

AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. PETERSON OF MINNESOTA

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Over-the-Counter De-
3 rivatives Markets Act of 2009”.

4 SEC. 2. TABLE OF CONTENTS.

5 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Review of regulatory authority.
- Sec. 4. International harmonization.

TITLE I—REGULATION OF SWAP MARKETS

- Sec. 101. Definitions.
- Sec. 102. Jurisdiction.
- Sec. 103. Clearing and execution transparency.
- Sec. 104. Public reporting of aggregate swap data.
- Sec. 105. Swap repositories.
- Sec. 106. Reporting and recordkeeping.
- Sec. 107. Registration and regulation of swap dealers and major swap participants.
- Sec. 108. Conflicts of interest.
- Sec. 109. Alternative swap execution facilities.
- Sec. 110. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 111. Designated contract markets.
- Sec. 112. Margin.
- Sec. 113. Position limits.
- Sec. 114. Enhanced authority over registered entities.
- Sec. 115. Foreign boards of trade.
- Sec. 116. Legal certainty for swaps.
- Sec. 117. FDICIA amendments.
- Sec. 118. Enforcement authority.
- Sec. 119. Enforcement.
- Sec. 120. Retail commodity transactions.
- Sec. 121. Large swap trader reporting.

- Sec. 122. Other authority.
- Sec. 123. Antitrust.
- Sec. 124. Review of prior actions.
- Sec. 125. Expedited process.
- Sec. 126. Effective date.

TITLE J—REGULATION OF SECURITY-BASED SWAP MARKETS

- Sec. 201. Definitions under the Securities Exchange Act of 1934.
- Sec. 202. Repeal of prohibition on regulation of security-based swaps.
- Sec. 203. Amendments to the Securities Exchange Act of 1934.
- Sec. 204. Reporting and recordkeeping.
- Sec. 205. State gaming and bucket shop laws.
- Sec. 206. Amendments to the Securities Act of 1933; treatment of security-based swaps.
- Sec. 207. Other authority.
- Sec. 208. Jurisdiction.
- Sec. 209. Effective date.

TITLE K—IMPROVED FINANCIAL AND COMMODITY MARKETS OVERSIGHT AND ACCOUNTABILITY

- Sec. 301. Elevation of certain Inspectors General to appointment pursuant to section 3 of the Inspector General Act of 1978.
- Sec. 302. Continuation of provisions relating to personnel.
- Sec. 303. Subpoena authority of certain Inspectors General.
- Sec. 304. Corrective responses by heads of certain establishments to deficiencies identified by Inspectors General.
- Sec. 305. Effective date; transition rule.

1 **SEC. 3. REVIEW OF REGULATORY AUTHORITY.**

2 (a) CONSULTATION.—

- 3 (1) CFTC.—Before commencing any rule-
- 4 making or issuing an order regarding swaps, swap
- 5 dealers, major swap participants, swap repositories,
- 6 persons associated with a swap dealer or major swap
- 7 participant, eligible contract participants, or alter-
- 8 native swap execution facilities pursuant to title I,
- 9 the Commodity Futures Trading Commission shall
- 10 consult with the Securities and Exchange Commis-
- 11 sion and the Prudential Regulators.

1 (2) SEC.—Before commencing any rulemaking
2 or issuing an order regarding security-based swaps,
3 security-based swap dealers, major security-based
4 swap participants, security-based swap repositories,
5 persons associated with a security-based swap dealer
6 or major security-based swap participant, eligible
7 contract participants with regard to security-based
8 swaps, or alternative swap execution facilities pursu-
9 ant to title II, the Securities and Exchange Commis-
10 sion shall consult with the Commodity Futures
11 Trading Commission and the Prudential Regulators.

12 (3) In developing and promulgating rules pur-
13 suant to this subsection, the Commodity Futures
14 Trading Commission and the Securities and Ex-
15 change Commission shall consider each other's views
16 and the views of the Prudential Regulators.

17 (4) In adopting a rule described in paragraph
18 (1) or (2), the Commodity Futures Trading Com-
19 mission and the Securities and Exchange Commis-
20 sion shall prescribe requirements to treat function-
21 ally or economically similar products or entities simi-
22 larly.

23 (5) Paragraph (4) shall not be construed to re-
24 quire the Commodity Futures Trading Commission
25 and the Securities Exchange Commission to adopt a

1 rule that treats functionally or economically similar
2 products identically.

3 (b) LIMITATION.—

4 (1) CFTC.—Nothing in this Act shall be con-
5 strued to confer jurisdiction on the Commodity Fu-
6 tures Trading Commission to issue a rule, regula-
7 tion, or order providing for oversight or regulation
8 of—

9 (A) security-based swaps; or

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

12 (i) security-based swap dealers;

13 (ii) major security-based swap partici-
14 pants;

15 (iii) security-based swap repositories;

16 (iv) persons associated with a secu-
17 rity-based swap dealer or major security-
18 based swap participant;

19 (v) eligible contract participants with
20 respect to security-based swaps; or

21 (vi) alternative swap execution facili-
22 ties.

23 (2) SEC.—Nothing in this Act shall be con-
24 strued to confer jurisdiction on the Securities and

1 Exchange Commission to issue a rule, regulation, or
2 order providing for oversight or regulation of—

3 (A) swaps; or

4 (B) with regard to their activities or func-
5 tions concerning swaps—

6 (i) swap dealers;

7 (ii) major swap participants;

8 (iii) swap repositories;

9 (iv) persons associated with a swap
10 dealer or major swap participant;

11 (v) eligible contract participants with
12 respect to swaps; or

13 (vi) alternative swap execution facili-
14 ties.

15 (c) OBJECTION TO COMMISSION REGULATION.—

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

1 order be set aside. Any such proceeding shall be ex-
2 pedited by the Court of Appeals.

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

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

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

(d) DEFINITIONS.—In this section, the terms “Prudential Regulators”, “swap”, “swap dealer”, “major swap participant”, “swap repository”, “person associated with a swap dealer or major swap participant”, “eligible contract participant”, “alternative swap execution facility”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, “security-based swap repository”, and “person associated with a security-based swap dealer or major security-based swap participant” shall have the meanings provided, respectively, in the Commodity Exchange Act, including any modification of the meanings under section 101(b) of this Act.

SEC. 4. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of contracts of sale of commodity for future delivery, swaps, and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, the Prudential Regulators (as defined in section 1a(43) of the Commodity Exchange Act), [and the financial stability regulator], as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of commodity for future delivery, swaps, and security-based swaps, and may agree to such information-sharing ar-

1 rangements as may be deemed to be necessary or appro-
2 priate in the public interest or for the protection of inves-
3 tors, swap counterparties, and security-based swap
4 counterparties.

5 **TITLE I—REGULATION OF SWAP** 6 **MARKETS**

7 **SEC. 101. DEFINITIONS.**

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

11 (1) by redesignating paragraphs (9) through
12 (34) as paragraphs (10) through (35), respectively;

13 (2) by redesignating paragraph (35) (as redes-
14 ignated by paragraph (1) of this subsection) as
15 paragraph (36);

16 (3) by inserting after paragraph (34) (as redes-
17 ignated by paragraph (1) of this subsection) the fol-
18 lowing:

19 “(35) SWAP.—

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

23 “(i) is a put, call, cap, floor, collar, or
24 similar option of any kind for the purchase
25 or sale of, or based on the value of, 1 or

1 more interest or other rates, currencies,
2 commodities, securities, instruments of in-
3 debtedness, indices, quantitative measures,
4 or other financial or economic interests or
5 property of any kind;

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

13 “(iii) provides on an executory basis
14 for the exchange, on a fixed or contingent
15 basis, of 1 or more payments based on the
16 value or level of 1 or more interest or other
17 rates, currencies, commodities, securities,
18 instruments of indebtedness, indices, quan-
19 titative measures, or other financial or eco-
20 nomic interests or property of any kind, or
21 any interest therein or based on the value
22 thereof, and that transfers, as between the
23 parties to the transaction, in whole or in
24 part, the financial risk associated with a
25 future change in any such value or level

1 without also conveying a current or future
2 direct or indirect ownership interest in an
3 asset (including any enterprise or invest-
4 ment pool) or liability that incorporates the
5 financial risk so transferred, and includes
6 any agreement, contract, or transaction
7 commonly known as an interest rate swap,
8 a rate floor, rate cap, rate collar, cross-cur-
9 rency rate swap, basis swap, currency
10 swap, foreign exchange swap, total return
11 swap, equity index swap, equity swap, debt
12 index swap, debt swap, credit spread, cred-
13 it default swap, credit swap, weather swap,
14 energy swap, metal swap, agricultural
15 swap, emissions swap, or commodity swap;

16 “(iv) is, or in the future becomes,
17 commonly known to the trade as a swap;
18 or

19 “(v) is any combination or permuta-
20 tion of, or option on, any agreement, con-
21 tract, or transaction described in any of
22 clauses (i) through (iv).

23 “(B) EXCLUSIONS.—The term ‘swap’ does
24 not include—

1 “(i) any contract of sale of a com-
2 modity for future delivery or security fu-
3 tures product traded on or subject to the
4 rules of any board of trade designated as
5 a contract market under section 5 or 5f;

6 “(ii) any sale of a nonfinancial com-
7 modity or security for deferred shipment or
8 delivery, so long as the transaction is phys-
9 ically settled;

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

18 “(iv) any put, call, straddle, option, or
19 privilege relating to foreign currency en-
20 tered into on a national securities exchange
21 registered pursuant to section 6(a) of the
22 Securities Exchange Act of 1934 (15
23 U.S.C. 78f(a));

24 “(v) any agreement, contract, or
25 transaction providing for the purchase or

1 sale of 1 or more securities on a fixed basis
2 that is subject to the Securities Act of
3 1933 (15 U.S.C. 77a et seq.) and the Se-
4 curities Exchange Act of 1934 (15 U.S.C.
5 78a et seq);

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

20 “(vii) any note, bond, or evidence of
21 indebtedness that is a security as defined
22 in section 2(a)(1) of the Securities Act of
23 1933 (15 U.S.C. 77b(a)(1));

24 “(viii) any agreement, contract, or
25 transaction that is—

1 “(I) based on a security; and

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

11 “(ix) a foreign exchange forward that
12 meets the requirements of subclause (I),
13 but only to the extent described in sub-
14 clause (II)—

15 “(I) a foreign exchange for-
16 ward—

17 “(aa) in which all parties to
18 the agreement are eligible con-
19 tract participants;

20 “(bb) that results in actual
21 delivery of currency; and

22 “(cc) that is not structured
23 to evade the [Over-the-Counter
24 Derivatives Markets Act of 2009]
25 in violation of any rules promul-

1 gated by the Commission pursu-
2 ant that Act;

3 “(II) shall not be considered a
4 “swap” except that—

5 “(aa) all parties to the
6 agreement (unless the agreement
7 was cleared) shall report such an
8 agreement either to a swap re-
9 pository described in section 21
10 or, if there is no repository that
11 would accept the agreement, to
12 the Commission pursuant to sec-
13 tion 4r within such time period
14 as the Commission may by rule
15 or regulation prescribe; and

16 “(bb) any party to the
17 agreement that is a swap dealer
18 or a major swap participant shall
19 conform to the business conduct
20 standards contained in section
21 4s(h);

22 “(x) any agreement, contract, or
23 transaction a counterparty of which is a
24 Federal Reserve bank, the United States
25 government or an agency of the United

1 States government that is expressly backed
2 by the full faith and credit of the United
3 States; and

4 “(xi) any security-based swap.

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

20 (4) in subparagraph (A) of paragraph (13) (as
21 redesignated by paragraph (1) of this subsection)—

22 (A) in clause (vii), 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 (5) in paragraph (30) (as redesignated by para-
5 graph (1) of this subsection), by—

6 (A) redesignating subparagraph (E) as
7 subparagraph (G);

8 (B) in subparagraph (D), by striking
9 “and”; and

10 (C) inserting after subparagraph (D) the
11 following:

12 “(E) an alternative swap execution facility
13 registered under section 5h;

14 “(F) a swap repository; and”;

15 (6) by inserting after paragraph (36) (as red-
16 igned by subsection (c)) the following:

17 “(37) BOARD.—The term ‘Board’ means the
18 Board of Governors of the Federal Reserve Sys-
19 tem.”;

20 (7) by inserting after paragraph (37) the fol-
21 lowing:

22 “(38) SECURITY-BASED SWAP.—The term ‘se-
23 curity-based swap’ has the same meaning as in sec-
24 tion 3(a)(68) of the Securities and Exchange Act of
25 1934.”;

1 (8) by inserting after paragraph (38) the fol-
2 lowing:

3 “(39) SWAP DEALER.—The term ‘swap dealer’
4 means any person who, as a significant part of its
5 business—

6 “(A) holds itself out as a dealer in swaps;

7 “(B) makes a market in swaps;

8 “(C) regularly engages in the purchase of
9 swaps and their resale to customers in the ordi-
10 nary course of a business; or

11 “(D) engages in any activity causing the
12 person to be commonly known in the trade as
13 a dealer or market maker in swaps.”;

14 (9) by inserting after paragraph (39) the fol-
15 lowing:

16 “(40) MAJOR SWAP PARTICIPANT.—

17 “(A) IN GENERAL.—The term ‘major swap
18 participant’ means any person who is not a
19 swap dealer and who maintains a substantial
20 net position in outstanding uncleared swaps.

