordance with  
9 the rules of the exchange or swap execution facility.

10 “(c) TRADING BY EXCHANGES.—An exchange shall,  
11 to the extent that the exchange also operates a swap exe-  
12 cution facility and uses the same electronic trade execution  
13 system for trading on the exchange and the swap execu-  
14 tion facility, identify whether the electronic trading is tak-  
15 ing place on the exchange or the swap execution facility.

16 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-  
17 CILITIES.—

18 “(1) IN GENERAL.—To be registered as, and to  
19 maintain its registration as, a swap execution facil-  
20 ity, the facility shall comply with the core principles  
21 specified in this subsection and any requirement that  
22 the Commission may impose by rule or regulation  
23 pursuant to section 8a(5). Except where the Com-  
24 mission determines otherwise by rule or regulation,  
25 the facility shall have reasonable discretion in estab-

1       lishing the manner in which it complies with these  
2       core principles.

3           “(2) COMPLIANCE WITH RULES.—The swap  
4       execution facility shall—

5           “(A) monitor and enforce compliance with  
6       any of the rules of the facility, including the  
7       terms and conditions of the swaps traded on or  
8       through the facility and any limitations on ac-  
9       cess to the facility; and

10          “(B) establish and enforce trading and  
11       participation rules that will deter abuses and  
12       have the capacity to detect, investigate, and en-  
13       force those rules, including means to—

14           “(i) provide market participants with  
15       impartial access to the market; and

16           “(ii) capture information that may be  
17       used in establishing whether rule violations  
18       have occurred.

19          “(3) SECURITY-BASED SWAPS NOT READILY  
20       SUSCEPTIBLE TO MANIPULATION.—The swap execu-  
21       tion facility shall permit trading only in security-  
22       based swaps that are not readily susceptible to ma-  
23       nipulation.

24          “(4) MONITORING OF TRADING.—The swap  
25       execution facility shall—

1           “(A) establish and enforce rules or terms  
2           and conditions defining, or specifications detail-  
3           ing, trading procedures to be used in entering  
4           and executing orders traded on or through its  
5           facilities; and

6           “(B) monitor trading in swaps to prevent  
7           manipulation, price distortion, and disruptions  
8           of the delivery or cash settlement process  
9           through surveillance, compliance, and discipli-  
10          nary practices and procedures, including meth-  
11          ods for conducting real-time monitoring of trad-  
12          ing and comprehensive and accurate trade re-  
13          constructions.

14          “(5) ABILITY TO OBTAIN INFORMATION.—The  
15          swap execution facility shall—

16               “(A) establish and enforce rules that will  
17               allow the facility to obtain any necessary infor-  
18               mation to perform any of the functions de-  
19               scribed in this section;

20               “(B) provide the information to the Com-  
21               mission upon request; and

22               “(C) have the capacity to carry out such  
23               international information-sharing agreements as  
24               the Commission may require.

1           “(6) FINANCIAL INTEGRITY OF TRANS-  
2   ACTIONS.—The swap execution facility shall estab-  
3   lish and enforce rules and procedures for ensuring  
4   the financial integrity of security-based swaps en-  
5   tered on or through its facilities, including the clear-  
6   ance and settlement of the security-based swaps pur-  
7   suant to section 3B.

8           “(7) EMERGENCY AUTHORITY.—The swap exe-  
9   cution facility shall adopt rules to provide for the ex-  
10   ercise of emergency authority, in consultation or co-  
11   operation with the Commission, where necessary and  
12   appropriate, including the authority to suspend or  
13   curtail trading in a security-based swap.

14           “(8) TIMELY PUBLICATION OF TRADING INFOR-  
15   MATION.—The swap execution facility shall make  
16   public timely information on price, trading volume,  
17   and other trading data to the extent prescribed by  
18   the Commission. The Commission shall evaluate the  
19   impact of public disclosure on market liquidity in the  
20   relevant market, and shall seek to avoid public dis-  
21   closure of information in a manner that would sig-  
22   nificantly reduce market liquidity. The Commission  
23   shall not disclose information related to the internal  
24   business decisions of particular market participants.



1           “(9) RECORDKEEPING AND REPORTING.—The  
2       swap execution facility shall maintain records of all  
3       activities related to the business of the facility, in-  
4       cluding a complete audit trail, in a form and manner  
5       acceptable to the Commission for a period of 5  
6       years, and report to the Commission all information  
7       determined by the Commission to be necessary or  
8       appropriate for the Commission to perform its re-  
9       sponsibilities under this Act in a form and manner  
10      acceptable to the Commission. The Commission shall  
11      adopt data collection and reporting requirements for  
12      swap execution facilities that are comparable to cor-  
13      responding requirements for clearing agencies and  
14      security-based swap repositories.

15           “(10) CONFLICTS OF INTEREST.—The swap  
16      execution facility shall—

17           “(A) establish and enforce rules to mini-  
18      mize conflicts of interest in its decision-making  
19      process; and

20           “(B) establish a process for resolving the  
21      conflicts of interest.

22           “(11) FINANCIAL RESOURCES.—The swap exe-  
23      cution facility shall have adequate financial, oper-  
24      ational, and managerial resources to discharge its  
25      responsibilities. Such financial resources shall be

1 considered adequate if their value exceeds the total  
2 amount that would enable the facility to cover its op-  
3 erating costs for a period of one year, calculated on  
4 a rolling basis.

5 “(12) SYSTEM SAFEGUARDS.—The swap execu-  
6 tion facility shall—

7 “(A) establish and maintain a program of  
8 risk analysis and oversight to identify and mini-  
9 mize sources of operational risk, through the  
10 development of appropriate controls and proce-  
11 dures, and the development of automated sys-  
12 tems, that are reliable, secure, and have ade-  
13 quate scalable capacity;

14 “(B) establish and maintain emergency  
15 procedures, backup facilities, and a plan for dis-  
16 aster recovery that allow for the timely recovery  
17 and resumption of operations and the fulfill-  
18 ment of the swap execution facility’s respon-  
19 sibilities and obligation; and

20 “(C) periodically conduct tests to verify  
21 that backup resources are sufficient to ensure  
22 continued order processing and trade matching,  
23 price reporting, market surveillance, and main-  
24 tenance of a comprehensive and accurate audit  
25 trail.

1           “(13) DESIGNATION OF COMPLIANCE OFFI-  
2 CER.—

3           “(A) IN GENERAL.—Each swap execution  
4 facility shall designate an individual to serve as  
5 a compliance officer.

6           “(B) DUTIES.—The compliance officer—

7           “(i) shall report directly to the board  
8 or to the senior officer of the facility; and

9           “(ii) shall—

10           “(I) review compliance with the  
11 core principles in section 3B(e).

12           “(II) in consultation with the  
13 board of the facility, a body per-  
14 forming a function similar to that of  
15 a board, or the senior officer of the  
16 facility, resolve any conflicts of inter-  
17 est that may arise;

18           “(III) be responsible for admin-  
19 istering the policies and procedures  
20 required to be established pursuant to  
21 this section; and

22           “(IV) ensure compliance with se-  
23 curities laws and the rules and regula-  
24 tions issued thereunder, including

1 rules prescribed by the Commission  
2 pursuant to this section; and

3 “(iii) shall establish procedures for re-  
4 mediation of non-compliance issues found  
5 during compliance office reviews,  
6 lookbacks, internal or external audit find-  
7 ings, self-reported errors, or through vali-  
8 dated complaints and to establish the han-  
9 dling, management response, remediation,  
10 re-testing, and closing of non-compliant  
11 issues.

12 “(C) ANNUAL REPORTS REQUIRED.—The  
13 compliance officer shall annually prepare and  
14 sign a report on the compliance of the facility  
15 with the securities laws and its policies and pro-  
16 cedures, including its code of ethics and conflict  
17 of interest policies, in accordance with rules  
18 prescribed by the Commission. Such compliance  
19 report shall accompany the financial reports of  
20 the facility that are required to be furnished to  
21 the Commission pursuant to this section and  
22 shall include a certification that, under penalty  
23 of law, the report is accurate and complete.