21 “(B) DEFINITION OF SUBSTANTIAL NET
22 POSTION.—The Commission shall define by rule
23 or regulation the term ‘substantial net position’
24 at a threshold that the Commission determines
25 prudent for the effective monitoring, manage-

1 ment and oversight of entities which are sys-
2 temically important or can significantly impact
3 the financial system.”;

4 (10) by inserting after paragraph (40) the fol-
5 lowing:

6 “(41) MAJOR SECURITY-BASED SWAP PARTICI-
7 PANT.—The term ‘major security-based swap partic-
8 ipant’ has the same meaning as in section 3(a)(67)
9 of the Securities Exchange Act of 1934.”;

10 (11) by inserting after paragraph (41) the fol-
11 lowing:

12 “(42) APPROPRIATE FEDERAL BANKING AGEN-
13 CY.—The term ‘appropriate Federal banking agency’
14 has the same meaning as in section 3(q) of the Fed-
15 eral Deposit Insurance Act (12 U.S.C. 1813(q)).”;

16 (12) by inserting after paragraph (42) the fol-
17 lowing:

18 “(43) PRUDENTIAL REGULATOR.—The term
19 ‘Prudential Regulator’ means—

20 “(A) the Board in the case of a swap deal-
21 er, major swap participant, security-based swap
22 dealer or major security-based swap participant
23 that is—

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

1 “(ii) a State-chartered branch or
2 agency of a foreign bank;

3 “(B) the Office of the Comptroller of the
4 Currency in the case of a swap dealer, major
5 swap participant, security-based swap dealer or
6 major security-based swap participant that is—

7 “(i) a national bank; or

8 “(ii) a federally chartered branch or
9 agency of a foreign bank; and

10 “(C) the Federal Deposit Insurance Cor-
11 poration in the case of a swap dealer, major
12 swap participant, security-based swap dealer or
13 major security-based swap participant that is a
14 state-chartered bank that is not a member of
15 the Federal Reserve System.”;

16 (13) by inserting after paragraph (43) the fol-
17 lowing:

18 “(44) SECURITY-BASED SWAP DEALER.—The
19 term ‘security-based swap dealer’ has the same
20 meaning as section 3(a)(71) of the Securities Ex-
21 change Act of 1934.”;

22 (14) by inserting after paragraph (44) the fol-
23 lowing:

24 “(45) FOREIGN EXCHANGE FORWARD.—The
25 term ‘foreign exchange forward’ means a transaction

1 that solely involves the exchange of 2 different cur-
2 rencies on a specific future date at a fixed rate
3 agreed at the inception of the contract.”;

4 (15) by inserting after paragraph (45) the fol-
5 lowing:

6 “(46) FOREIGN EXCHANGE SWAP.—The term
7 ‘foreign exchange swap’ means a transaction that
8 solely involves the exchange of 2 different currencies
9 on a specific date at a fixed rate agreed at the incep-
10 tion of the contract, and a reverse exchange of the
11 same 2 currencies at a date further in the future
12 and at a fixed rate agreed at the inception of the
13 contract.”;

14 (16) by inserting after paragraph (46) the fol-
15 lowing:

16 “(47) 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’ has the same meaning as in sec-
23 tion 3(a)(70) of the Securities Exchange Act of
24 1934.”;

1 (17) by inserting after paragraph (47) the fol-
2 lowing:

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

20 (18) by inserting after paragraph (48) the fol-
21 lowing:

22 “(49) SWAP REPOSITORY.—The term ‘swap re-
23 pository’ means an entity that collects and maintains
24 the records of the terms and conditions of swaps or
25 security-based swaps entered into by third parties.”.

1 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
2 Commodity Futures Trading Commission shall adopt a
3 rule further defining the terms “swap”, “swap dealer”,
4 “major swap participant”, and “eligible contract partici-
5 pant” for the purpose of including transactions and enti-
6 ties that have been structured to evade this Act.

7 (c) EXEMPTIONS.—Section 4(c) of the Commodity
8 Exchange Act (7 U.S.C. 4(c)) is amended by adding at
9 the end the following: “The Commission shall not have
10 the authority to grant exemptions from the swap-related
11 provisions of the Over-the-Counter Derivatives Markets
12 Act of 2009, except as expressly authorized under the pro-
13 visions of that Act.”.

14 **SEC. 102. JURISDICTION.**

15 (a) EXCLUSIVE JURISDICTION.—The first sentence
16 of section 2(a)(1)(A) of the Commodity Exchange Act (7
17 U.S.C. 2(a)(1)(A)) is amended—

- 18 (1) by striking “(c) through (i)” and inserting
19 “(c) and (f)”;
- 20 (2) by inserting “swaps, or” before “contracts
21 of sale”.

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

- 24 (1) in clause (i) by striking “or” at the end;

1 (2) by redesignating clause (ii) as clause (iii);

2 and

3 (3) by inserting after clause (i) the following:

4 “(ii) a swap; or”.

5 **SEC. 103. CLEARING AND EXECUTION TRANSPARENCY.**

6 (a) CLEARING AND EXECUTION TRANSPARENCY RE-
7 QUIREMENTS.—

8 (1) Section 2 of the Commodity Exchange Act
9 (7 U.S.C. 2) is amended by striking subsections (d),
10 (e), (g), and (h).

11 (2)(A) Prior to the final effective dates in this
12 Act, a person may petition the Commodity Futures
13 Trading Commission to be remain subject to the
14 provisions of section 2h of the Commodity Exchange
15 Act.

16 (B) The Commodity Futures Trading Commis-
17 sion shall consider any petition submitted under sub-
18 paragraph (A) in a prompt manner and may allow
19 a person to continue operating subject to the provi-
20 sions of section 2h for up to one year after the effec-
21 tive date of this Act.

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

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

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

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

17 “(j) CLEARING REQUIREMENT.—

18 “(1) IN GENERAL.—

19 “(A) PRESUMPTION OF CLEARING.—A
20 swap shall be submitted for clearing if a deriva-
21 tives clearing organization that is registered
22 under this Act will accept the swap for clearing.

23 “(B) OPEN ACCESS.—The rules of a de-
24 rivatives clearing organization described in sub-
25 paragraph (A) shall—

1 “(i) prescribe that all swaps submitted
2 to the derivatives clearing organization
3 with the same terms and conditions are
4 fungible within the derivatives clearing or-
5 ganization and may be offset with each
6 other; and

7 “(ii) provide for non-discriminatory
8 clearing of a swap executed bilaterally or
9 on or through the rules of an unaffiliated
10 designated contract market or alternative
11 swap execution facility.

12 “(2) COMMISSION APPROVAL.—

13 “(A) IN GENERAL.—A derivatives clearing
14 organization shall submit to the Commission for
15 prior approval, and provide notice of such sub-
16 mission to its members (as determined by Com-
17 mission), each swap, or any group, category,
18 type or class of swaps, that it seeks to accept
19 for clearing, which submission the Commission
20 shall make available to the public.

21 “(B) DEADLINE.—The Commission, after
22 at least a 30-day public comment period, shall
23 take final action on a request submitted pursu-
24 ant to subparagraph (A) not later than 90 days
25 after submission of the request, unless the de-

1 ratives clearing organization submitting the
2 request agrees to an extension of the time limi-
3 tation established under this subparagraph. A
4 request on which the Commission fails to take
5 final action within the time limitation pursuant
6 to this subparagraph is deemed approved.

7 “(C) APPROVAL.—The Commission shall
8 approve, unconditionally or subject to such
9 terms and conditions as the Commission deter-
10 mines to be appropriate, any request submitted
11 pursuant to subparagraph (A) if the Commis-
12 sion finds that the request is consistent with
13 section 5b(c)(2). In reviewing the request, the
14 Commission shall also take into account the fol-
15 lowing factors:

16 “(i) The existence of significant out-
17 standing notional exposures, trading liquid-
18 ity and adequate pricing data.

19 “(ii) The availability of rule frame-
20 work, capacity, operational expertise and
21 resources, and credit support infrastruc-
22 ture to clear the contract on terms that are
23 consistent with the material terms and
24 trading conventions on which the contract
25 is then traded.

1 “(iii) The effect on the mitigation of
2 systemic risk, taking into account the size
3 of the market for such contract and the re-
4 sources of the derivative clearing organiza-
5 tion available to clear the contract.

6 “(iv) The effect on competition.

7 “(v) The existence of reasonable legal
8 certainty in the event of the insolvency of
9 the relevant derivative clearing
10 organization or 1 or more of its clearing
11 members with regard to the treatment of
12 customer and swap counterparty positions,
13 funds, and property.

14 “(D) CURRENT CLEARING OF SWAPS.—
15 Swaps that are accepted for clearing by a deriv-
16 ative clearing organization before the effective
17 date of the Over-the-Counter Derivatives Mar-
18 kets Act of 2009 are deemed approved for pur-
19 poses of this section.

20 “(E) RULES.—Not later than 180 days
21 after the effective date of the Over-the-Counter
22 Derivatives Markets Act of 2009, the Commis-
23 sion shall adopt rules for a derivatives clearing
24 organization’s submission for approval, pursu-
25 ant to this paragraph, of a swap, or a group,

1 category, type or class of swaps, that it seeks
2 to accept for clearing.

3 “(3) STAY OF CLEARING REQUIREMENT.—

4 “(A) After an approval pursuant to para-
5 graph (2), the Commission, on application of a
6 counterparty to a swap or on its own initiative,
7 may stay the clearing requirement of paragraph
8 (1) until the Commission completes a review of
9 the terms of the swap (or the group, category,
10 type or class of swaps) and the clearing ar-
11 rangement.

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

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

23 “(i) determine, unconditionally or sub-
24 ject to such terms and conditions as the
25 Commission determines to be appropriate,

1 that the swap, or group, category, type or
2 class of swaps, must be cleared pursuant
3 to this subsection if it finds that such
4 clearing is consistent with section 5b(c)(2);
5 or

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

10 “(D) RULES.—Not later than 180 days
11 after the effective date of the Over-the-Counter
12 Derivatives Markets Act of 2009, the Commis-
13 sion shall adopt rules for reviewing, pursuant to
14 this paragraph, a derivatives clearing organiza-
15 tion’s clearing of a swap, or a group, category,
16 type or class of swaps, that it has accepted for
17 clearing.

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

22 “(5) REQUIRED REPORTING.—

23 “(A) IN GENERAL.—All swaps that are not
24 accepted for clearing by any derivatives clearing
25 organization shall be reported either to a swap

1 repository described in section 21 or, if there is
2 no repository that would accept the swap, to the
3 Commission pursuant to section 4r within such
4 time period as the Commission may by rule or
5 regulation prescribe. Counterparties to a swap
6 may agree which counterparty will report the
7 swap as required by this paragraph.

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

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

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

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

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

25 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 becoming
11 clearable pursuant to this subsection are ex-
12 empt from the clearing requirements of this
13 subsection if reported pursuant to paragraph
14 (6)(B).

15 “(C) ENTERED INTO BEFORE TIER 1 DES-
16 IGNATION.—Swaps entered into with a
17 counterparty in reliance of the exception in
18 paragraph (8) before designation of such
19 counterparty as a [Tier 1 financial holding com-
20 pany] are exempt from the clearing require-
21 ments of this subsection.

22 “(8) EXCEPTIONS.—

23 “(A) IN GENERAL.—The requirements of
24 paragraphs (1) and (3) shall not apply to a
25 swap if—

1 “(i) one of the counterparties to the
2 swap—

3 “(I) is not a swap dealer or
4 major swap participant; and

5 “(II) demonstrates to the Com-
6 mission, in a manner set forth by the
7 Commission, how it generally meets
8 its financial obligations associated
9 with entering into non-cleared swaps;
10 and

11 “(ii) none of the counterparties to the
12 swap is a [Tier 1 financial holding com-
13 pany].

14 “(B) ABUSE OF EXEMPTION.—The Com-
15 mission may prescribe rules under this sub-
16 section, or issue interpretations of the rules, as
17 necessary to prevent abuse of the exemption in
18 subparagraph (A) by swap dealers and major
19 swap participants.

20 “(k) EXECUTION TRANSPARENCY.—

21 “(1) REQUIREMENT.—A swap that is subject to
22 the clearing requirement of subsection (j) shall not
23 be traded except on or through a board of trade des-
24 ignated as a contract market under section 5, or on
25 or through an alternative swap execution facility reg-

1 istered under section 5h, that lists the swap for
2 trading.

3 “(2) EXCEPTIONS.—The requirement of para-
4 graph (1) shall not apply to a swap if no designated
5 contract market or alternative swap execution facil-
6 ity lists the swap for trading.

7 “(3) AGRICULTURAL SWAPS.—No person shall
8 offer to enter into, enter into or confirm the execu-
9 tion of, any swap in an agricultural commodity that
10 is subject to paragraph (1) except pursuant to a rule
11 or regulation of the Commission allowing the swap
12 under such terms and conditions as the Commission
13 shall prescribe.”.

14 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

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

18 “(a) REGISTRATION REQUIREMENT.—It shall be un-
19 lawful for any entity, unless registered with the Commis-
20 sion, directly or indirectly to make use of the mails or any
21 means or instrumentality of interstate commerce to per-
22 form the functions of a derivatives clearing organization
23 described in section 1a(10) of this Act with respect to—

24 “(1) a contract of sale of a commodity for fu-
25 ture delivery (or option on such a contract) or option

1 on a commodity, in each case unless the contract or
2 option is—

3 “(A) excluded from this Act by section
4 2(a)(1)(C)(i), 2(c), or 2(f); or

5 “(B) a security futures product cleared by
6 a clearing agency registered with the Securities
7 and Exchange Commission under the Securities
8 Exchange Act of 1934 (15 U.S.C. 78a et seq.);
9 or

10 “(2) a swap.

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

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

17 “(g) RULES.—Not later than 180 days after the ef-
18 fective date of the Over-the-Counter Derivatives Markets
19 Act of 2009, the Commission, in consultation with the Se-
20 curities and Exchange Commission, shall adopt rules gov-
21 erning persons that are registered as derivatives clearing
22 organizations for swaps under this subsection.

23 “(h) EXEMPTIONS.—The Commission may exempt,
24 conditionally or unconditionally, a derivatives clearing or-
25 ganization from registration under this section for the

1 clearing of swaps if the Commission finds that the deriva-
2 tives clearing organization is subject to comparable, com-
3 prehensive supervision and regulation on a consolidated
4 basis by the Securities and Exchange Commission, a Pru-
5 dential Regulator or the appropriate governmental au-
6 thorities in the organization's home country.

7 “(i) DESIGNATION OF COMPLIANCE OFFICER.—

8 “(1) IN GENERAL.—Each derivatives clearing
9 organization shall designate an individual to serve as
10 a compliance officer.

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

12 “(A) shall report directly to the board or
13 to the senior officer of the derivatives clearing
14 organization; and

15 “(B) shall—

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

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

1 “(iii) be responsible for administering
2 the policies and procedures required to be
3 established pursuant to this section; and

4 “(iv) ensure compliance with this Act
5 and the rules and regulations issued under
6 this Act; and

7 “(C) shall establish procedures for remedi-
8 ation of non-compliance issues found during
9 compliance office reviews, lookbacks, internal or
10 external audit findings, self-reported errors, or
11 through validated complaints. The procedures
12 shall establish the handling, management re-
13 sponse, remediation, re-testing, and closing of
14 non-compliant issues.

15 “(3) ANNUAL REPORTS REQUIRED.—The com-
16 pliance officer shall annually prepare and sign a re-
17 port on the compliance of the derivatives clearing or-
18 ganization with this Act and the policies and proce-
19 dures of the derivatives clearing organization, includ-
20 ing the code of ethics and conflict of interest policies
21 of the derivatives clearing organization, in accord-
22 ance with rules prescribed by the Commission. The
23 compliance report shall accompany the financial re-
24 ports of the derivatives clearing organization that
25 are required to be furnished to the Commission pur-

1 suant to this section and shall include a certification
2 that, under penalty of law, the report is accurate
3 and complete.”.

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

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

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

20 “(B) FINANCIAL RESOURCES.—

21 “(i) The derivatives clearing organiza-
22 tion shall have adequate financial, oper-
23 ational, and managerial resources to dis-
24 charge the responsibilities of the organiza-
25 tion.

1 “(ii) The financial resources of the de-
2 rivatives clearing organization shall at a
3 minimum exceed the total amount that
4 would—

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

14 “(II) enable the organization to
15 cover the operating costs of the orga-
16 nization for a period of 1 year, cal-
17 culated on a rolling basis.

18 “(C) PARTICIPANT AND PRODUCT ELIGI-
19 BILITY.—

20 “(i) The derivatives clearing organiza-
21 tion shall establish—

22 “(I) appropriate admission and
23 continuing eligibility standards (in-
24 cluding sufficient financial resources
25 and operational capacity to meet obli-

1 gations arising from participation in
2 the organization) for members of and
3 participants in the organization; and

4 “(II) appropriate standards for
5 determining eligibility of agreements,
6 contracts, or transactions submitted
7 to the organization for clearing.

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

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

16 “(D) RISK MANAGEMENT.—

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

23 “(ii) The derivatives clearing organi-
24 zation shall measure the credit exposures
25 of the organization to the members of, and

1 participants in, the organization at least
2 once each business day and shall monitor
3 the exposures throughout the business day.

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

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

19 “(v) The models and parameters used
20 in setting margin requirements shall be
21 risk-based and reviewed regularly.

22 “(E) SETTLEMENT PROCEDURES.—The
23 derivatives clearing organization shall—

1 “(i) complete money settlements on a
2 timely basis, and not less than once each
3 business day;

4 “(ii) employ money settlement ar-
5 rangements that eliminate or strictly limit
6 the exposure of the organization to settle-
7 ment bank risks, such as credit and liquid-
8 ity risks from the use of banks to effect
9 money settlements;

10 “(iii) ensure money settlements are
11 final when effected;

12 “(iv) maintain an accurate record of
13 the flow of funds associated with each
14 money settlement;

15 “(v) have the ability to comply with
16 the terms and conditions of any permitted
17 netting or offset arrangements with other
18 clearing organizations; and

19 “(vi) for physical settlements, estab-
20 lish rules that clearly state the obligations
21 of the organization with respect to physical
22 deliveries, including how risks from these
23 obligations shall be identified and man-
24 aged.

25 “(F) TREATMENT OF FUNDS.—

1 “(i) The derivatives clearing organiza-
2 tion shall have standards and procedures
3 designed to protect and ensure the safety
4 of member and participant funds and as-
5 sets.

6 “(ii) The derivatives clearing organi-
7 zation shall hold member and participant
8 funds and assets in a manner whereby risk
9 of loss or of delay in the access of the or-
10 ganization to the assets and funds is mini-
11 mized.

12 “(iii) Assets and funds invested by the
13 derivatives clearing organization shall be
14 held in instruments with minimal credit,
15 market, and liquidity risks.

16 “(G) DEFAULT RULES AND PROCE-
17 DURES.—

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

1 “(ii) The default procedures of the de-
2 rivatives clearing organization shall be
3 clearly stated, and they shall ensure that
4 the organization can take timely action to
5 contain losses and liquidity pressures and
6 to continue meeting the obligations of the
7 organization.

8 “(iii) The default procedures shall be
9 publicly available.

10 “(H) RULE ENFORCEMENT.—The deriva-
11 tives clearing organization shall—

12 “(i) maintain adequate arrangements
13 and resources for the effective monitoring
14 and enforcement of compliance with rules
15 of the organization and for resolution of
16 disputes; and

17 “(ii) have the authority and ability to
18 discipline, limit, suspend, or terminate the
19 activities of a member of participant for
20 violations of rules of the organization.

21 “(I) SYSTEM SAFEGUARDS.—The deriva-
22 tives clearing organization shall—

23 “(i) establish and maintain a program
24 of risk analysis and oversight to identify
25 and minimize sources of operational risk

1 through the development of appropriate
2 controls and procedures, and the develop-
3 ment of automated systems, that are reli-
4 able, secure, and have adequate scalable
5 capacity;

6 “(ii) establish and maintain emer-
7 gency procedures, backup facilities, and a
8 plan for disaster recovery that allows for
9 the timely recovery and resumption of op-
10 erations and the fulfillment of the respon-
11 sibilities and obligations of the organiza-
12 tion; and

13 “(iii) periodically conduct tests to
14 verify that backup resources are sufficient
15 to ensure continued order processing and
16 trade matching, price reporting, market
17 surveillance, and maintenance of a com-
18 prehensive and accurate audit trail.

19 “(J) REPORTING.—The derivatives clear-
20 ing organization shall provide to the Commis-
21 sion all information necessary for the Commis-
22 sion to conduct oversight of the organization.

23 “(K) RECORDKEEPING.—The derivatives
24 clearing organization shall maintain records of
25 all activities related to the business of the orga-

1 nization as a derivatives clearing organization
2 in a form and manner acceptable to the Com-
3 mission for a period of 5 years.

4 “(L) PUBLIC INFORMATION.—

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

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

17 “(iii) The derivatives clearing organi-
18 zation shall disclose publicly and to the
19 Commission information concerning—

20 “(I) the terms and conditions of
21 contracts, agreements, and trans-
22 actions cleared and settled by the or-
23 ganization;

24 “(II) clearing and other fees that
25 the organization charges the members

1 of, and participants in, the organiza-
2 tion;

3 “(III) the margin-setting method-
4 ology and the size and composition of
5 the financial resource package of the
6 organization;

7 “(IV) other information relevant
8 to participation in the settlement and
9 clearing activities of the organization;
10 and

11 “(V) daily settlement prices, vol-
12 ume, and open interest for all con-
13 tracts settled or cleared by the organi-
14 zation.

15 “(M) INFORMATION-SHARING.—The de-
16 rivatives clearing organization shall—

17 “(i) enter into and abide by the terms
18 of all appropriate and applicable domestic
19 and international information-sharing
20 agreements; and

21 “(ii) use relevant information obtained
22 from the agreements in carrying out the
23 risk management program of the organiza-
24 tion.

1 “(N) ANTITRUST CONSIDERATIONS.—Un-
2 less appropriate to achieve the purposes of this
3 chapter, the derivatives clearing organization
4 shall avoid—

5 “(i) adopting any rule or taking any
6 action that results in any unreasonable re-
7 straint of trade; or

8 “(ii) imposing any material anti-
9 competitive burden.

10 “(O) GOVERNANCE FITNESS STAND-
11 ARDS.—

12 “(i) The derivatives clearing organiza-
13 tion shall establish governance arrange-
14 ments that are transparent in order to ful-
15 fill public interest requirements and to
16 support the objectives of the owners of,
17 and participants in, the organization.

18 “(ii) The derivatives clearing organi-
19 zation shall establish and enforce appro-
20 priate fitness standards for the directors,
21 members of any disciplinary committee,
22 and members of the organization, and any
23 other persons with direct access to the set-
24 tlement or clearing activities of the organi-
25 zation, including any parties affiliated with

1 any of the persons described in this sub-
2 paragraph.

3 “(P) CONFLICTS OF INTEREST.—The de-
4 rivatives clearing organization shall establish
5 and enforce rules to minimize conflicts of inter-
6 est in the decision-making process of the orga-
7 nization and establish a process for resolving
8 the conflicts of interest.

9 “(Q) COMPOSITION OF THE BOARDS.—The
10 derivatives clearing organization shall ensure
11 that the composition of the governing board or
12 committee includes market participants.

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

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

20 “(j) REPORTING.—

21 “(1) IN GENERAL.—A derivatives clearing orga-
22 nization that clears swaps shall provide to the Com-
23 mission all information determined by the Commis-
24 sion to be necessary to perform the responsibilities
25 of the Commission under this Act. The Commission

1 shall adopt data collection and maintenance require-
2 ments for swaps cleared by derivatives clearing orga-
3 nizations that are comparable to the corresponding
4 requirements for swaps accepted by swap reposi-
5 tories and swaps traded on alternative swap execu-
6 tion facilities. The Commission shall share the infor-
7 mation, upon request, with the Board, the Securities
8 and Exchange Commission, the appropriate Federal
9 banking agencies, the [Financial Services Oversight
10 Council], and the Department of Justice or to other
11 persons the Commission deems appropriate, includ-
12 ing foreign financial supervisors (including foreign
13 futures authorities), foreign central banks, and for-
14 eign ministries that comply with the provisions of
15 section 8.

16 “(2) PUBLIC INFORMATION.—A derivatives
17 clearing organization that clears swaps shall provide
18 to the Commission, or its designee, such information
19 as is required by, and in a form and at a frequency
20 to be determined by, the Commission, in order to
21 comply with the public reporting requirements con-
22 tained in section 8(j).”.

23 (5) Section 8(e) of such Act (7 U.S.C. 12(e))
24 is amended in the last sentence by inserting “central

1 bank and ministries” after “department” each place
2 it appears.

3 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING
4 PRODUCTS.—

5 (1) REPEAL.—Sections 402(d), 404, 407,
6 408(b), and 408(c)(2) of the Legal Certainty for
7 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
8 27e, 27f(b), and 27f(c)(2)) are repealed.

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

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

13 “(a) EXCLUSION.—Except as provided in subsection
14 (b) or (c), neither the provisions of the Commodity Ex-
15 change Act (7 U.S.C. 1 et seq.), nor the Securities Act
16 of 1933, nor the Securities Exchange Act of 1934 shall
17 apply to, and the Commodity Futures Trading Commis-
18 sion and the Securities and Exchange Commission shall
19 not exercise regulatory authority under any of such stat-
20 utes with respect to, an identified banking product.

21 “(b) EXCEPTION.—An appropriate Federal banking
22 agency may except an identified banking product of a
23 bank under its regulatory jurisdiction from the exclusion
24 in subsection (a) if the agency determines, in consultation

1 with the Commodity Futures Trading Commission and the
2 Securities and Exchange Commission, that the product—

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

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

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

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

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

24 “(3) has become known to the trade as a swap
25 or security-based swap, or otherwise has been struc-

1 tured as an identified banking product for the pri-
2 mary purpose of evading the provisions of the Com-
3 modity Exchange Act (7 U.S.C. 1 et seq.), the Secu-
4 rities Act of 1933 (15 U.S.C. 77a et seq.), or the
5 Securities Exchange Act of 1934 (15 U.S.C. 78a et
6 seq.).”.

7 **SEC. 104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

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

10 “(j) PUBLIC REPORTING OF AGGREGATE SWAP
11 DATA.—

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

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

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

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

3 “(B) swap repositories pursuant to section
4 21(c)(3); and

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

7 **SEC. 105. SWAP REPOSITORIES.**

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

10 **“SEC. 21. SWAP REPOSITORIES.**

11 “(a) REGISTRATION REQUIREMENT.—

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

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

21 “(b) STANDARD SETTING.—

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

1 “(2) DATA COLLECTION AND MAINTENANCE.—

2 The Commission shall prescribe data collection and
3 data maintenance standards for swap repositories.

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

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

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

12 “(2) maintain the data in such form and man-
13 ner and for such period as may be required by the
14 Commission;

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

20 “(4) make available, on a confidential basis
21 pursuant to section 8, all data obtained by the swap
22 repository, including individual counterparty trade
23 and position data, to the Commission, the appro-
24 priate Federal banking agencies, the [Financial
25 Services Oversight Council], the Securities and Ex-

1 change Commission, and the Department of Justice
2 or to other persons the Commission deems appro-
3 priate, including foreign financial supervisors (in-
4 cluding foreign futures authorities), foreign central
5 banks, and foreign ministries.