24 “(e) EXEMPTIONS.—The Commission may exempt,  
25 conditionally or unconditionally, a swap execution facility

1 from registration under this section if the Commission  
2 finds that such organization is subject to comparable,  
3 comprehensive supervision and regulation on a consoli-  
4 dated basis by the Commodity Futures Trading Commis-  
5 sion, a Prudential Regulator or the appropriate govern-  
6 mental authorities in the organization's home country or  
7 if necessary or appropriate in the public interest and con-  
8 sistent with the purpose of this Act.

9       “(f) RULES.—Not later than 1 year after the date  
10 of the enactment of the Derivative Markets Transparency  
11 and Accountability Act of 2009, the Commission shall pre-  
12 scribe rules governing the regulation of swap execution fa-  
13 cilities under this section.”.

14       (e) SEGREGATION OF ASSETS HELD AS COLLATERAL  
15 IN SWAP TRANSACTIONS.—The Securities Exchange Act  
16 of 1934 (15 U.S.C. 78a, et seq.) is further amended by  
17 adding after section 3C (as added by subsection (b) the  
18 following:

19       **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
20               **IN SECURITY-BASED SWAP TRANSACTIONS.**

21       “(a) OVER-THE-COUNTER SWAPS.—At the request of  
22 a counterparty to a security-based swap who provides  
23 funds or other property to a security-based swap dealer  
24 as initial margin or collateral to secure the obligations of  
25 the counterparty under a security-based swap between the

1 counterparty and the security-based swap dealer that is  
2 not submitted for clearing to a derivatives clearing agency,  
3 the security-based swap dealer shall segregate the funds  
4 or other property for the benefit of the counterparty, and  
5 maintain the funds or other property in an account which  
6 is carried by a third-party custodian and designated as  
7 a segregated account for the counterparty, in accordance  
8 with such rules and regulations as the Commission or Pru-  
9 dential Regulator may prescribe. If a security-based swap  
10 counterparty is a security-based swap dealer or major se-  
11 curity-based swap participant who owns more than 20 per-  
12 cent of, or has more than 50 percent representation on  
13 the board of directors of a custodian, the custodian shall  
14 not be considered independent from the security-based  
15 swap counterparties for purposes of the preceding sen-  
16 tence. This subsection shall not be interpreted to preclude  
17 commercial arrangements regarding the investment of the  
18 segregated funds or other property and the related alloca-  
19 tion of gains and losses resulting from any such invest-  
20 ment.

21       “(b) FURTHER AUDIT REPORTING.—If a security-  
22 based swap dealer does not segregate funds pursuant to  
23 the request of a security-based swap counterparty in ac-  
24 cordance with subsection (a), the security-based swap  
25 dealer shall report to its counterparty on a quarterly basis

1 that its procedures relating to margin and collateral re-  
2 quirements are in compliance with the agreement of the  
3 counterparties.”.

4 (f) TRADING IN SECURITY-BASED SWAPS.—Section 6  
5 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)  
6 is amended by adding at the end the following:

7 “(l) It shall be unlawful for any person to effect a  
8 transaction in a security-based swap with or for a person  
9 that is not an eligible contract participant unless such  
10 transaction is effected on a national securities exchange  
11 registered pursuant to subsection (b).”.

12 (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-  
13 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)  
14 through (3) of section 9(b) of the Securities Exchange Act  
15 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read  
16 as follows:

17 “(1) any transaction in connection with any se-  
18 curity whereby any party to such transaction ac-  
19 quires (A) any put, call, straddle, or other option or  
20 privilege of buying the security from or selling the  
21 security to another without being bound to do so;  
22 (B) any security futures product on the security; or  
23 (C) any security-based swap involving the security or  
24 the issuer of the security; or

1           “(2) any transaction in connection with any se-  
2           curity with relation to which he has, directly or indi-  
3           rectly, any interest in any (A) such put, call, strad-  
4           dle, option, or privilege; (B) such security futures  
5           product; or (C) such security-based swap; or

6           “(3) any transaction in any security for the ac-  
7           count of any person who he has reason to believe  
8           has, and who actually has, directly or indirectly, any  
9           interest in any (A) such put, call, straddle, option,  
10          or privilege; (B) such security futures product with  
11          relation to such security; or (C) any security-based  
12          swap involving such security or the issuer of such se-  
13          curity.”.

14          (h) RULEMAKING AUTHORITY TO PREVENT FRAUD,  
15          MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-  
16          BASED SWAPS.—Section 9 of the Securities Exchange Act  
17          of 1934 (15 U.S.C. 78i) is amended by adding at the end  
18          the following:

19          “(i) It shall be unlawful for any person, directly or  
20          indirectly, by the use of any means or instrumentality of  
21          interstate commerce or of the mails, or of any facility of  
22          any national securities exchange, to effect any transaction  
23          in, or to induce or attempt to induce the purchase or sale  
24          of, any security-based swap, in connection with which such  
25          person engages in any fraudulent, deceptive, or manipula-



1 tive act or practice, makes any fictitious quotation, or en-  
2 gages in any transaction, practice, or course of business  
3 which operates as a fraud or deceit upon any person. The  
4 Commission shall, for the purposes of this paragraph, by  
5 rules and regulations define, and prescribe means reason-  
6 ably designed to prevent, such transactions, acts, prac-  
7 tices, and courses of business as are fraudulent, deceptive,  
8 or manipulative, and such quotations as are fictitious.”.

9 (i) POSITION LIMITS AND POSITION ACCOUNT-  
10 ABILITY FOR SECURITY-BASED SWAPS.—The Securities  
11 Exchange Act of 1934 is amended by inserting after sec-  
12 tion 10A (15 U.S.C. 78j–1) the following new section:

13 “SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-  
14 ABILITY FOR SECURITY-BASED SWAPS AND  
15 LARGE TRADER REPORTING.

16 “(a) POSITION LIMITS.—As a means reasonably de-  
17 signed to prevent fraud and manipulation, the Commission  
18 may, by rule or regulation, as necessary or appropriate  
19 in the public interest or for the protection of investors,  
20 establish limits (including related hedge exemption provi-  
21 sions) on the size of positions in any security-based swap  
22 that may be held by any person. In establishing such lim-  
23 its, the Commission may require any person to aggregate  
24 positions in—

1           “(1) any security-based swap and any security  
2           or loan or group or index of securities or loans on  
3           which such security-based swap is based, which such  
4           security-based swap references, or to which such se-  
5           curity-based swap is related as described in section  
6           3(a)(68), and any other instrument relating to such  
7           security or loan or group or index of securities or  
8           loans; or

9           “(2) any security-based swap and (A) any secu-  
10          rity or group or index of securities, the price, yield,  
11          value, or volatility of which, or of which any interest  
12          therein, is the basis for a material term of such se-  
13          curity-based swap as described in section 3(a)(76)  
14          and (B) any security-based swap and any other in-  
15          strument relating to the same security or group or  
16          index of securities.

17          “(b) EXEMPTIONS.—The Commission, by rule, regu-  
18          lation, or order, may conditionally or unconditionally ex-  
19          empt any person or class of persons, any security-based  
20          swap or class of security-based swaps, or any transaction  
21          or class of transactions from any requirement it may es-  
22          tablish under this section with respect to position limits.

23          “(c) SRO RULES.—

24                 “(1) IN GENERAL.—As a means reasonably de-  
25          signed to prevent fraud or manipulation, the Com-

1 mission, by rule, regulation, or order, as necessary  
2 or appropriate in the public interest, for the protec-  
3 tion of investors, or otherwise in furtherance of the  
4 purposes of this title, may direct a self-regulatory  
5 organization—

6 “(A) to adopt rules regarding the size of  
7 positions in any security-based swap that may  
8 be held by—

9 “(i) any member of such self-regu-  
10 latory organization; or

11 “(ii) any person for whom a member  
12 of such self-regulatory organization effects  
13 transactions in such security-based swap;  
14 and

15 “(B) to adopt rules reasonably designed to  
16 ensure compliance with requirements prescribed  
17 by the Commission under subsection (c)(1)(A).