6 “(d) RULES.—Not later than 180 days after the ef-
7 fective date of the Over-the-Counter Derivatives Markets
8 Act of 2009, the Commission shall adopt rules governing
9 persons that are registered under this section, including
10 uniform rules that specify the data elements that shall be
11 collected and maintained.

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

20 **SEC. 106. REPORTING AND RECORDKEEPING.**

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

1 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
2 **SWAPS.**

3 “(a) IN GENERAL.—Any person who enters into a
4 swap and—

5 “(1) did not have the swap cleared in accord-
6 ance with section 2(j)(1); and

7 “(2) did not have data regarding the swap ac-
8 cepted by a swap repository in accordance with rules
9 (including timeframes) adopted by the Commission
10 under section 21,
11 shall meet the requirements in subsection (b).

12 “(b) REPORTS.—Any person described in subsection
13 (a) shall—

14 “(1) make such reports in such form and man-
15 ner and for such period as the Commission shall pre-
16 scribe by rule or regulation regarding the swaps held
17 by the person; and

18 “(2) keep books and records pertaining to the
19 swaps held by the person in such form and manner
20 and for such period as may be required by the Com-
21 mission, which books and records shall be open to
22 inspection by any representative of the Commission,
23 an appropriate Federal banking agency, the Securi-
24 ties and Exchange Commission, the [Financial Serv-
25 ices Oversight Council], and the Department of Jus-
26 tice.

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

6 **SEC. 107. REGISTRATION AND REGULATION OF SWAP DEAL-**
7 **ERS AND MAJOR SWAP PARTICIPANTS.**

8 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
9 is amended by inserting after section 4r (as added by sec-
10 tion 106) the following:

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

13 “(a) REGISTRATION.—

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

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

21 “(b) REQUIREMENTS.—

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

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

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

14 “(4) RULES.—Except as provided in sub-
15 sections (c), (d) and (e), the Commission may pre-
16 scribe rules applicable to swap dealers and major
17 swap participants, including rules that limit the ac-
18 tivities of swap dealers and major swap participants.

19 “(5) TRANSITION.—Rules adopted under this
20 section shall provide for the registration of swap
21 dealers and major swap participants no later than 1
22 year after the effective date of the Over-the-Counter
23 Derivatives Markets Act of 2009.

24 “(6) STATUTORY DISQUALIFICATION.—Except
25 to the extent otherwise specifically provided by rule,

1 regulation, or order, it shall be unlawful for a swap
2 dealer or a major swap participant to permit any
3 person associated with a swap dealer or a major
4 swap participant who is subject to a statutory dis-
5 qualification to effect or be involved in effecting
6 swaps on behalf of the swap dealer or major swap
7 participant, if the swap dealer or major swap partici-
8 pant knew, or in the exercise of reasonable care
9 should have known, of the statutory disqualification.

10 “(c) RULES.—

11 “(1) IN GENERAL.—Not later than 180 days
12 after the effective date of this section, the Commis-
13 sion shall adopt rules for persons that are registered
14 as swap dealers or major swap participants under
15 this section.

16 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
17 MENTS.—The Commission shall not prescribe rules
18 imposing prudential requirements on swap dealers or
19 major swap participants for which there is a Pru-
20 dential Regulator. This provision shall not be con-
21 strued as limiting the authority of the Commission
22 to prescribe appropriate business conduct, reporting,
23 and recordkeeping requirements to protect investors.

24 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

25 “(1) IN GENERAL.—

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

23 “(i) help ensure the safety and sound-
24 ness of the swap dealer or major swap par-
25 ticipant; and

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

4 “(2) RULES.—

5 “(A) BANK SWAP DEALERS AND MAJOR
6 SWAP PARTICIPANTS.—Within 180 days after
7 the date of the enactment of this section, the
8 Prudential Regulators, in consultation with the
9 Commission and the Securities and Exchange
10 Commission, shall jointly adopt rules imposing
11 capital and margin requirements under this
12 subsection for swap dealers and major swap
13 participants, with respect to their activities as
14 a swap dealer or major swap participant for
15 which there is a Prudential Regulator

16 “(B) NON-BANK SWAP DEALERS AND
17 MAJOR SWAP PARTICIPANTS.—Within 180 days
18 after such date of enactment, the Commission
19 shall adopt rules imposing capital and margin
20 requirements under this subsection for swap
21 dealers and major swap participants for which
22 there is no Prudential Regulator.

23 “(3) SET-ASIDE REQUIREMENTS.—A person
24 shall not initially be registered as a swap dealer, or

1 continue to be so registered, unless the person, at all
2 times—

3 “(A) sets aside, in accordance with such
4 rules, regulations, or orders as the Commission
5 may promulgate, the following amounts or
6 property for each swap to which the person is
7 a party and that is not cleared—

8 “(i) an amount equal to the minimum
9 margin requirement for the swap that the
10 Commission may prescribe, by rule, regula-
11 tion, or order with respect to the person,
12 pursuant to subparagraph (A); plus

13 “(ii) any additional amount that the
14 person and the counterparty agree shall be
15 set aside from the person’s own funds or
16 property in order to margin, guarantee, or
17 secure the swap; plus

18 “(iii) any amount that the person re-
19 ceives from its counterparty in order to
20 margin, guarantee, or secure the swap;
21 plus

22 “(iv) the greater of—

23 “(I) any accrued but unpaid
24 losses the person has incurred in con-
25 nection with the swap, less any ac-

1 crued but unpaid gains the person has
2 earned in connection with the swap,
3 or

4 “(II) zero; less

5 “(v) any amount that the person posts
6 with its counterparty in order to margin,
7 guarantee, or secure the swap.

8 “(B) treats, deals with, and limits its in-
9 vestments of any amount that the person is re-
10 quired to set aside, pursuant to subparagraph
11 (A)(i), in accordance with any rule, regulation,
12 or order that the Commission may promulgate.

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

18 “(e) REPORTING AND RECORDKEEPING.—

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

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

25 “(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; and

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

16 “(2) RULES.—Within 365 days after the date
17 of the enactment of this section, the Commission
18 shall adopt rules governing reporting and record-
19 keeping for swap dealers and major swap partici-
20 pants.

21 “(f) DAILY TRADING RECORDS.—

22 “(1) IN GENERAL.—Each registered swap deal-
23 er and major swap participant shall maintain daily
24 trading records of its swaps and all related records
25 (including related cash or forward transactions) and

1 recorded communications including but not limited
2 to electronic mail, instant messages, and recordings
3 of telephone calls, for such period as may be pre-
4 scribed by the Commission by rule or regulation.

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

8 “(3) CUSTOMER RECORDS.—Each registered
9 swap dealer and major swap participant shall main-
10 tain daily trading records for each customer or
11 counterparty in such manner and form as to be
12 identifiable with each swap transaction.

13 “(4) AUDIT TRAIL.—Each registered swap deal-
14 er and major swap participant shall maintain a com-
15 plete audit trail for conducting comprehensive and
16 accurate trade reconstructions.

17 “(5) RULES.—Within 365 days after the date
18 of the enactment of this section, the Commission
19 shall adopt rules governing daily trading records for
20 swap dealers and major swap participants.

21 “(g) BUSINESS CONDUCT STANDARDS.—

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

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

4 “(B) diligent supervision of its business as
5 a swap dealer;

6 “(C) adherence to all applicable position
7 limits; and

8 “(D) such other matters as the Commis-
9 sion shall determine to be necessary or appro-
10 priate.

11 “(2) BUSINESS CONDUCT REQUIREMENTS.—
12 Business conduct requirements adopted by the Com-
13 mission shall—

14 “(A) establish the standard of care for a
15 swap dealer or major swap participant to verify
16 that any counterparty meets the eligibility
17 standards for an eligible contract participant;

18 “(B) require disclosure by the swap dealer
19 or major swap participant to any counterparty
20 to the transaction (other than a swap dealer or
21 major swap participant) of:

22 “(i) information about the material
23 risks and characteristics of the swap;

24 “(ii) the source and amount of any
25 fees or other material remuneration that

1 the swap dealer or major swap participant
2 would directly or indirectly expect to re-
3 ceive in connection with the swap; and

4 “(iii) any other material incentives or
5 conflicts of interest that the swap dealer or
6 major swap participant may have in con-
7 nection with the swap; and

8 “(C) establish such other standards and
9 requirements as the Commission may determine
10 are necessary or appropriate in the public inter-
11 est, for the protection of investors, or otherwise
12 in furtherance of the purposes of this Act.

13 “(3) RULES.—The Commission shall prescribe
14 rules under this subsection governing business con-
15 duct standards for swap dealers and major swap
16 participants within 365 days of the enactment of the
17 Over-the-Counter Derivatives Markets Act of 2009.

18 “(h) DOCUMENTATION AND BACK OFFICE STAND-
19 ARDS.—

20 “(1) IN GENERAL.—Each registered swap deal-
21 er and major swap participant shall conform with
22 standards, as may be prescribed by the Commission
23 by rule or regulation, addressing timely and accurate
24 confirmation, processing, netting, documentation,
25 and valuation of all swaps.

1 “(2) RULES.—Within 365 days after the date
2 of the enactment of this section, the Commission, in
3 consultation with the Securities and Exchange Com-
4 mission and the appropriate Federal banking agen-
5 cies, shall adopt rules governing documentation and
6 back office standards for swap dealers and major
7 swap participants.

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

11 “(1) MONITORING OF TRADING.—The swap
12 dealer or major swap participant shall monitor its
13 trading in swaps to prevent violations of applicable
14 position limits.

15 “(2) DISCLOSURE OF GENERAL INFORMA-
16 TION.—The swap dealer or major swap participant
17 shall disclose to the Commission or to the Prudential
18 Regulator for the swap dealer or major swap partici-
19 pant, as applicable, information concerning—

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

21 “(B) swap trading operations, mechanisms,
22 and practices;

23 “(C) financial integrity protections relating
24 to swaps; and

1 “(D) other information relevant to its trad-
2 ing in swaps.

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

5 “(A) establish and enforce internal systems
6 and procedures to obtain any necessary infor-
7 mation to perform any of the functions de-
8 scribed in this section; and

9 “(B) provide the information to the Com-
10 mission or to the Prudential Regulator for the
11 swap dealer or major swap participant, as ap-
12 plicable, upon request.

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

16 “(A) establish structural and institutional
17 safeguards to assure that the activities of any
18 person within the firm relating to research or
19 analysis of the price or market for any com-
20 modity are separated by appropriate informa-
21 tional partitions within the firm from the re-
22 view, pressure, or oversight of those whose in-
23 volvement in trading or clearing activities might
24 potentially bias their judgment or supervision;
25 and

1 “(B) address such other issues as the
2 Commission determines appropriate.

3 “(5) ANTITRUST CONSIDERATIONS.—Unless
4 necessary or appropriate to achieve the purposes of
5 this Act, the swap dealer or major swap participant
6 shall avoid—

7 “(A) adopting any processes or taking any
8 actions that result in any unreasonable re-
9 straints of trade; or

10 “(B) imposing any material anticompeti-
11 tive burden on trading.”.

12 **SEC. 108. CONFLICTS OF INTEREST.**

13 Section 4d of the Commodity Exchange Act (7 U.S.C.
14 6d) is amended by—

15 (1) redesignating subsection (c) as subsection
16 (d); and

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

18 “(c) CONFLICTS OF INTEREST.—The Commission
19 shall require that futures commission merchants and in-
20 troducing brokers implement conflict-of-interest systems
21 and procedures that—

22 “(1) establish structural and institutional safe-
23 guards to assure that the activities of any person
24 within the firm relating to research or analysis of
25 the price or market for any commodity are separated

1 by appropriate informational partitions within the
2 firm from the review, pressure, or oversight of those
3 whose involvement in trading or clearing activities
4 might potentially bias their judgment or supervision;
5 and

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

8 **SEC. 109. ALTERNATIVE SWAP EXECUTION FACILITIES.**

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

11 **“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.**

12 “(a) REGISTRATION.—A person may not operate a
13 facility for the trading of swaps unless the facility is reg-
14 istered with the Commission as a designated contract mar-
15 ket under section 5 or an alternative swap execution facil-
16 ity under this section.

17 “(b) REQUIREMENTS FOR TRADING.—

18 “(1) An alternative swap execution facility that
19 is registered under subsection (a) may list for trad-
20 ing any swap.

21 “(2) RULES FOR TRADING THROUGH THE FA-
22 CILITY.—Not later than 180 days after the date of
23 enactment of the [Over-the-Counter Derivatives
24 Markets Act of 2009], the Commission shall adopt
25 rules to allow a swap to be traded through the facili-

1 ties of a designated contract market or an alter-
2 native swap execution facility. Such rules shall per-
3 mit an intermediary, acting as principal or agent, to
4 enter into or execute a swap, notwithstanding sec-
5 tion 2(k), if the swap is reported, recorded, or con-
6 firmed in accordance with the rules of the des-
7 ignated contract market or alternative swap execu-
8 tion facility.

9 “(c) TRADING BY CONTRACT MARKETS.—A board of
10 trade that operates a contract market shall, to the extent
11 that the board of trade also operates an alternative swap
12 execution facility and uses the same electronic trade execu-
13 tion system for trading on the contract market and the
14 alternative swap execution facility, identify whether the
15 electronic trading is taking place on the contract market
16 or the alternative swap execution facility.