18 “(2) REQUIREMENT TO AGGREGATE POSI-  
19 TIONS.—In establishing such limits, the self-regu-  
20 latory organization may require such member or per-  
21 son to aggregate positions in—

22 “(A) any security-based swap and any se-  
23 curity or loan or group or index of securities or  
24 loans on which such security-based swap is  
25 based, which such security-based swap ref-

1           erences, or to which such security-based swap is  
2           related as described in section 3(a)(68), and  
3           any other instrument relating to such security  
4           or loan or group or index of securities or loans;  
5           or

6           “(B)(i) any security-based swap; and

7           “(ii) any security-based swap and any  
8           other instrument relating to the same security  
9           or group or index of securities.

10       “(d) LARGE TRADER REPORTING.—The Commis-  
11       sion, by rule or regulation, may require any person that  
12       effects transactions for such person’s own account or the  
13       account of others in any securities-based swap or  
14       uncleared security-based swap agreement and any security  
15       or loan or group or index of securities or loans as set forth  
16       in paragraphs (1) and (2) of subsection (a) under this sec-  
17       tion to report such information as the Commission may  
18       prescribe regarding any position or positions in any secu-  
19       rity-based swap or uncleared security-based swap agree-  
20       ment and any security or loan or group or index of securi-  
21       ties or loans and any other instrument relating to such  
22       security or loan or group or index of securities or loans  
23       as set forth in paragraphs (1) and (2) of subsection (a)  
24       under this section.”.

1 (j) PUBLIC REPORTING AND REPOSITORIES FOR SE-  
2 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-  
3 change Act of 1934 (15 U.S.C. 78m) is amended by add-  
4 ing at the end the following:

5 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-  
6 BASED SWAP DATA.—

7 “(1) IN GENERAL.—The Commission, or a per-  
8 son designated by the Commission pursuant to para-  
9 graph (2), shall make available to the public, in a  
10 manner that does not disclose the business trans-  
11 actions and market positions of any person, aggre-  
12 gate data on security-based swap trading volumes  
13 and positions from the sources set forth in para-  
14 graph (3).

15 “(2) DESIGNEE OF THE COMMISSION.—The  
16 Commission may designate a clearing agency or a  
17 security-based swap repository to carry out the pub-  
18 lic reporting described in paragraph (1).

19 “(3) SOURCES OF INFORMATION.—The sources  
20 of the information to be publicly reported as de-  
21 scribed in paragraph (1) are—

22 “(A) clearing agencies pursuant to section  
23 3A;

24 “(B) security-based swap repositories pur-  
25 suant to subsection (n); and

1           “(C) reports received by the Commission  
2           pursuant to section 13A.

3           “(n) SECURITY-BASED SWAP REPOSITORIES.—

4           “(1) REGISTRATION REQUIREMENT.—

5           “(A) IN GENERAL.—It shall be unlawful  
6           for a security-based swap repository, unless reg-  
7           istered with the Commission, directly or indi-  
8           rectly to make use of the mails or any means  
9           or instrumentality of interstate commerce to  
10          perform the functions of a security-based swap  
11          repository.

12          “(B) INSPECTION AND EXAMINATION.—  
13          Registered security-based swap repositories  
14          shall be subject to inspection and examination  
15          by any representatives of the Commission.

16          “(2) STANDARD SETTING.—

17          “(A) DATA IDENTIFICATION.—The Com-  
18          mission shall prescribe standards that specify  
19          the data elements for each security-based swap  
20          that shall be collected and maintained by each  
21          security-based swap repository.

22          “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data  
23          collection and data maintenance standards for  
24          security-based swap repositories.  
25

1           “(C) COMPARABILITY.—The standards  
2           prescribed by the Commission under this sub-  
3           section shall be comparable to the data stand-  
4           ards imposed by the Commission on clearing  
5           agencies that clear security-based swaps.

6           “(3) DUTIES.—A security-based swap reposi-  
7           tory shall—

8           “(A) accept data prescribed by the Com-  
9           mission for each security-based swap under this  
10          paragraph (2);

11          “(B) maintain such data in such form and  
12          manner and for such period as may be required  
13          by the Commission;

14          “(C) provide to the Commission, or its des-  
15          ignee, such information as is required by, and  
16          in a form and at a frequency to be determined  
17          by, the Commission, in order to comply with the  
18          public reporting requirements contained in sub-  
19          section (m); and

20          “(D) make available, on a confidential  
21          basis, all data obtained by the security-based  
22          swap repository, including individual  
23          counterparty trade and position data, to the  
24          Commission, the appropriate Federal banking  
25          agencies, the Commodity Futures Trading

1 Commission, the Financial Services Oversight  
2 Council, and the Department of Justice or to  
3 other persons the Commission deems appro-  
4 priate, including foreign financial supervisors  
5 (including foreign futures authorities), foreign  
6 central banks, and foreign ministries.

7 “(4) RULES.—Not later than 1 year after the  
8 date of the enactment of the Derivative Markets  
9 Transparency and Accountability Act of 2009, the  
10 Commission shall adopt rules governing persons that  
11 are registered under this section, including rules  
12 that specify the data elements that shall be collected  
13 and maintained.

14 “(5) EXEMPTIONS.—The Commission may ex-  
15 empt, conditionally or unconditionally, a security-  
16 based swap repository from the requirements of this  
17 section if the Commission finds that such security-  
18 based swap repository is subject to comparable, com-  
19 prehensive supervision or regulation on a consoli-  
20 dated basis by the Commodity Futures Trading  
21 Commission, a Prudential Regulator or the appro-  
22 priate governmental authorities in the organization’s  
23 home country or if necessary or appropriate in the  
24 public interest and consistent with the purpose of  
25 this Act.”



1 **SEC. 3204. REGISTRATION AND REGULATION OF SWAP**  
2 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a,  
4 et seq.) is amended by inserting after section 15E (15  
5 U.S.C. 78o-7) the following:

6 **"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**  
7 **BASED SWAP DEALERS AND MAJOR SECU-**  
8 **RITY-BASED SWAP PARTICIPANTS.**

9 **"(a) REGISTRATION.—**

10 **"(1)** It shall be unlawful for any person to act  
11 as a security-based swap dealer unless such person  
12 is registered as a security-based swap dealer with  
13 the Commission.

14 **"(2)** It shall be unlawful for any person to act  
15 as a major security-based swap participant unless  
16 such person is registered as a major security-based  
17 swap participant with the Commission.

18 **"(b) REQUIREMENTS.—**

19 **"(1) IN GENERAL.—**A person shall register as  
20 a security-based swap dealer or major security-based  
21 swap participant by filing a registration application  
22 with the Commission.

23 **"(2) CONTENTS.—**The application shall be  
24 made in such form and manner as prescribed by the  
25 Commission, giving any information and facts as the  
26 Commission may deem necessary concerning the

1 business in which the applicant is or will be engaged.  
2 Such person, when registered as a security-based  
3 swap dealer or major security-based swap partici-  
4 pant, shall continue to report and furnish to the  
5 Commission such information pertaining to such  
6 person's business as the Commission may require.

7 “(3) EXPIRATION.—Each registration shall ex-  
8 pire at such time as the Commission may by rule or  
9 regulation prescribe.

10 “(4) RULES.—Except as provided in sub-  
11 sections (c) and (d), the Commission may prescribe  
12 rules applicable to security-based swap dealers and  
13 major security-based swap participants, including  
14 rules that limit the activities of security-based swap  
15 dealers and major security-based swap participants.  
16 Except as provided in subsection (d)(1)(A), the  
17 Commission may provide conditional or uncondi-  
18 tional exemptions from some or all of the rules or  
19 requirements prescribed under this section for secu-  
20 rity-based swap dealers and major security-based  
21 swap participants.

22 “(5) TRANSITION.—Rules adopted under this  
23 section shall provide for the registration of security-  
24 based swap dealers and major security-based swap  
25 participants no later than 1 year after the effective

1 date of the Derivative Markets Transparency and  
2 Accountability Act of 2009.