17 “(d) CORE PRINCIPLES FOR ALTERNATIVE SWAP
18 EXECUTION FACILITIES.—

19 “(1) IN GENERAL.—To be registered as, and to
20 maintain its registration as, an alternative swap exe-
21 cution facility, the facility shall comply with the core
22 principles specified in this subsection and any re-
23 quirement that the Commission may impose by rule
24 or regulation pursuant to section 8a(5). Except
25 where the Commission determines otherwise by rule

1 or regulation, the facility shall have reasonable dis-
2 cretion in establishing the manner in which it com-
3 plies with these core principles.

4 “(2) COMPLIANCE WITH RULES.—The alter-
5 native swap execution facility shall—

6 “(A) monitor and enforce compliance with
7 any of the rules of the facility, including the
8 terms and conditions of the swaps traded on or
9 through the facility and any limitations on ac-
10 cess to the facility; and

11 “(B) establish and enforce trading and
12 participation rules that will deter abuses and
13 have the capacity to detect, investigate, and en-
14 force those rules, including means to—

15 “(i) provide market participants with
16 impartial access to the market; and

17 “(ii) capture information that may be
18 used in establishing whether rule violations
19 have occurred.

20 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
21 NIPULATION.—The alternative swap execution facil-
22 ity shall permit trading only in swaps that are not
23 readily susceptible to manipulation.

24 “(4) MONITORING OF TRADING.—The alter-
25 native swap 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 alternative 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.

25 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

1 “(A) To reduce the potential threat of
2 market manipulation or congestion, especially
3 during trading in the delivery month, and to
4 eliminate or prevent excessive speculation as de-
5 scribed in section 4a(a), the alternative swap
6 execution facility shall adopt for each of its con-
7 tracts, where necessary and appropriate, posi-
8 tion limitations or position accountability for
9 speculators.

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 alternative
13 swap execution facility shall set its position lim-
14 itation at a level no higher than the Commis-
15 sion limitation.

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

22 “(8) EMERGENCY AUTHORITY.—The alternative
23 swap execution facility shall adopt rules to provide
24 for the exercise of emergency authority, in consulta-
25 tion or cooperation with the Commission, where nec-

1 essary and appropriate, including the authority to
2 liquidate or transfer open positions in any swap or
3 to suspend or curtail trading in a swap.

4 “(9) TIMELY PUBLICATION OF TRADING INFOR-
5 MATION.—The alternative swap execution facility
6 shall make public timely information on price, trad-
7 ing volume, and other trading data on swaps to the
8 extent prescribed by the Commission.

9 “(10) RECORDKEEPING AND REPORTING.—The
10 alternative swap execution facility shall maintain
11 records of all activities related to the business of the
12 facility, including a complete audit trail, in a form
13 and manner acceptable to the Commission for a pe-
14 riod of 5 years, and report to the Commission all in-
15 formation determined by the Commission to be nec-
16 essary or appropriate for the Commission to perform
17 its responsibilities under this Act in a form and
18 manner acceptable to the Commission. The Commis-
19 sion shall adopt data collection and reporting re-
20 quirements for alternative swap execution facilities
21 that are comparable to corresponding requirements
22 for derivatives clearing organizations and swap re-
23 positories.

24 “(11) ANTITRUST CONSIDERATIONS.—Unless
25 necessary or appropriate to achieve the purposes of

1 this Act, the alternative swap execution facility shall
2 avoid—

3 “(A) adopting any rules or taking any ac-
4 tions that result in any unreasonable restraints
5 of trade; or

6 “(B) imposing any material anticompeti-
7 tive burden on trading on the swap execution
8 facility.

9 “(12) CONFLICTS OF INTEREST.—The alter-
10 native swap execution facility shall—

11 “(A) establish and enforce rules to mini-
12 mize conflicts of interest in its decision-making
13 process; and

14 “(B) establish a process for resolving the
15 conflicts of interest.

16 “(13) FINANCIAL RESOURCES.—

17 “(A) The alternative swap execution facil-
18 ity shall have adequate financial, operational,
19 and managerial resources to discharge its re-
20 sponsibilities.

21 “(B) The financial resources of the alter-
22 native swap execution facility shall be consid-
23 ered adequate if their value exceeds the total
24 amount that would enable the facility to cover

1 its operating costs for a period of 1 year, cal-
2 culated on a rolling basis.

3 “(14) SYSTEM SAFEGUARDS.—The alternative
4 swap execution facility shall—

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

12 “(B) establish and maintain emergency
13 procedures, backup facilities, and a plan for dis-
14 aster recovery that allow for the timely recovery
15 and resumption of operations and the fulfill-
16 ment of the alternative swap execution facility’s
17 responsibilities and obligation; and

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

24 “(15) DESIGNATION OF COMPLIANCE OFFI-
25 CER.—

1 “(A) IN GENERAL.—Each alternative swap
2 execution facility shall designate an individual
3 to serve as a compliance officer.

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

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

7 “(ii) shall—

8 “(I) review compliance with the
9 core principles in this subsection;

10 “(II) in consultation with the
11 board of the facility, a body per-
12 forming a function similar to that of
13 a board, or the senior officer of the
14 facility, resolve any conflicts of inter-
15 est that may arise;

16 “(III) be responsible for admin-
17 istering the policies and procedures
18 required to be established pursuant to
19 this section; and

20 “(IV) ensure compliance with
21 commodity laws and the rules and
22 regulations issued thereunder, includ-
23 ing rules prescribed by the Commis-
24 sion pursuant to this section; and

1 “(iii) shall establish procedures for re-
2 mediation of non-compliance issues found
3 during compliance office reviews,
4 lookbacks, internal or external audit find-
5 ings, self-reported errors, or through vali-
6 dated complaints. The procedures shall es-
7 tablish the handling, management re-
8 sponse, remediation, re-testing, and closing
9 of non-compliant issues.

10 “(C) ANNUAL REPORTS REQUIRED.—The
11 compliance officer shall annually prepare and
12 sign a report on the compliance of the facility
13 with the commodity laws and its policies and
14 procedures, including its code of ethics and con-
15 flict of interest policies, in accordance with
16 rules prescribed by the Commission. The com-
17 pliance report shall accompany the financial re-
18 ports of the facility that are required to be fur-
19 nished to the Commission pursuant to this sec-
20 tion and shall include a certification that, under
21 penalty of law, the report is accurate and com-
22 plete.

23 “(e) EXEMPTIONS.—The Commission may exempt,
24 conditionally or unconditionally, an alternative swap exe-
25 cution facility from registration under this section if the

1 Commission finds that the facility is subject to com-
2 parable, comprehensive supervision and regulation on a
3 consolidated basis by the Securities and Exchange Com-
4 mission, a Prudential Regulator or the appropriate gov-
5 ernmental authorities in the organization's home country.

6 “(f) RULES.—Within 180 days after the date of the
7 enactment of this section, the Commission shall prescribe
8 rules governing the regulation of alternative swap execu-
9 tion facilities under this section.”.

10 **SEC. 110. DERIVATIVES TRANSACTION EXECUTION FACILI-**
11 **TIES AND EXEMPT BOARDS OF TRADE.**

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

14 (b)(1) Prior to the final effective dates in this Act,
15 a person may petition the Commodity Futures Trading
16 Commission to be remain subject to the provisions of sec-
17 tion 5d of the Commodity Exchange Act.

18 (2) The Commodity Futures Trading Commission
19 shall consider any petition submitted under paragraph (1)
20 in a prompt manner and may allow a person to continue
21 operating subject to the provisions of section 5d of the
22 Commodity Exchange Act for up to one year after the ef-
23 fective date of this Act.

1 **SEC. 111. DESIGNATED CONTRACT MARKETS.**

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

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

15 “(2) COMPLIANCE WITH RULES.—

16 “(A) The board of trade shall monitor and
17 enforce compliance with the rules of the con-
18 tract market, including access requirements, the
19 terms and conditions of any contracts to be
20 traded on the contract market and the contract
21 market’s abusive trade practice prohibitions.

22 “(B) The board of trade shall have the ca-
23 pacity to detect, investigate, and apply appro-
24 priate sanctions to, any person or entity that
25 violates the rules.

1 “(C) The rules shall provide the board of
2 trade with the ability and authority to obtain
3 any necessary information to perform any of
4 the functions described in this subsection, in-
5 cluding the capacity to carry out such inter-
6 national information-sharing agreements as the
7 Commission may require.”.

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

11 “(4) PREVENTION OF MARKET DISRUPTION.—

12 The board of trade shall have the capacity and re-
13 sponsibility to prevent manipulation, price distortion,
14 and disruptions of the delivery or cash-settlement
15 process through market surveillance, compliance,
16 and enforcement practices and procedures, including
17 methods for conducting real-time monitoring of trad-
18 ing and comprehensive and accurate trade recon-
19 structions.

20 “(5) POSITION LIMITATIONS OR ACCOUNT-
21 ABILITY.—

22 “(A) To reduce the potential threat of
23 market manipulation or congestion, especially
24 during trading in the delivery month, and to
25 eliminate or prevent excessive speculation as de-

1 scribed in section 4a(a), the board of trade shall
2 adopt for each of its contracts, where necessary
3 and appropriate, position limitations or position
4 accountability for speculators.

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

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

14 “(7) AVAILABILITY OF GENERAL INFORMA-
15 TION.—The board of trade shall make available to
16 market authorities, market participants, and the
17 public accurate information concerning—

18 “(A) the terms and conditions of the con-
19 tracts of the contract market; and

20 “(B) the rules, regulations and mecha-
21 nisms for executing transactions on or through
22 the facilities of the contract market, and the
23 rules and specifications describing the operation
24 of the board of trade’s electronic matching plat-
25 form or other trade execution facility.”.

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

4 “(9) EXECUTION OF TRANSACTIONS.—

5 “(A) The board of trade shall provide a
6 competitive, open, and efficient market and
7 mechanism for executing transactions that pro-
8 tects the price discovery process of trading in
9 the board of trade’s centralized market.

10 “(B) The rules may authorize, for bona
11 fide business purposes—

12 “(i) transfer trades or office trades;

13 “(ii) an exchange of—

14 “(I) futures in connection with a
15 cash commodity transaction;

16 “(II) futures for cash commod-
17 ities; or

18 “(III) futures for swaps; or

19 “(iii) A futures commission merchant,
20 acting as principal or agent, to enter into
21 or confirm the execution of a contract for
22 the purchase or sale of a commodity for fu-
23 ture delivery if the contract is reported, re-
24 corded, or cleared in accordance with the

1 rules of the contract market or a deriva-
2 tives clearing organization.”.

3 (e) Section 5(d) of such Act (7 U.S.C. 7(d)) is
4 amended by adding at the end the following:

5 “(19) FINANCIAL RESOURCES.—The board of
6 trade shall demonstrate that it has adequate finan-
7 cial, operational, and managerial resources to dis-
8 charge the responsibilities of a contract market. For
9 the financial resources of a board of trade to be con-
10 sidered adequate, their value shall exceed the total
11 amount that would enable the contract market to
12 cover its operating costs for a period of 1 year, cal-
13 culated on a rolling basis.

14 “(20) SYSTEM SAFEGUARDS.—The board of
15 trade shall—

16 “(A) establish and maintain a program of
17 risk analysis and oversight to identify and mini-
18 mize sources of operational risk through the de-
19 velopment of appropriate controls and proce-
20 dures, and the development of automated sys-
21 tems, that are reliable, secure, and give ade-
22 quate scalable capacity;

23 “(B) establish and maintain emergency
24 procedures, backup facilities, and a plan for dis-
25 aster recovery that allow for the timely recovery

1 and resumption of operations and the fulfill-
2 ment of the board of trade's responsibilities and
3 obligations; and

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

10 “(21) DIVERSITY OF BOARDS OF DIRECTORS.—

11 The board of trade, if a publicly traded company,
12 shall endeavor to recruit individuals to serve on the
13 board of directors and the other decision-making
14 bodies (as determined by the Commission) of the
15 board of trade from among, and to have the com-
16 position of the bodies reflect, a broad and culturally
17 diverse pool of qualified candidates.

18 “(22) DISCIPLINARY PROCEDURES.—The board
19 of trade shall establish and enforce disciplinary pro-
20 cedures that authorize the board of trade to dis-
21 cipline, suspend, or expel members or market par-
22 ticipants that violate the rules of the board of trade,
23 or similar methods for performing the same func-
24 tions, including delegation of the functions to third
25 parties.”.

1 (f) Section 5 of such Act (7 U.S.C. 7) is amended
2 by striking subsection (b).

3 **SEC. 112. MARGIN.**

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

7 **SEC. 113. POSITION LIMITS.**

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

10 (1) inserting “(1)” after “(a)”;

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

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

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

24 (5) inserting at the end the following:

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

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

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

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

23 “(A) on the number of positions that may
24 be held by any person for the spot month, each
25 other month, and the aggregate number of posi-

1 tions that may be held by any person for all
2 months; and

3 “(B) to the maximum extent practicable,
4 in its discretion—

5 “(i) to diminish, eliminate, or prevent
6 excessive speculation as described under
7 this section;

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

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

12 “(iv) to ensure that the price dis-
13 covery function of the underlying market is
14 not disrupted.

15 “(4)(A) Not later than 150 days after the es-
16 tablishment of position limits pursuant to paragraph
17 (2), and biannually thereafter, the Commission shall
18 hold 2 public hearings, 1 for agriculture commodities
19 and 1 for energy commodities as such terms are de-
20 fined by the Commission, in order to receive rec-
21 ommendations regarding the position limits to be es-
22 tablished in paragraph (2).

23 “(B) Each public hearing held pursuant to sub-
24 paragraph (A) shall, at a minimum providing there

1 is sufficient interest, receive recommendations
2 from—

3 “(i) 7 predominantly commercial short
4 hedgers of the actual physical commodity for
5 future delivery;

6 “(ii) 7 predominantly commercial long
7 hedgers of the actual physical commodity for
8 future delivery;

9 “(iii) 4 non-commercial participants in
10 markets for commodities for future delivery;
11 and

12 “(iv) each designated contract market
13 upon which a contract in the commodity for fu-
14 ture delivery is traded.

15 “(C) Within 60 days after each public hearing
16 held pursuant to subparagraph (A), the Commission
17 shall publish in the Federal Register its response to
18 the recommendations regarding position limits heard
19 at the hearing.

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

1 “(A) PRICE LINKAGE.—The extent to
2 which the swap uses or otherwise relies on a
3 daily or final settlement price, or other major
4 price parameter, of another contract traded on
5 a regulated market based upon the same under-
6 lying commodity, to value a position, transfer or
7 convert a position, financially settle a position,
8 or close out a position;

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

18 “(C) MATERIAL PRICE REFERENCE.—The
19 extent to which, on a frequent and recurring
20 basis, bids, offers, or transactions in a contract
21 traded on a regulated market are directly based
22 on, or are determined by referencing, the price
23 generated by the swap;

24 “(D) MATERIAL LIQUIDITY.—The extent
25 to which the volume of swaps being traded in

1 the commodity is sufficient to have a material
2 effect on another contract traded on a regulated
3 market; and

4 “(E) OTHER MATERIAL FACTORS.—Such
5 other material factors as the Commission speci-
6 fies by rule or regulation as relevant to deter-
7 mine whether a swap serves a significant price
8 discovery function with respect to a regulated
9 market.

10 “(6) AGGREGATE POSITION LIMITS.—The Com-
11 mission may, by rule or regulation, establish limits
12 (including related hedge exemption provisions) on
13 the aggregate number or amount of positions in con-
14 tracts based upon the same underlying commodity
15 (as defined by the Commission) that may be held by
16 any person, including any group or class of traders,
17 for each month across—

18 “(A) contracts listed by designated con-
19 tract markets;

20 “(B) with respect to an agreement con-
21 tract, or transaction that settles against any
22 price (including the daily or final settlement
23 price) of 1 or more contracts listed for trading
24 on a registered entity, contracts traded on a
25 foreign board of trade that provides members or

1 other participants located in the United States
2 with direct access to its electronic trading and
3 order matching system; and

4 “(C) swap contracts that perform or affect
5 a significant price discovery function with re-
6 spect to regulated entities.

7 “(7) EXEMPTIONS.—The Commission, by rule,
8 regulation, or order, may exempt, conditionally or
9 unconditionally, any person or class of persons, any
10 swap or class of swaps, or any transaction or class
11 of transactions from any requirement it may estab-
12 lish under this section with respect to position lim-
13 its.”.

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

16 (1) in paragraph (1), by striking “or derivatives
17 transaction execution facility or facilities or elec-
18 tronic trading facility” and inserting “or alternative
19 swap execution facility or facilities”; and

20 (2) in paragraph (2), by striking “or derivatives
21 transaction execution facility or facilities or elec-
22 tronic trading facility” and inserting “or alternative
23 swap execution facility”.

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

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

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

3 “(2) For the purposes of implementation of
4 subsection (a)(2) for contracts of sale for future de-
5 livery or options on the contracts or commodities,
6 the Commission shall define what constitutes a bona
7 fide hedging transaction or position as a transaction
8 or position that—

9 “(A)(i) represents a substitute for trans-
10 actions made or to be made or positions taken
11 or to be taken at a later time in a physical mar-
12 keting channel;

13 “(ii) is economically appropriate to the re-
14 duction of risks in the conduct and manage-
15 ment of a commercial enterprise; and

16 “(iii) arises from the potential change in
17 the value of—

18 “(I) assets that a person owns, pro-
19 duces, manufactures, processes, or mer-
20 chandises or anticipates owning, producing,
21 manufacturing, processing, or merchan-
22 dising;

23 “(II) liabilities that a person owns or
24 anticipates incurring; or

1 “(III) services that a person provides,
2 purchases, or anticipates providing or pur-
3 chasing; or

4 “(B) reduces risks attendant to a position
5 resulting from a swap that—

6 “(i) was executed opposite a
7 counterparty for which the transaction
8 would qualify as a bona fide hedging trans-
9 action pursuant to subparagraph (A); or

10 “(ii) meets the requirements of sub-
11 paragraph (A).”.

12 (d) Section 5(d)(5) of such Act (7 U.S.C. 7(d)(5))
13 is amended to read as follows:

14 “(5) To reduce the potential threat of market
15 manipulation or congestion, especially during trading
16 in the delivery month, the board of trade shall adopt
17 for each of its contracts, where necessary and appro-
18 priate, position limitations or position accountability
19 standards for speculators. For any contract that is
20 subject to a position limitation established by the
21 Commission pursuant to section 4a(a), the board of
22 trade shall set its position limitation at a level no
23 higher than the Commission-established limitation.”.

1 **SEC. 114. ENHANCED AUTHORITY OVER REGISTERED ENTI-**
2 **TIES.**

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

5 (1) in paragraph (1), by striking “5a(d) and
6 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

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

9 (b) 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 equat explanation by the submitting registered enti-

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

3 “(C) 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 (c) Section 5c(d) of such Act (7 U.S.C. 7a-2(d)) is
10 repealed.

11 **SEC. 115. FOREIGN BOARDS OF TRADE.**

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

15 “(e) FOREIGN BOARDS OF TRADE.—

16 “(1) IN GENERAL.—The Commission may not
17 permit a foreign board of trade to provide to the
18 members of the foreign board of trade or other par-
19 ticipants located in the United States direct access
20 to the electronic trading and order-matching system
21 of the foreign board of trade with respect to an
22 agreement, contract, or transaction that settles
23 against any price (including the daily or final settle-
24 ment price) of 1 or more contracts listed for trading

1 on a registered entity, unless the Commission deter-
2 mines that—

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

11 “(B) the foreign board of trade (or the for-
12 eign futures authority that oversees the foreign
13 board of trade)—

14 “(i) adopts position limits (including
15 related hedge exemption provisions) for the
16 agreement, contract, or transaction that
17 are comparable, taking into consideration
18 the relative sizes of the respective markets,
19 to the position limits (including related
20 hedge exemption provisions) adopted by
21 the registered entity for the 1 or more con-
22 tracts against which the agreement, con-
23 tract, or transaction traded on the foreign
24 board of trade settles;

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

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

18 “(I) the information that the for-
19 eign board of trade will make publicly
20 available;

21 “(II) the position limits that the
22 foreign board of trade or foreign fu-
23 tures authority will adopt and enforce;

24 “(III) the position reductions re-
25 quired to prevent manipulation, exces-

1 sive speculation as described in sec-
2 tion 4a, price distortion, or disruption
3 of delivery or the cash settlement
4 process; and

5 “(IV) any other area of interest
6 expressed by the Commission to the
7 foreign board of trade or foreign fu-
8 tures authority;

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

18 “(v) provides the Commission with in-
19 formation necessary to publish reports on
20 aggregate trader positions for the agree-
21 ment, contract, or transaction traded on
22 the foreign board of trade that are com-
23 parable to the reports on aggregate trader
24 positions for the 1 or more contracts
25 against which the agreement, contract, or

1 transaction traded on the foreign board of
2 trade settles.

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

4 Paragraph (1) shall not be effective with respect to
5 any foreign board of trade to which the Commission
6 has granted direct access permission before the date
7 of the enactment of this subsection until the date
8 that is 180 days after such date of enactment.

9 “(3) PERSONS LOCATED IN THE UNITED
10 STATES.—”.

11 (b) LIABILITY OF REGISTERED PERSONS TRADING
12 ON A FOREIGN BOARD OF TRADE.—

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

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

19 “(f)(1) A person registered with the Commission, or
20 exempt from registration by the Commission, under this
21 Act may not be found to have violated subsection (a) with
22 respect to a transaction in, or in connection with, a con-
23 tract of sale of a commodity for future delivery if the per-
24 son—

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

4 “(i) legally organized under the laws of a
5 foreign country;

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

8 “(iii) subject to regulation by the foreign
9 futures authority; and

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

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

17 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
18 TURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.
19 25(a)) is amended by adding at the end the following:

20 “(5) CONTRACT ENFORCEMENT FOR FOREIGN
21 FUTURES CONTRACTS.—A contract of sale of a com-
22 modity for future delivery traded or executed on or
23 through the facilities of a board of trade, exchange,
24 or market located outside the United States for pur-
25 poses of section 4(a) shall not be void, voidable, or

1 unenforceable, and a party to such a contract shall
2 not be entitled to rescind or recover any payment
3 made with respect to the contract, based on the fail-
4 ure of the foreign board of trade to comply with any
5 provision of this Act.”.

6 **SEC. 116. LEGAL CERTAINTY FOR SWAPS.**

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

9 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
10 GIBLE COUNTERPARTIES.—

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

21 “(B) An agreement, contract, or trans-
22 action between eligible contract participants or
23 persons reasonably believed to be eligible con-
24 tract participants shall not be void, voidable, or
25 unenforceable, and a party thereto shall not be

1 entitled to rescind, or recover any payment
2 made with respect to, such an agreement, con-
3 tract, or transaction under this section or any
4 other provision of Federal or State law, based
5 solely on the failure of the agreement, contract,
6 or transaction to meet the definition of a swap
7 set forth in section 1a or to be cleared pursuant
8 to section 2(j)(1).”.

9 **SEC. 117. FDICIA AMENDMENTS.**

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

13 **SEC. 118. ENFORCEMENT AUTHORITY.**

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

16 **“SEC. 4b–1. ENFORCEMENT AUTHORITY.**

17 “(a) CFTC.—Except as provided in subsection (b),
18 the Commission shall have exclusive authority to enforce
19 the provisions of title I of the Over-the-Counter Deriva-
20 tives Markets Act of 2009 with respect to any person.

21 “(b) PRUDENTIAL REGULATORS.—The Prudential
22 Regulators shall have exclusive authority to enforce the
23 provisions of section 4s(d) and other prudential require-
24 ments of this Act with respect to banks, and branches or

1 agencies of foreign banks that are swap dealers or major
2 swap participants.

3 “(c) REFERRAL.—(1) If the Prudential Regulator for
4 a swap dealer or major swap participant has cause to be-
5 lieve that the swap dealer or major swap participant may
6 have engaged in conduct that constitutes a violation of the
7 nonprudential requirements of section 4s or rules adopted
8 by the Commission thereunder, that Prudential Regulator
9 may recommend in writing to the Commission that the
10 Commission initiate an enforcement proceeding as author-
11 ized under this Act. The recommendation shall be accom-
12 panied by a written explanation of the concerns giving rise
13 to the recommendation.

14 “(2) If the Commission has cause to believe that a
15 swap dealer or major swap participant that has a Pruden-
16 tial Regulator may have engaged in conduct that con-
17 stitute a violation of the prudential requirements of sec-
18 tion 4s or rules adopted thereunder, the Commission may
19 recommend in writing to the Prudential Regulator that
20 the Prudential Regulator initiate an enforcement pro-
21 ceeding as authorized under this Act. The recommenda-
22 tion shall be accompanied by a written explanation of the
23 concerns given rise to the recommendation.”.

1 **SEC. 119. ENFORCEMENT.**

2 (a) Section 4b(a)(2) of the Commodity Exchange Act
3 (7 U.S.C. 6b(a)(2)) is amended by striking “or other
4 agreement, contract, or transaction subject to paragraphs
5 (1) and (2) of section 5a(g),” and inserting “or swap,”.

6 (b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is
7 amended by striking “or other agreement, contract or
8 transaction subject to paragraphs (1) and (2) of section
9 5a(g),” and inserting “or swap,”.

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

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

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

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

23 (g) Section 8(b) of the Federal Deposit Insurance Act
24 (12 U.S.C. 1818(b)) is amended by redesignating para-
25 graphs (6) through (10) as paragraphs (7) through (11),

1 respectively, and inserting after paragraph (5) the fol-
2 lowing:

3 “(6) This section shall apply to any swap deal-
4 er, major swap participant, security-based swap
5 dealer, major security-based swap participant, de-
6 rivatives clearing organization, swap repository or al-
7 ternative swap execution facility, whether or not it
8 is an insured depository institution, for which the
9 Board, the Corporation, or the Office of the Comp-
10 troller of the Currency is the appropriate Federal
11 banking agency or Prudential Regulator for pur-
12 poses of the Over-the-Counter Derivatives Markets
13 Act of 2009.”.

14 **SEC. 120. RETAIL COMMODITY TRANSACTIONS.**

15 Section 2(c) of the Commodity Exchange Act (7
16 U.S.C. 2(c)) is amended—

17 (1) in paragraph (1), by striking “(other than
18 section 5a (to the extent provided in section 5a(g)),
19 5b, 5d, or 12(e)(2)(B))” and inserting “(other than
20 section 5b or 12(e)(2)(B))”; and

21 (2) in paragraph (2), by inserting after sub-
22 paragraph (C) the following:

23 “(D) RETAIL COMMODITY TRANS-
24 ACTIONS.—

1 “(i) This subparagraph shall apply to,
2 and the Commission shall have jurisdiction
3 over, any agreement, contract, or trans-
4 action in any commodity that is—

5 “(I) entered into with, or offered
6 to (even if not entered into with), a
7 person that is not an eligible contract
8 participant or eligible commercial en-
9 tity; and

10 “(II) entered into, or offered
11 (even if not entered into), on a lever-
12 aged or margined basis, or financed
13 by the offeror, the counterparty, or a
14 person acting in concert with the of-
15 feror or counterparty on a similar
16 basis.