3 “(c) RULES.—

4 “(1) IN GENERAL.—Not later than 1 year after  
5 the date of the enactment of the Derivative Markets  
6 Transparency and Accountability Act of 2009, the  
7 Commission shall adopt rules for persons that are  
8 registered as security-based swap dealers or major  
9 security-based swap participants under this Act.

10 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
11 MENTS.—The Commission shall not prescribe rules  
12 imposing prudential requirements on security-based  
13 swap dealers or major security-based swap partici-  
14 pants for which there is a Prudential Regulator.  
15 This provision shall not be construed as limiting the  
16 authority of the Commission to prescribe appropriate  
17 business conduct, reporting, and recordkeeping re-  
18 quirements to protect investors.

19 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

20 “(1) IN GENERAL.—

21 “(A) BANK SECURITY-BASED SWAP DEAL-  
22 ERS AND MAJOR SECURITY-BASED SWAP PAR-  
23 TICIPANTS.—Each registered security-based  
24 swap dealer and major security-based swap par-  
25 ticipant for which there is a Prudential Regu-

1           lator shall meet such minimum capital require-  
2           ments and minimum initial and variation mar-  
3           gin requirements as the Prudential Regulators  
4           shall by rule or regulation jointly prescribe  
5           that—

6                   “(i) help ensure the safety and sound-  
7                   ness of the security-based swap dealer or  
8                   major security-based swap participant; and

9                   “(ii) are appropriate for the risk asso-  
10                  ciated with the non-cleared swaps held as  
11                  a swap dealer or major swap participant.

12                 “(B) NON-BANK SECURITY-BASED SWAP  
13                 DEALERS AND MAJOR SECURITY-BASED SWAP  
14                 PARTICIPANTS.—Each registered security-based  
15                 swap dealer and major security-based swap par-  
16                 ticipant for which there is not a Prudential  
17                 Regulator shall meet such minimum capital re-  
18                 quirements and minimum initial and variation  
19                 margin requirements as the Commission shall  
20                 by rule or regulation prescribe that—

21                   “(i) help ensure the safety and sound-  
22                   ness of the security-based swap dealer or  
23                   major security-based swap participant; and

1           “(ii) are appropriate for the risk asso-  
2           ciated with the non-cleared swaps held as  
3           the swap dealer or major swap participant.

4           “(2) RULES.—

5           “(A) BANK SECURITY-BASED SWAP DEAL-  
6           ERS AND MAJOR SECURITY-BASED SWAP PAR-  
7           TICIPANTS.—Not later than 1 year after the  
8           date of the enactment of the Derivative Markets  
9           Transparency and Accountability Act of 2009,  
10          the Prudential Regulators, in consultation with  
11          the Commission, shall jointly adopt rules impos-  
12          ing capital and margin requirements under this  
13          subsection for security-based swap dealers and  
14          major security-based swap participants, with re-  
15          spect to their activities as a security-based swap  
16          dealer or major security-based swap participant  
17          for which there is a Prudential Regulator.

18          “(B) NON-BANK SECURITY-BASED SWAP  
19          DEALERS AND MAJOR SECURITY-BASED SWAP  
20          PARTICIPANTS.—Not later than 1 year after the  
21          date of the enactment of the Derivative Markets  
22          Transparency and Accountability Act of 2009,  
23          the Commission shall adopt rules imposing cap-  
24          ital and margin requirements under this sub-  
25          section for security-based swap dealers and

1 major security-based swap participants for  
2 which there is no Prudential Regulator.

3 “(3) AUTHORITY.—Nothing in this section shall  
4 limit the authority of the Commission to set capital  
5 requirements for a broker or dealer registered in ac-  
6 cordance with section 15 of this Act.

7 “(e) REPORTING AND RECORDKEEPING.—

8 “(1) IN GENERAL.—Each registered security-  
9 based swap dealer and major security-based swap  
10 participant—

11 “(A) shall make such reports as are pre-  
12 scribed by the Commission by rule or regulation  
13 regarding the transactions and positions and fi-  
14 nancial condition of such person;

15 “(B) for which—

16 “(i) there is a Prudential Regulator  
17 shall keep books and records of all activi-  
18 ties related to its business as a security-  
19 based swap dealer or major security-based  
20 swap participant in such form and manner  
21 and for such period as may be prescribed  
22 by the Commission by rule or regulation;

23 “(ii) there is no Prudential Regulator  
24 shall keep books and records in such form  
25 and manner and for such period as may be

1                   prescribed by the Commission by rule or  
2                   regulation; and

3                   “(C) shall keep such books and records  
4                   open to inspection and examination by any rep-  
5                   resentative of the Commission.

6                   “(2) RULES.—Not later than 1 year after the  
7                   date of enactment of the Derivative Markets Trans-  
8                   parency and Accountability Act of 2009, the Com-  
9                   mission shall adopt rules governing reporting and  
10                  recordkeeping for security-based swap dealers and  
11                  major security-based swap participants.

12                  “(f) DAILY TRADING RECORDS.—

13                  “(1) IN GENERAL.—Each registered security-  
14                  based swap dealer and major security-based swap  
15                  participant shall maintain daily trading records of  
16                  its security-based swaps and all related records (in-  
17                  cluding related transactions) and recorded commu-  
18                  nications including but not limited to electronic mail,  
19                  instant messages, and recordings of telephone calls,  
20                  for such period as may be prescribed by the Com-  
21                  mission by rule or regulation.

22                  “(2) INFORMATION REQUIREMENTS.—The daily  
23                  trading records shall include such information as the  
24                  Commission shall prescribe by rule or regulation.

1           “(3) CUSTOMER RECORDS.—Each registered se-  
2           curity-based swap dealer or major security-based  
3           swap participant shall maintain daily trading records  
4           for each customer or counterparty in such manner  
5           and form as to be identifiable with each security-  
6           based swap transaction.

7           “(4) AUDIT TRAIL.—Each registered security-  
8           based swap dealer or major security-based swap par-  
9           ticipant shall maintain a complete audit trail for  
10          conducting comprehensive and accurate trade recon-  
11          structions.

12          “(5) RULES.—Not later than 1 year after the  
13          date of the enactment of the Derivative Markets  
14          Transparency and Accountability Act of 2009, the  
15          Commission shall adopt rules governing daily trad-  
16          ing records for security-based swap dealers and  
17          major security-based swap participants.

18          “(g) BUSINESS CONDUCT STANDARDS.—

19                 “(1) IN GENERAL.—Each registered security-  
20                 based swap dealer and major security-based swap  
21                 participant shall conform with business conduct  
22                 standards as may be prescribed by the Commission  
23                 by rule or regulation addressing—

24                         “(A) fraud, manipulation, and other abu-  
25                         sive practices involving security-based swaps



1 (including security-based swaps that are offered  
2 but not entered into);

3 “(B) diligent supervision of its business as  
4 a security-based swap dealer;

5 “(C) adherence to all applicable position  
6 limits; and

7 “(D) such other matters as the Commis-  
8 sion shall determine to be necessary or appro-  
9 priate.

10 “(2) BUSINESS CONDUCT REQUIREMENTS.—

11 Business conduct requirements adopted by the Com-  
12 mission shall—

13 “(A) establish the standard of care for a  
14 security-based swap dealer or major security-  
15 based swap participant to verify that any secu-  
16 rity-based swap counterparty meets the eligi-  
17 bility standards for an eligible contract partici-  
18 pant;

19 “(B) require disclosure by the security-  
20 based swap dealer or major security-based swap  
21 participant to any counterparty to the security-  
22 based swap (other than a security-based swap  
23 dealer or major security-based swap partici-  
24 pant) of:

1 “(i) information about the material  
2 risks and characteristics of the security-  
3 based swap;

4 “(ii) for cleared security-based swaps,  
5 upon the request of the counterparty, the  
6 daily mark from the appropriate clearing  
7 agency, and for non-cleared security-based  
8 swaps, upon request of the counterparty,  
9 the daily mark of the security-based swap  
10 dealer or major security-based swap partic-  
11 ipant; and

12 “(iii) any other material incentives or  
13 conflicts of interest that the security-based  
14 swap dealer or major security-based swap  
15 participant may have in connection with  
16 the security-based swap; and

17 “(C) establish such other standards and  
18 requirements as the Commission may determine  
19 are necessary or appropriate in the public inter-  
20 est, for the protection of investors, or otherwise  
21 in furtherance of the purposes of this title.