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

18 “(I) an agreement, contract, or
19 transaction described in paragraph (1)
20 or subparagraphs (A), (B), or (C), in-
21 cluding any agreement, contract, or
22 transaction specifically excluded from
23 subparagraph (A), (B), or (C);

24 “(II) any security;

25 “(III) a contract of sale that—

1 “(aa) results in actual deliv-
2 ery within 28 days or such other
3 longer period as the Commission
4 may determine by rule or regula-
5 tion based upon the typical com-
6 mercial practice in cash or spot
7 markets for the commodity in-
8 volved; or

9 “(bb) creates an enforceable
10 obligation to deliver between a
11 seller and a buyer that have the
12 ability to deliver and accept deliv-
13 ery, respectively, in connection
14 with their line of business.

15 “(IV) an agreement, contract, or
16 transaction that is listed on a national
17 securities exchange registered under
18 section 6(a) of the Securities Ex-
19 change Act of 1934 (15 U.S.C.
20 78f(a)); or

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

1 “(iii) Sections 4(a), 4(b) and 4b shall
2 apply to any agreement, contract or trans-
3 action described in clause (i), that is not
4 excluded from clause (i) by clause (ii), as
5 if the agreement, contract, or transaction
6 were a contract of sale of a commodity for
7 future delivery.

8 “(iv) This subparagraph shall not be
9 construed to limit any jurisdiction that the
10 Commission may otherwise have under any
11 other provision of this Act over an agree-
12 ment, contract, or transaction that is a
13 contract of sale of a commodity for future
14 delivery;

15 “(v) This subparagraph shall not be
16 construed to limit any jurisdiction that the
17 Commission or the Securities and Ex-
18 change Commission may otherwise have
19 under any other provisions of this Act with
20 respect to security futures products and
21 persons effecting transactions in security
22 futures products;

23 “(vi) For the purposes of this sub-
24 paragraph, an agricultural producer, pack-
25 er, or handler shall be considered an eligi-

1 ble commercial entity for any agreement,
2 contract, or transaction for a commodity in
3 connection with its line of business.”.

4 **SEC. 121. LARGE SWAP TRADER REPORTING.**

5 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
6 is amended by inserting after section 4s (as added by sec-
7 tion 107 of this Act) the following:

8 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

9 “(a) It shall be unlawful for any person to enter into
10 any swap that performs or affects a significant price dis-
11 covery function with respect to regulated markets if—

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

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

20 unless the person files or causes to be filed with the prop-
21 erly designated officer of the Commission such reports re-
22 garding any transactions or positions described in para-
23 graphs (1) and (2) as the Commission may by rule or reg-
24 ulation require and unless, in accordance with the rules
25 and regulations of the Commission, the person keeps

1 books and records of all such swaps and any transactions
2 and positions in any related commodity traded on or sub-
3 ject to the rules of any board of trade, and of cash or
4 spot transactions in, inventories of, and purchase and sale
5 commitments of, such a commodity.

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

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

12 “(d) For the purpose of this subsection, the swaps,
13 futures and cash or spot transactions and positions of any
14 person shall include the transactions and positions of any
15 persons directly or indirectly controlled by the person.

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

20 **SEC. 122. OTHER AUTHORITY.**

21 Unless otherwise provided by its terms, this title does
22 not divest any appropriate Federal banking agency, the
23 Commission, the Securities and Exchange Commission, or
24 other Federal or State agency, of any authority derived
25 from any other applicable law.

1 **SEC. 123. ANTITRUST.**

2 Nothing in the amendments made by this title shall
3 be construed to modify, impair, or supersede the operation
4 of any of the antitrust laws. For purposes of this title,
5 the term “antitrust laws” has the same meaning given the
6 term in subsection (a) of the first section of the Clayton
7 Act, except that the term includes section 5 of the Federal
8 Trade Commission Act to the extent that such section 5
9 applies to unfair methods of competition.

10 **SEC. 124. REVIEW OF PRIOR ACTIONS.**

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

21 **SEC. 125. EXPEDITED PROCESS.**

22 The Commodity Futures Trading Commission may
23 use emergency and expedited procedures (including any
24 administrative or other procedure as appropriate) to carry
25 out this Act if, in its discretion, it deems it necessary to
26 do so.

1 **SEC. 126. EFFECTIVE DATE.**

2 This title is effective 180 days after the date of the
3 enactment of this Act.

4 **TITLE J—REGULATION OF SECU-**
5 **RITY-BASED SWAP MARKETS**

6 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**
7 **CHANGE ACT OF 1934.**

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

10 (1) in paragraph (5)(A) and (B), by inserting
11 “(but not security-based swaps, other than security-
12 based swaps with or for persons that are not eligible
13 contract participants)” after the word “securities”
14 in each place it appears;

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

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

24 (4) in paragraph (14), by adding at the end the
25 following: “For security-based swaps, such terms in-
26 clude the execution, termination (prior to its sched-

1 uled maturity date), assignment, exchange, or simi-
2 lar transfer or conveyance of, or extinguishing of
3 rights or obligations under, a security-based swap,
4 as the context may require.”;

5 (5) in paragraph (39)—

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

11 (B) by adding “security-based swap dealer,
12 major security-based swap participant,” after
13 “government securities dealer,” in subpara-
14 graph (B)(i)(II);

15 (C) by striking “or government securities
16 dealer” and adding “government securities
17 dealer, security-based swap dealer or major se-
18 curity-based swap participant” in its place in
19 subparagraph (C); and

20 (D) by adding “security-based swap dealer,
21 major security-based swap participant,” after
22 “government securities dealer,” in subpara-
23 graph (D); and

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

1 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
2 term ‘eligible contract participant’ has the same
3 meaning as in section 1a(13) of the Commodity Ex-
4 change Act (7 U.S.C. 1a(13)).

5 “(66) MAJOR SWAP PARTICIPANT.—The term
6 ‘major swap participant’ has the same meaning as in
7 section 1a(40) of the Commodity Exchange Act (7
8 U.S.C. 1a(40)).

9 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
10 PANT.—

11 “(A) IN GENERAL.—The term ‘major secu-
12 rity-based swap participant’ means any person
13 who is not a security-based swap dealer and
14 who maintains a substantial net position in out-
15 standing uncleared security-based swaps.

16 “(B) DEFINITION OF ‘SUBSTANTIAL NET
17 POSITION’.—The Commission shall define by
18 rule or regulation the term ‘substantial net po-
19 sition’ at a threshold that the Commission de-
20 termine prudent for the effective monitoring,
21 management and oversight of entities which are
22 systemically important or can significantly im-
23 pact the financial system.

24 “(68) SECURITY-BASED SWAP.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘security-based
3 swap’ means any agreement, contract, or trans-
4 action that would be a swap under section
5 1a(35) of the Commodity Exchange Act (with-
6 out regard to section 1a(35)(B)(xii) of such
7 Act), and that—

8 “(i) is primarily based on an index
9 that is a narrow-based security index, in-
10 cluding any interest therein or based on
11 the value thereof;

12 “(ii) is primarily based on a single se-
13 curity or loan, including any interest there-
14 in or based on the value thereof; or

15 “(iii) is primarily based on the occur-
16 rence, non-occurrence, or extent of the oc-
17 currence of an event relating to a single
18 issuer of a security or the issuers of securi-
19 ties in a narrow-based security index, pro-
20 vided that such event must directly affect
21 the financial statements, financial condi-
22 tion, or financial obligations of the issuer.

23 “(B) RULE OF CONSTRUCTION REGARDING
24 MASTER AGREEMENTS.—The term ‘security-
25 based swap’ shall be construed to include a

1 master agreement that provides for an agree-
2 ment, contract, or transaction that is a secu-
3 rity-based swap pursuant to subparagraph (A),
4 together with all supplements to any such mas-
5 ter agreement, without regard to whether the
6 master agreement contains an agreement, con-
7 tract, or transaction that is not a security-based
8 swap pursuant to subparagraph (A), except
9 that the master agreement shall be considered
10 to be a security-based swap only with respect to
11 each agreement, contract, or transaction under
12 the master agreement that is a security-based
13 swap pursuant to subparagraph (A).

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

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

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

13 “(71) SECURITY-BASED SWAP DEALER.—The
14 term ‘security-based swap dealer’ means any person
15 that, as a significant part of its business—

16 “(A) holds itself out as a dealer in secu-
17 rity-based swaps;

18 “(B) makes a market in security-based
19 swaps;

20 “(C) regularly engages in the purchase of
21 security-based swaps and their resale to cus-
22 tomers in the ordinary course of a business; or

23 “(D) engages in any activity causing it to
24 be commonly known in the trade as a dealer or
25 market maker in security-based swaps.

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

5 “(73) BOARD.—The term ‘Board’ means the
6 Board of Governors of the Federal Reserve System.

7 “(74) PRUDENTIAL REGULATOR.—The term
8 ‘Prudential Regulator’ means—

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

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

15 “(ii) a State-chartered branch or
16 agency of a foreign bank;

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

21 “(i) a national bank; or

22 “(ii) a federally chartered branch or
23 agency of a foreign bank; and

24 “(C) the Federal Deposit Insurance Cor-
25 poration in the case of a swap dealer, major

1 swap participant, security-based swap dealer or
2 major security-based swap participant that is a
3 state-chartered bank that is not a member of
4 the Federal Reserve System.

5 “(75) SWAP DEALER.—The term ‘swap dealer’
6 has the same meaning as in section 1a(39) of the
7 Commodity Exchange Act (7 U.S.C. 1a(39)).

8 “(76) BROAD-BASED SECURITY INDEX SWAP.—
9 The term ‘broad-based security index swap’ means a
10 swap that is based upon an index that is not a nar-
11 row-based security index, including any interest
12 therein or based on the value thereof.

13 “(77) SECURITY-BASED SWAP REPOSITORY.—
14 The term ‘security-based swap repository’ means any
15 person that collects, calculates, prepares or main-
16 tains information or records with respect to trans-
17 actions or positions in, or the terms and conditions
18 of, security-based swaps entered into by third par-
19 ties.”.

20 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
21 Securities and Exchange Commission may adopt a rule
22 further defining the terms “security-based swap”, “secu-
23 rity-based swap dealer”, “major security-based swap par-
24 ticipant”, and “eligible contract participant” with regard
25 to security-based swaps (as such terms are defined in the

1 amendments made by subsection (a)) for the purpose of
2 including transactions and entities that have been struc-
3 tured to evade this Act.

4 **SEC. 202. REPEAL OF PROHIBITION ON REGULATION OF SE-**
5 **CURITY-BASED SWAPS.**

6 (a) REPEAL OF LAW.—Section 206B of the Gramm-
7 Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

8 (b) CONFORMING AMENDMENTS TO THE SECURITIES
9 ACT OF 1933.—

10 (1) Section 2A(b) is amended by striking “secu-
11 rity-based swap agreement (as defined in section
12 206B of the Gramm-Leach-Bliley Act)” each place
13 that such term appears and inserting “broad-based
14 security index swap”.

15 (2) Section 17 of the Securities Act of 1933 (15
16 U.S.C. 77q) is amended—

17 (A) in subsection (a)—

18 (i) by inserting “(including security-
19 based swaps)” after “securities”; and

20 (ii) by striking “security-based swap
21 agreement (as defined in section 206B of
22 the Gramm-Leach-Bliley Act)” and insert-
23 ing “broad-based security index swap as
24 defined in section 3(a)(76) of the Securi-
25 ties Exchange Act of 1934”; and

1 (B) in subsection (d), by striking “secu-
2 rity-based swap agreements (as defined in Sec-
3 tion 206B of the Gramm-Leach-Bliley Act)”
4 and inserting “broad-based security index
5 swaps as defined in Section 3(a)(76) of the Se-
6 curities Exchange Act of 1934”.

7 (c) CONFORMING AMENDMENTS TO THE SECURITIES
8 EXCHANGE ACT OF 1934.—The Securities Exchange Act
9 of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

10 (1) Section 3A (15 U.S.C. 78c-1) is amended
11 by striking “security-based swap agreement (as de-
12 fined in section 206B of the Gramm-Leach-Bliley
13 Act)” each place that the term appears and insert-
14 ing “broad-based security index swap”.

15 (2) Section 9(a) (15 U.S.C. 78i(a)) is amended
16 by striking paragraphs (2) through (5) and insert-
17 ing:

18 “(2) To effect, alone or with one or more other
19 persons, a series of transactions in any security reg-
20 istered on a national securities exchange or in con-
21 nection with any security-based swap with respect to
22 such security creating actual or apparent active
23 trading in such security, or raising or depressing the
24 price of such security, for the purpose of inducing
25 the purchase or sale of such security by others.

1 “(3) If a dealer, broker, security-based swap
2 dealer, major security-based swap participant or
3 other person selling or offering for sale or pur-
4 chasing or offering to purchase the security to in-
5 duce the purchase or sale of any security registered
6 on a national securities exchange or any security-
7 based swap with respect to such security by the cir-
8 culation or dissemination in the ordinary course of
9 business of information to the effect that the price
10 of any such security will or is likely to rise or fall
11 because of market operations of any one or more
12 persons conducted for the purpose of raising or de-
13 pressing the price of such security.

14 “(4) If a dealer, broker, security-based swap
15 dealer, major security-based swap participant or
16 other person selling or offering for sale or pur-
17 chasing or offering to purchase the security, to
18 make, regarding any security registered on a na-
19 tional securities exchange or any security-based swap
20 with respect to such security, for the purpose of in-
21 ducing the purchase or sale of such security or such
22 security-based swap, any statement which was at the
23 time and in the light of the circumstances under
24 which it was made, false or misleading with respect

1 to any material fact, and which he knew or had rea-
2 sonable ground to believe was so false or misleading.