22 “(3) RULES.—The Commission shall prescribe  
23 rules under this subsection governing business con-  
24 duct standards for security-based swap dealers and  
25 major security-based swap participants not later

1 than 1 year after the date of enactment of the De-  
2 rivative Markets Transparency and Accountability  
3 Act of 2009.

4 “(h) DOCUMENTATION STANDARDS.—

5 “(1) IN GENERAL.—Each registered security-  
6 based swap dealer and major security-based swap  
7 participant shall conform with standards, as may be  
8 prescribed by the Commission by rule or regulation,  
9 addressing timely and accurate confirmation, proc-  
10 essing, netting, documentation, and valuation of all  
11 security-based swaps.

12 “(2) RULES.—Not later than 1 year after the  
13 date of enactment of the Derivative Markets Trans-  
14 parency and Accountability Act of 2009, the Com-  
15 mission and the appropriate Federal banking agen-  
16 cies, shall adopt rules governing the standards de-  
17 scribed in paragraph (1) for security-based swap  
18 dealers and major security-based swap participants.

19 “(i) DEALER RESPONSIBILITIES.—Each registered  
20 security-based swap dealer and major security-based swap  
21 participant at all times shall comply with the following re-  
22 quirements:

23 “(1) MONITORING OF TRADING.—The security-  
24 based swap dealer or major security-based swap par-  
25 ticipant shall monitor its trading in security-based

1 swaps to prevent violations of applicable position  
2 limits.

3 “(2) DISCLOSURE OF GENERAL INFORMA-  
4 TION.—The security-based swap dealer or major se-  
5 curity-based swap participant shall disclose to the  
6 Commission or to the Prudential Regulator for such  
7 security-based swap dealer or major security-based  
8 swap participant, as applicable, information con-  
9 cerning—

10 “(A) terms and conditions of its security-  
11 based swaps;

12 “(B) security-based swap trading oper-  
13 ations, mechanisms, and practices;

14 “(C) financial integrity protections relating  
15 to security-based swaps; and

16 “(D) other information relevant to its trad-  
17 ing in security-based swaps.

18 “(3) ABILITY TO OBTAIN INFORMATION.—The  
19 security-based swap dealer or major swap security-  
20 based participant shall—

21 “(A) establish and enforce internal systems  
22 and procedures to obtain any necessary infor-  
23 mation to perform any of the functions de-  
24 scribed in this section; and

1           “(B) provide the information to the Com-  
2 mission or to the Prudential Regulator for such  
3 security-based swap dealer or major security-  
4 based swap participant, as applicable, upon re-  
5 quest.

6           “(4) CONFLICTS OF INTEREST.—The security-  
7 based swap dealer and major security-based swap  
8 participant shall implement conflict-of-interest sys-  
9 tems and procedures that—

10           “(A) establish structural and institutional  
11 safeguards to assure that the activities of any  
12 person within the firm relating to research or  
13 analysis of the price or market for any security  
14 are separated by appropriate informational par-  
15 titions within the firm from the review, pres-  
16 sure, or oversight of those whose involvement in  
17 trading or clearing activities might potentially  
18 bias their judgment or supervision; and

19           “(B) address such other issues as the  
20 Commission determines appropriate.

21           “(j) STATUTORY DISQUALIFICATION.—Except to the  
22 extent otherwise specifically provided by rule, regulation,  
23 or order of the Commission, it shall be unlawful for a secu-  
24 rity-based swap dealer or a major security-based swap par-  
25 ticipant to permit any person associated with a security-

1 based swap dealer or a major security-based swap partici-  
2 pant who is subject to a statutory disqualification to effect  
3 or be involved in effecting security-based swaps on behalf  
4 of such security-based swap dealer or major security-based  
5 swap participant, if such security-based swap dealer or  
6 major security-based swap participant knew, or in the ex-  
7 ercise of reasonable care should have known, of such stat-  
8 utory disqualification.

9 “(k) ENFORCEMENT AND ADMINISTRATIVE PRO-  
10 CEEDING AUTHORITY.—

11 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

12 “(A) SEC.—Except as provided in sub-  
13 paragraph (B), the Commission shall have ex-  
14 clusive authority to enforce the amendments  
15 made by subtitle B of the Derivative Markets  
16 Transparency and Accountability Act of 2009  
17 with respect to any person.

18 “(B) PRUDENTIAL REGULATORS.—The  
19 Prudential Regulators shall have exclusive au-  
20 thority to enforce the provisions of section  
21 15F(d) and other prudential requirements of  
22 this Act with respect to banks, and branches or  
23 agencies of foreign banks that are security-  
24 based swap dealers or major security-based  
25 swap participants.

1 “(C) REFERRAL.—

2 “(i) VIOLATIONS OF NONPRUDENTIAL  
3 REQUIREMENTS.—If the Prudential Regu-  
4 lator for a security-based swap dealer or  
5 major security-based swap participant has  
6 cause to believe that such security-based  
7 swap dealer or major security-based swap  
8 participant may have engaged in conduct  
9 that constitutes a violation of the non-  
10 prudential requirements of section 15F or  
11 rules adopted by the Commission there-  
12 under, that Prudential Regulator may rec-  
13 ommend in writing to the Commission that  
14 the Commission initiate an enforcement  
15 proceeding as authorized under this Act.  
16 The recommendation shall be accompanied  
17 by a written explanation of the concerns  
18 giving rise to the recommendation.

19 “(ii) VIOLATIONS OF PRUDENTIAL RE-  
20 QUIREMENTS.—If the Commission has  
21 cause to believe that a securities-based  
22 swap dealer or major securities-based swap  
23 participant that has a Prudential Regu-  
24 lator may have engaged in conduct that  
25 constitute a violation of the prudential re-

1           quirements of section 15F(e) or rules  
2           adopted thereunder, the Commission may  
3           recommend in writing to the Prudential  
4           Regulator that the Prudential Regulator  
5           initiate an enforcement proceeding as au-  
6           thorized under this Act. The recommenda-  
7           tion shall be accompanied by a written ex-  
8           planation of the concerns giving rise to the  
9           recommendation.

10           “(2) CENSURE, DENIAL, SUSPENSION; NOTICE  
11       AND HEARING.—The Commission, by order, shall  
12       censure, place limitations on the activities, functions,  
13       or operations of, or revoke the registration of any se-  
14       curity-based swap dealer or major security-based  
15       swap participant that has registered with the Com-  
16       mission pursuant to subsection (b) if it finds, on the  
17       record after notice and opportunity for hearing, that  
18       such censure, placing of limitations, or revocation is  
19       in the public interest and that such security-based  
20       swap dealer or major security-based swap partici-  
21       pant, or any person associated with such security-  
22       based swap dealer or major security-based swap par-  
23       ticipant effecting or involved in effecting trans-  
24       actions in security-based swaps on behalf of such se-  
25       curity-based swap dealer or major security-based



1 swap participant, whether prior or subsequent to be-  
2 coming so associated—

3 “(A) has committed or omitted any act, or  
4 is subject to an order or finding, enumerated in  
5 subparagraph (A), (D), or (E) of paragraph (4)  
6 of section 15(b);

7 “(B) has been convicted of any offense  
8 specified in subparagraph (B) of such para-  
9 graph (4) within 10 years of the commencement  
10 of the proceedings under this subsection;

11 “(C) is enjoined from any action, conduct,  
12 or practice specified in subparagraph (C) of  
13 such paragraph (4);

14 “(D) is subject to an order or a final order  
15 specified in subparagraph (F) or (H), respec-  
16 tively, of such paragraph (4); or

17 “(E) has been found by a foreign financial  
18 regulatory authority to have committed or omit-  
19 ted any act, or violated any foreign statute or  
20 regulation, enumerated in subparagraph (G) of  
21 such paragraph (4).

22 “(3) ASSOCIATED PERSONS.—With respect to  
23 any person who is associated, who is seeking to be-  
24 come associated, or, at the time of the alleged mis-  
25 conduct, who was associated or was seeking to be-

1       come associated with a security-based swap dealer or  
2       major security-based swap participant for the pur-  
3       pose of effecting or being involved in effecting secu-  
4       rity-based swaps on behalf of such security-based  
5       swap dealer or major security-based swap partici-  
6       pant, the Commission, by order, shall censure, place  
7       limitations on the activities or functions of such per-  
8       son, or suspend for a period not exceeding 12  
9       months, or bar such person from being associated  
10      with a security-based swap dealer or major security-  
11      based swap participant, if the Commission finds, on  
12      the record after notice and opportunity for a hear-  
13      ing, that such censure, placing of limitations, sus-  
14      pension, or bar is in the public interest and that  
15      such person—

16               “(A) has committed or omitted any act, or  
17               is subject to an order or finding, enumerated in  
18               subparagraph (A), (D), or (E) of paragraph (4)  
19               of section 15(b);

20               “(B) has been convicted of any offense  
21               specified in subparagraph (B) of such para-  
22               graph (4) within 10 years of the commencement  
23               of the proceedings under this subsection;

1           “(C) is enjoined from any action, conduct,  
2           or practice specified in subparagraph (C) of  
3           such paragraph (4);

4           “(D) is subject to an order or a final order  
5           specified in subparagraph (F) or (H), respec-  
6           tively, of such paragraph (4); or

7           “(E) has been found by a foreign financial  
8           regulatory authority to have committed or omit-  
9           ted any act, or violated any foreign statute or  
10          regulation, enumerated in subparagraph (G) of  
11          such paragraph (4).

12          “(4) UNLAWFUL CONDUCT.—It shall be unlaw-  
13          ful—

14               “(A) for any person as to whom an order  
15               under paragraph (3) is in effect, without the  
16               consent of the Commission, willfully to become,  
17               or to be, associated with a security-based swap  
18               dealer or major security-based swap participant  
19               in contravention of such order; or

20               “(B) for any security-based swap dealer or  
21               major security-based swap participant to permit  
22               such a person, without the consent of the Com-  
23               mission, to become or remain a person associ-  
24               ated with the security-based swap dealer or  
25               major security-based swap participant in con-

1           travention of such order, if such security-based  
2           swap dealer or major security-based swap par-  
3           ticipant knew, or in the exercise of reasonable  
4           care should have known, of such order.”.

5   **SEC. 3205. REPORTING AND RECORDKEEPING.**

6           (a) The Securities Exchange Act of 1934 (15 U.S.C.  
7   78a, et seq.) is amended by inserting after section 13 the  
8   following section:

9   **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**  
10           **TAIN SECURITY-BASED SWAPS.**

11           “(a) IN GENERAL.—Any person who enters into a se-  
12   curity-based swap and—

13           “(1) did not clear the security-based swap in  
14   accordance with section 3A; and

15           “(2) did not have data regarding the security-  
16   based swap accepted by a security-based swap repos-  
17   itory in accordance with rules adopted by the Com-  
18   mission under section 13(n),

19   shall meet the requirements in subsection (b).

20           “(b) REPORTS.—Any person described in subsection  
21   (a) shall—

22           “(1) make such reports in such form and man-  
23   ner and for such period as the Commission shall pre-  
24   scribe by rule or regulation regarding the security-  
25   based swaps held by the person; and

1           “(2) keep books and records pertaining to the  
2           security-based swaps held by the person in such  
3           form and manner and for such period as may be re-  
4           quired by the Commission, which books and records  
5           shall be open to inspection by any representative of  
6           the Commission, an appropriate Federal banking  
7           agency, the Commodity Futures Trading Commis-  
8           sion, the Financial Services Oversight Council, and  
9           the Department of Justice.

10          “(c) IDENTICAL DATA.—In adopting rules under this  
11       section, the Commission shall require persons described in  
12       subsection (a) to report the same or more comprehensive  
13       data than the Commission requires security-based swap  
14       repositories to collect under subsection (n).”.

15          (b) BENEFICIAL OWNERSHIP REPORTING.—

16               (1) Section 13(d)(1) of the Securities Exchange  
17       Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by  
18       inserting “or otherwise becomes or is deemed to be-  
19       come a beneficial owner of any of the foregoing upon  
20       the purchase or sale of a security-based swap or  
21       other derivative instrument that the Commission  
22       may define by rule, and” after “Alaska Native  
23       Claims Settlement Act,”; and

24               (2) Section 13(g)(1) of the Securities Exchange  
25       Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by

1 inserting “or otherwise becomes or is deemed to be-  
2 come a beneficial owner of any security of a class de-  
3 scribed in subsection (d)(1) upon the purchase or  
4 sale of a security-based swap or other derivative in-  
5 strument that the Commission may define by rule”  
6 after “subsection (d)(1) of this section”.

7 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-  
8 AGERS.—Section 13(f)(1) of the Securities Exchange Act  
9 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting  
10 “or otherwise becomes or is deemed to become a beneficial  
11 owner of any security of a class described in subsection  
12 (d)(1) upon the purchase or sale of a security-based swap  
13 or other derivative instrument that the Commission may  
14 define by rule,” after “subsection (d)(1) of this section”.

15 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—  
16 Section 15(b)(4) of the Securities Exchange Act of 1934  
17 (15 U.S.C. 78o(b)(4)) is amended—

18 (1) in subparagraph (C), by adding “security-  
19 based swap dealer, major security-based swap partic-  
20 ipant,” after “government securities dealer,”; and

21 (2) in subparagraph (F), by adding “, or secu-  
22 rity-based swap dealer, or a major security-based  
23 swap participant” after “or dealer”.

1 (e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section  
2 13 of the Securities Exchange Act of 1934 (15 U.S.C.  
3 78m) is amended by adding at the end the following:

4 “(o) BENEFICIAL OWNERSHIP.—For purposes of this  
5 section and section 16, a person shall be deemed to acquire  
6 beneficial ownership of an equity security based on the  
7 purchase or sale of a security-based swap or other deriva-  
8 tive instrument only to the extent that the Commission,  
9 by rule, determines after consultation with the Prudential  
10 Regulators and the Secretary of the Treasury, that the  
11 purchase or sale of the security-based swap or other deriv-  
12 ative instrument, or class of security-based swaps or other  
13 derivative instruments, provides incidents of ownership  
14 comparable to direct ownership of the equity security, and  
15 that it is necessary to achieve the purposes of this section  
16 that the purchase or sale of the security-based swaps or  
17 instrument, or class of security-based swap or instru-  
18 ments, be deemed the acquisition of beneficial ownership  
19 of the equity security.”.

20 **SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.**

21 Section 28(a) of the Securities Exchange Act of 1934  
22 (15 U.S.C. 78bb(a)) is amended to read as follows:

23 “(a) Except as provided in subsection (f), the rights  
24 and remedies provided by this title shall be in addition  
25 to any and all other rights and remedies that may exist.

1 at law or in equity; but no person permitted to maintain  
2 a suit for damages under the provisions of this title shall  
3 recover, through satisfaction of judgment in one or more  
4 actions, a total amount in excess of his actual damages  
5 on account of the act complained of. Except as otherwise  
6 specifically provided in this title, nothing in this title shall  
7 affect the jurisdiction of the securities commission (or any  
8 agency or officer performing like functions) of any State  
9 over any security or any person insofar as it does not con-  
10 flict with the provisions of this title or the rules and regu-  
11 lations thereunder. No State law which prohibits or regu-  
12 lates the making or promoting of wagering or gaming con-  
13 tracts, or the operation of 'bucket shops' or other similar  
14 or related activities, shall invalidate (1) any put, call,  
15 straddle, option, privilege, or other security subject to this  
16 title (except any security that has a pari-mutuel payout  
17 or otherwise is determined by the Commission, acting by  
18 rule, regulation, or order, to be appropriately subject to  
19 such laws), or apply to any activity which is incidental or  
20 related to the offer, purchase, sale, exercise, settlement,  
21 or closeout of any such security, (2) any security-based  
22 swap between eligible contract participants, or (3) any se-  
23 curity-based swap effected on a national securities ex-  
24 change registered pursuant to section 6(b). No provision  
25 of State law regarding the offer, sale, or distribution of



1 securities shall apply to any transaction in a security-  
2 based swap or a security futures product, except that this  
3 sentence shall not be construed as limiting any State anti-  
4 fraud law of general applicability. A security-based swap  
5 may not be regulated as an insurance contract under State  
6 law.”.

7 **SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

8 **TREATMENT OF SECURITY-BASED SWAPS.**

9 (a) DEFINITIONS.—Section 2(a) of the Securities Act  
10 of 1933 (15 U.S.C. 77b(a)) is amended—

11 (1) in paragraph (1), by inserting “security-  
12 based swap,” after “security future,”;

13 (2) in paragraph (3) by adding at the end the  
14 following: “Any offer or sale of a security-based  
15 swap by or on behalf of the issuer of the securities  
16 upon which such security-based swap is based or is  
17 referenced, an affiliate of the issuer, or an under-  
18 writer, shall constitute a contract for sale of, sale of,  
19 offer for sale, or offer to sell such securities.”; and

20 (3) by adding at the end the following:

21 “(17) The terms ‘swap’ and ‘security-based  
22 swap’ have the same meanings as provided in sec-  
23 tions 1a(35) of the Commodity Exchange Act (7  
24 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-  
25 ties Exchange Act of 1934.

1           “(18) The terms ‘purchase’ or ‘sale’ of a secu-  
2           rity-based swap shall be deemed to mean the execu-  
3           tion, termination (prior to its scheduled maturity  
4           date), assignment, exchange, or similar transfer or  
5           conveyance of, or extinguishing of rights or obliga-  
6           tions under, a security-based swap, as the context  
7           may require.”.

8           (b) EXEMPTION FROM REGISTRATION.—Section 3(a)  
9           of the Securities Act of 1933 is amended by adding at  
10          the end the following:

11           “(15) Any security-based swap, as defined in  
12           section 2(a)(17) that is not otherwise a security as  
13           defined in section 2(a)(1) and that satisfies such  
14           conditions as established by rule or regulation by the  
15           Commission consistent with the provisions of the  
16           Derivative Markets Transparency and Accountability  
17           Act of 2009. The Commission shall promulgate rules  
18           implementing this exemption.”.

19           (c) REGISTRATION OF SECURITY-BASED SWAPS.—  
20           Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)  
21           is amended by adding at the end the following:

22           “(d) Notwithstanding the provisions of section 3 or  
23           section 4, unless a registration statement meeting the re-  
24           quirements of subsection (a) of section 10 is in effect as  
25           to a security-based swap, it shall be unlawful for any per-

1 son, directly or indirectly, to make use of any means or  
2 instruments of transportation or communication in inter-  
3 state commerce or of the mails to offer to sell, offer to  
4 buy or purchase or sell a security-based swap to any per-  
5 son who is not an eligible contract participant as defined  
6 in section 1a(12) of the Commodity Exchange Act (7  
7 U.S.C. 1a(12)).”.

8 **SEC. 3208. OTHER AUTHORITY.**

9 Unless otherwise provided by its terms, this subtitle  
10 does not divest any appropriate Federal banking agency,  
11 the Commission, the Commodity Futures Trading Com-  
12 mission, or other Federal or State agency, of any authority  
13 derived from any other applicable law.

14 **SEC. 3209. JURISDICTION.**

15 (a) Section 36 of the Securities Exchange Act of  
16 1934 (15 U.S.C. 78mm) is amended by adding at the end  
17 the following new subsection:

18 “(c) DERIVATIVES.—The Commission shall not grant  
19 exemptions from the security-based swap provisions of the  
20 Derivative Markets Transparency and Accountability Act  
21 of 2009, except as expressly authorized under the provi-  
22 sions of that Act.”.

23 (b) Section 30 of the Securities Exchange Act of  
24 1934 is amended by adding at the end the following:

1       “(c) No provision of this Act that was added by the  
2   Derivative Markets Transparency and Accountability Act  
3   of 2009 or any rule or regulation thereunder shall apply  
4   to any person insofar as such person transacts a business  
5   in security-based swaps without the jurisdiction of the  
6   United States unless he transacts such business in con-  
7   travention of such rules and regulations as the Commis-  
8   sion may prescribe as necessary or appropriate to prevent  
9   the evasion of any provision of this Act that was added  
10  by the Derivative Markets Transparency and Account-  
11  ability Act of 2009. This subsection shall not be construed  
12  to limit the jurisdiction of the Commission under any pro-  
13  vision of this Act as in effect prior to enactment of the  
14  Derivative Markets Transparency and Accountability Act  
15  of 2009.”.

16 **SEC. 3210. EFFECTIVE DATE.**

17       (a) Unless otherwise provided, the provisions of this  
18  subtitle shall become effective the later of 270 days after  
19  the date of the enactment of this subtitle or, to the extent  
20  a provision of this subtitle requires rulemaking, no less  
21  than 60 days after publication of a final rule or regulation  
22  implementing such provision of this subtitle.

23       (b) Subsection (a) shall not preclude the Securities  
24  Exchange Commission from any rulemaking required to  
25  implement the provisions of this subtitle.

1 **Subtitle C—Improved Financial**  
2 **and Commodity Markets Over-**  
3 **sight and Accountability**

4 **SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL**  
5 **TO APPOINTMENT PURSUANT TO SECTION 3**  
6 **OF THE INSPECTOR GENERAL ACT OF 1978.**

7 (a) INCLUSION IN CERTAIN DEFINITIONS.—Section  
8 12 of the Inspector General Act of 1978 (5 U.S.C. App.)  
9 is amended—

10 (1) in paragraph (1), by striking “or the Fed-  
11 eral Cochairpersons of the Commissions established  
12 under section 15301 of title 40, United States  
13 Code;” and inserting “the Federal Cochairpersons of  
14 the Commissions established under section 15301 of  
15 title 40, United States Code; the Chairman of the  
16 Board of Governors of the Federal Reserve System;  
17 the Chairman of the Commodity Futures Trading  
18 Commission; the Chairman of the National Credit  
19 Union Administration; the Director of the Pension  
20 Benefit Guaranty Corporation; the Chairman of the  
21 Securities and Exchange Commission; or the Direc-  
22 tor of the Consumer Financial Protection Agency;”;  
23 and

24 (2) in paragraph (2), by striking “or the Com-  
25 missions established under section 15301 of title 40,

1 United States Code,” and inserting “the Commis-  
2 sions established under section 15301 of title 40,  
3 United States Code, the Board of Governors of the  
4 Federal Reserve System, the Commodity Futures  
5 Trading Commission, the National Credit Union Ad-  
6 ministration, the Pension Benefit Guaranty Corpora-  
7 tion, the Securities and Exchange Commission, or  
8 the Director of the Consumer Financial Protection  
9 Agency,”.

10 (b) EXCLUSION FROM DEFINITION OF DESIGNATED  
11 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector  
12 General Act of 1978 (5 U.S.C. App.) is amended—

13 (1) by striking “the Board of Governors of the  
14 Federal Reserve System,”;

15 (2) by striking “the Commodity Futures Trad-  
16 ing Commission,”;

17 (3) by striking “the National Credit Union Ad-  
18 ministration,”; and

19 (4) by striking “the Pension Benefit Guaranty  
20 Corporation, the Securities and Exchange Commis-  
21 sion,”.

1 **SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO**  
2 **PERSONNEL.**

3 (a) IN GENERAL.—The Inspector General Act of  
4 1978 (5 U.S.C. App.) is amended by inserting after sec-  
5 tion 8L the following:

6 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**  
7 **TABLISHMENTS.**

8 “(a) DEFINITION.—For purposes of this section, the  
9 term ‘covered establishment’ means the Board of Gov-  
10 ernors of the Federal Reserve System, the Commodity Fu-  
11 tures Trading Commission, the National Credit Union Ad-  
12 ministration, the Pension Benefit Guaranty Corporation,  
13 and the Securities and Exchange Commission.

14 “(b) PROVISIONS RELATING TO ALL COVERED ES-  
15 TABLISHMENTS.—

16 “(1) PROVISIONS RELATING TO INSPECTORS  
17 GENERAL.—In the case of the Inspector General of  
18 a covered establishment, subsections (b) and (c) of  
19 section 4 of the Inspector General Reform Act of  
20 2008 (Public Law 110–409) shall apply in the same  
21 manner as if such covered establishment were a des-  
22 ignated Federal entity under section 8G. An Inspec-  
23 tor General who is subject to the preceding sentence  
24 shall not be subject to section 3(e).

25 “(2) PROVISIONS RELATING TO OTHER PER-  
26 SONNEL.—Notwithstanding paragraphs (7) and (8)

1 of section 6(a), the Inspector General of a covered  
2 establishment may select, appoint, and employ such  
3 officers and employees as may be necessary for car-  
4 rying out the functions, powers, and duties of the  
5 Office of Inspector General of such establishment  
6 and to obtain the temporary or intermittent services  
7 of experts or consultants or an organization of ex-  
8 perts or consultants, subject to the applicable laws  
9 and regulations that govern such selections, appoint-  
10 ments, and employment, and the obtaining of such  
11 services, within such establishment.

12 “(c) PROVISION RELATING TO THE BOARD OF GOV-  
13 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-  
14 visions of subsection (a) of section 8D (other than the pro-  
15 visions of subparagraphs (A), (B), (C), and (E) of para-  
16 graph (1) of such subsection (a)) shall apply to the Inspec-  
17 tor General of the Board of Governors of the Federal Re-  
18 serve System and the Chairman of the Board of Governors  
19 of the Federal Reserve System in the same manner as  
20 such provisions apply to the Inspector General of the De-  
21 partment of the Treasury and the Secretary of the Treas-  
22 ury, respectively.”.

23 (b) CONFORMING AMENDMENT.—Paragraph (3) of  
24 section 8G(g) of the Inspector General Act of 1978 (5  
25 U.S.C. App.) is repealed.



1 **SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CER-**  
2 **TAIN ESTABLISHMENTS TO DEFICIENCIES**  
3 **IDENTIFIED BY INSPECTORS GENERAL.**

4 The Chairman of the Board of Governors of the Fed-  
5 eral Reserve System, the Chairman of the Commodity Fu-  
6 tures Trading Commission, the Chairman of the National  
7 Credit Union Administration, the Director of the Pension  
8 Benefit Guaranty Corporation, and the Chairman of the  
9 Securities and Exchange Commission shall each—

10 (1) take action to address deficiencies identified  
11 by a report or investigation of the Inspector General  
12 of the establishment concerned; or

13 (2) certify to both Houses of Congress that no  
14 action is necessary or appropriate in connection with  
15 a deficiency described in paragraph (1).

16 **SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.**

17 (a) **EFFECTIVE DATE.**—This subtitle and the amend-  
18 ments made by this subtitle shall take effect 30 days after  
19 the date of the enactment of this subtitle.

20 (b) **TRANSITION RULE.**—An individual serving as In-  
21 spector General of the Board of Governors of the Federal  
22 Reserve System, the Commodity Futures Trading Com-  
23 mission, the National Credit Union Administration, the  
24 Pension Benefit Guaranty Corporation, or the Securities  
25 and Exchange Commission on the effective date of this  
26 subtitle pursuant to an appointment made under section

1 8G of the Inspector General Act of 1978 (5 U.S.C.  
2 App.)—

3 (1) may continue so serving until the President  
4 makes an appointment under section 3(a) of such  
5 Act with respect to the Board of Governors of the  
6 Federal Reserve System, the Commodity Futures  
7 Trading Commission, the National Credit Union Ad-  
8 ministration, the Pension Benefit Guaranty Corpora-  
9 tion, or the Securities and Exchange Commission, as  
10 the case may be, consistent with the amendments  
11 made by section 301; and

12 (2) shall, while serving under paragraph (1), re-  
13 main subject to the provisions of section 8G of such  
14 Act which, immediately before the effective date of  
15 this subtitle, applied with respect to the Inspector  
16 General of the Board of Governors of the Federal  
17 Reserve System, the Commodity Futures Trading  
18 Commission, the National Credit Union Administra-  
19 tion, the Pension Benefit Guaranty Corporation, or  
20 the Securities and Exchange Commission, as the  
21 case may be, and suffer no reduction in pay.

Page 694, beginning on line 19, strike “a designated  
Federal entity” and insert “an establishment”.

In the table of contents, strike the items relating to title III, subtitles A, B, and C of title III, and sections 3001 through 3304 and insert the following:

TITLE III—DERIVATIVE MARKETS TRANSPARENCY AND  
ACCOUNTABILITY ACT

- Sec. 3001. Short title.
- Sec. 3002. Review of regulatory authority.
- Sec. 3003. International harmonization.
- Sec. 3004. Prohibition against government assistance.
- Sec. 3005. Studies.
- Sec. 3006. Recommendations for changes to insolvency laws.
- Sec. 3007. Abusive swaps.
- Sec. 3008. Authority to prohibit participation in swap activities.
- Sec. 3009. Memorandum.

Subtitle A—Regulation of Swap Markets

- Sec. 3101. Definitions.
- Sec. 3102. Jurisdiction.
- Sec. 3103. Clearing and execution transparency.
- Sec. 3104. Public reporting of aggregate swap data.
- Sec. 3105. Swap repositories.
- Sec. 3106. Reporting and recordkeeping.
- Sec. 3107. Registration and regulation of swap dealers and major swap participants.
- Sec. 3108. Conflicts of interest.
- Sec. 3109. Swap execution facilities.
- Sec. 3110. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 3111. Designated contract markets.
- Sec. 3112. Margin.
- Sec. 3113. Position limits.
- Sec. 3114. Enhanced authority over registered entities.
- Sec. 3115. Foreign boards of trade.
- Sec. 3116. Legal certainty for swaps.
- Sec. 3117. FDICIA amendments.
- Sec. 3118. Enforcement authority.
- Sec. 3119. Enforcement.
- Sec. 3120. Retail commodity transactions.
- Sec. 3121. Large swap trader reporting.
- Sec. 3122. Segregation of assets held as collateral in swap transactions.
- Sec. 3123. Other authority.
- Sec. 3124. Antitrust.
- Sec. 3125. Review of prior actions.
- Sec. 3126. Expedited process.
- Sec. 3127. Effective date.

Subtitle B—Regulation of Security-Based Swap Markets

- Sec. 3201. Definitions under the Securities Exchange Act of 1934.
- Sec. 3202. Repeal of prohibition on regulation of security-based swaps.

- Sec. 3203. Amendments to the Securities Exchange Act of 1934.
- Sec. 3204. Registration and regulation of swap dealers and major swap participants.
- Sec. 3205. Reporting and recordkeeping.
- Sec. 3206. State gaming and bucket shop laws.
- Sec. 3207. Amendments to the Securities Act of 1933; treatment of security-based swaps.
- Sec. 3208. Other authority.
- Sec. 3209. Jurisdiction.
- Sec. 3210. Effective date.

Subtitle C—Improved Financial and Commodity Markets Oversight and  
Accountability

- Sec. 3301. Elevation of certain Inspectors General to appointment pursuant to section 3 of the Inspector General Act of 1978.
- Sec. 3302. Continuation of provisions relating to personnel.
- Sec. 3303. Corrective responses by heads of certain establishments to deficiencies identified by Inspectors General.
- Sec. 3304. Effective date; transition rule.