3 “(5) For a consideration, received directly or
4 indirectly from a dealer, broker, security-based swap
5 dealer, major security-based swap participant or
6 other person selling or offering for sale or pur-
7 chasing or offering to purchase the security, to in-
8 duce the purchase of any security registered on a
9 national securities exchange or any security-based
10 swap with respect to such security by the circulation
11 or dissemination of information to the effect that the
12 price of any such security will or is likely to rise or
13 fall because of the market operations of any one or
14 more persons conducted for the purpose of raising or
15 depressing the price of such security.”.

16 (3) Section 10 (15 U.S.C. 78j) is amended—

17 (A) by striking “securities-based swap
18 agreement (as defined in section 206B of the
19 Gramm-Leach-Bliley Act)” each place that the
20 term appears and inserting “broad-based secu-
21 rity index swap”; and

22 (B) by striking “security-based swap
23 agreement (as defined in section 206B of the
24 Gramm-Leach-Bliley Act)” each place that the

1 term appears and inserting “broad-based secu-
2 rity index swap”.

3 (4) Section 15(c)(1) is amended—

4 (A) in subparagraph (A), by striking “, or
5 any security-based swap agreement (as defined
6 in section 206B of the Gramm-Leach-Bliley
7 Act),” and inserting “broad-based security
8 index swap”; 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 (5) 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 “security-
17 based swap agreements (as defined in section 206B
18 of the Gramm-Leach-Bliley Act)” and inserting
19 “broad-based security index swaps”.

20 (6) Section 16 (15 U.S.C. 78p) is amended—

21 (A) in subsection (a)(2)(C), by striking
22 “security-based swap agreement (as defined in
23 section 206(b) of the Gramm-Leach-Bliley
24 Act)” and inserting “broad-based security index
25 swap”;

1 (B) in subsection (b), by striking “secu-
2 rity-based swap agreement (as defined in sec-
3 tion 206B of the Gramm-Leach-Bliley Act)” in
4 each place that the term appears and inserting
5 “broad-based security index swa”p; and

6 (C) in subsection (g), by striking “security-
7 based swap agreement (as defined in section
8 206B of the Gramm-Leach-Bliley Act)” and in-
9 serting “broad-based security index swap”.

10 (7) Section 20 (15 U.S.C. 78t) is amended—

11 (A) in subsection (d), by striking “secu-
12 rity-based swap agreement (as defined in sec-
13 tion 206B of the Gramm-Leach-Bliley Act)”
14 and inserting “broad-based security index
15 swap”; and

16 (B) in subsection (f), by striking “security-
17 based swap agreement (as defined in section
18 206B of the Gramm-Leach-Bliley Act)” and in-
19 serting “broad-based security index swap”.

20 (8) Section 21A (15 U.S.C. 78u-1) is amend-
21 ed—

22 (A) in subsection (a)(1), by “striking secu-
23 rity-based swap agreement (as defined in sec-
24 tion 206B of the Gramm-Leach-Bliley Act)”

1 and inserting “broad-based security index
2 swap,”; and

3 (B) in subsection (g), by striking “secu-
4 rity-based swap agreement (as defined in sec-
5 tion 206B of the Gramm-Leach-Bliley Act)”
6 and inserting “broad-based security index
7 swap”.

8 **SEC. 203. AMENDMENTS TO THE SECURITIES EXCHANGE**
9 **ACT OF 1934.**

10 (a) CLEARING AND EXECUTION TRANSPARENCY FOR
11 SECURITY-BASED SWAPS.—The Securities Exchange Act
12 of 1934 (15 U.S.C. 78a, et seq.) is amended by adding
13 the following section after section 3A:

14 **“SEC. 3B. CLEARING AND EXECUTION TRANSPARENCY FOR**
15 **SECURITY-BASED SWAPS.**

16 “(a) CLEARING REQUIREMENT.—

17 “(1) IN GENERAL.—

18 “(A) PRESUMPTION OF CLEARING.—A se-
19 curity-based swap shall be submitted for clear-
20 ing if a clearing agency that is registered under
21 this Act will accept the security-based swap for
22 clearing.

23 “(B) OPEN ACCESS.—The rules of a clear-
24 ing agency described in subparagraph (A)
25 shall—

1 “(i) prescribe that all security-based
2 swaps submitted to the clearing agency
3 with the same terms and conditions, prop-
4 erly submitted and accepted by the clear-
5 ing agency, are fungible and may be offset
6 with each other within the clearing agency;
7 and

8 “(ii) provide for non-discriminatory
9 clearing of a security-based swap executed
10 on or through the rules of an unaffiliated
11 exchange or alternative swap execution fa-
12 cility.

13 “(2) COMMISSION APPROVAL.—

14 “(A) SUBMISSION FOR APPROVAL.—A
15 clearing agency shall submit to the Commission
16 for prior approval each security-based swap, or
17 any group, category, type or class of security-
18 based swap, that it seeks to accept for clearing,
19 which submission the Commission shall make
20 available to the public.

21 “(B) DEADLINE.—The Commission, after
22 at least a 30-day public comment period, shall
23 take final action on a request submitted pursu-
24 ant to subparagraph (A) not later than 90 days
25 after submission of the request, unless the

1 clearing agency submitting the request agrees
2 to an extension of the time limitation estab-
3 lished under this subparagraph. A request on
4 which the Commission fails to take final action
5 within the time limitation established under this
6 subparagraph shall be deemed approved.

7 “(C) FACTORS IN APPROVAL.—The Com-
8 mission shall approve, unconditionally or sub-
9 ject to such terms and conditions as the Com-
10 mission determines to be appropriate, any re-
11 quest submitted pursuant to subparagraph (A)
12 if it finds that the request is consistent with the
13 securities laws. In reviewing such request, the
14 Commission shall also take into account the fol-
15 lowing factors:

16 “(i) The existence of significant out-
17 standing notional exposures, trading liquid-
18 ity and adequate pricing data.

19 “(ii) The availability of rule frame-
20 work, capacity, operational expertise and
21 resources, and credit support infrastruc-
22 ture to clear the contract on terms that are
23 consistent with the material terms and
24 trading conventions on which the contract
25 is then traded.

1 “(iii) The impact on the mitigation of
2 systemic risk, taking into account the size
3 of the market for such contract and the re-
4 sources of the clearing agency available to
5 clear the contract.

6 “(iv) The impact on competition.

7 “(v) The existence of reasonable legal
8 certainty in the event of the insolvency of
9 the relevant clearing agency or one or more
10 of its clearing members with regard to the
11 treatment of customer and swap
12 counterparty positions, funds, and prop-
13 erty.

14 “(D) PRIOR CLEARING OF SWAPS.—Swaps
15 that are accepted for clearing by a clearing
16 agency prior to the effective date of the Over-
17 the-Counter Derivatives Markets Act of 2009
18 are deemed approved for purposes of this sec-
19 tion.

20 “(E) RULES.—Not later than 180 days
21 after the effective date for the Over-the-Counter
22 Derivatives Markets Act of 2009, the Commis-
23 sion shall adopt rules for a clearing agency’s
24 submission for approval, pursuant to this para-
25 graph, of a security-based swap, or a group,

1 category, type or class of security-based swap,
2 that it seeks to accept for clearing.

3 “(3) STAY OF CLEARING REQUIREMENT.—

4 “(A) AUTHORITY.—At any time after
5 issuance of an approval pursuant to paragraph
6 (2), the Commission, on application of a
7 counterparty to a security-based swap or on its
8 own initiative, may stay the clearing require-
9 ment of paragraph (1) until the Commission
10 completes a review of the terms of the security-
11 based swap (or the group, category, type or
12 class of security-based swap) and the clearing
13 arrangement.

14 “(B) DEADLINE.—The Commission shall
15 complete a review undertaken pursuant to sub-
16 paragraph (A) not later than 90 days after
17 issuance of the stay, unless the clearing agency
18 that clears the security-based swap, or group,
19 category, type or class of security-based swap,
20 agrees to an extension of the time limitation es-
21 tablished under this subparagraph.

22 “(C) DETERMINATION.—Upon completion
23 of the review undertaken pursuant to subpara-
24 graph (A), the Commission may—

1 “(i) determine, unconditionally or sub-
2 ject to such terms and conditions as the
3 Commission determines to be appropriate,
4 that the security-based swap, or group,
5 category, type or class of security-based
6 swap, must be cleared pursuant to this
7 subsection if it finds that such clearing is
8 consistent with the securities laws; or

9 “(ii) determine that the clearing re-
10 quirement of paragraph (1) shall not apply
11 to the security-based swap, or group, cat-
12 egory, type or class of security-based swap.

13 “(D) RULES.—Not later than 180 days
14 after the effective date of the Over-the-Counter
15 Derivatives Markets Act of 2009, the Commis-
16 sion shall adopt rules for reviewing, pursuant to
17 this paragraph, a clearing agency’s clearing of
18 a security-based swap, or a group, category,
19 type or class of security-based swap, that it has
20 accepted for clearing.

21 “(4) PREVENTION OF EVASION.—The Commis-
22 sion may prescribe rules under this section, or issue
23 interpretations of such rules, as necessary to prevent
24 evasions of this title.

25 “(5) REQUIRED REPORTING.—

1 “(A) IN GENERAL.—All security-based
2 swaps that are not accepted for clearing by any
3 clearing agency shall be reported either to a se-
4 curity-based swap repository described in sub-
5 section 13(n) or, if there is no security-based
6 swap repository that would accept the security-
7 based swap, to the Commission pursuant to sec-
8 tion 13A within such time period as the Com-
9 mission may by rule or regulation prescribe.
10 Counterparties to a security-based swap may
11 agree which counterparty will report the secu-
12 rity-based swap as required by this paragraph.

13 “(B) SECURITY-BASED SWAP DEALER DES-
14 IGNATION.—With regard to security-based
15 swaps where only one counterparty is a secu-
16 rity-based swap dealer, the security-based swap
17 dealer shall report the security-based swap as
18 required by this paragraph

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

22 “(A) Security-based swaps that were en-
23 tered into before the date of enactment of the
24 Over-the-Counter Derivatives Markets Act of
25 2009 shall be reported to a registered security-

1 based swap repository or the Commission no
2 later than 180 days after the effective date of
3 such Act.

4 “(B) Security-based swaps that were en-
5 tered into on or after the date of enactment of
6 such Act shall be reported to a registered secu-
7 rity-based swap repository or the Commission
8 no later than the later of:

9 “(i) 90 days after the effective date of
10 such Act; or

11 “(ii) such other time after entering
12 into the security-based swap as the Com-
13 mission may prescribe by rule or regula-
14 tion.

15 “(7) CLEARING TRANSITION RULES.—

16 “(A) ENTERED INTO BEFORE DATE OF
17 ENACTMENT.—Security-based swaps that were
18 entered into before the date of enactment of the
19 Over-the-Counter Derivatives Markets Act of
20 2009 are exempt from the clearing require-
21 ments of this subsection provided such security-
22 based swaps are reported pursuant to para-
23 graph (6)(A).

24 “(B) ENTERED INTO BEFORE BECOMING
25 CLEARABLE.—Security-based swaps that were

1 entered into before becoming clearable pursuant
2 to this subsection are exempt from the clearing
3 requirements of this subsection provided such
4 security-based swaps are reported pursuant to
5 paragraph (6)(B).

6 **【“(C) ENTERED INTO BEFORE TIER-1**
7 **DESIGNATION.—**Security-based swaps that were
8 entered into with a counterparty in reliance of
9 the exception in paragraph (8) prior to designa-
10 tion of such counterparty as a **【Tier 1 financial**
11 **holding company】** are exempt from the clearing
12 requirements of this subsection.**】**

13 “(8) EXCEPTION.—

14 “(A) IN GENERAL.—The requirements of
15 subsections (a)(1) and (a)(3) do not apply to a
16 security-based swap if—

17 “(i) one of the counterparties to the
18 swap is not a security-based swap dealer or
19 major security-based swap participant; and

20 “(ii) none of the counterparties to the
21 security-based swap is a **【Tier 1 financial**
22 **holding company】**.

23 “(B) ABUSE OF EXEMPTION.—The Com-
24 mission may prescribe rules under this sub-
25 section, or issue interpretations of such rules,

1 as necessary to prevent abuse of the exemption
2 described under subparagraph (A) by security-
3 based swap dealers and major security-based
4 swap participants.

5 “(9) VOLUNTARY REGISTRATION.—A person
6 that clears agreements, contracts, or transactions
7 that are not required to be cleared under this Act
8 may register with the Commission as a clearing
9 agency.

10 “(b) EXECUTION TRANSPARENCY.—

11 “(1) REQUIREMENT.—A security-based swap
12 that is subject to the clearing requirement of sub-
13 section (a) shall be traded on or through an ex-
14 change, or on or through an alternative swap execu-
15 tion facility registered under section 3B, that lists
16 the security-based swap for trading.

17 “(2) EXCEPTIONS.—The requirement of para-
18 graph (1) does not apply to a security-based swap if
19 no exchange or alternative swap execution facility
20 lists the security-based swap for trading.

21 “(c) REPORTING.—

22 “(1) IN GENERAL.—A clearing agency that
23 clears security-based swaps shall provide to the
24 Commission all information determined by the Com-
25 mission to be necessary to perform its responsibil-

1 ities under this Act. The Commission shall adopt
2 data collection and maintenance requirements for se-
3 curity-based swaps cleared by clearing agencies that
4 are comparable to the corresponding requirements
5 for security-based swaps accepted by security-based
6 swap repositories and security-based swaps traded
7 on alternative swap execution facilities. Subject to
8 section 24, the Commission shall share such infor-
9 mation, upon request, with the Board, the Com-
10 modity Futures Trading Commission, the appro-
11 priate Federal banking agencies, the **Financial**
12 **Services Oversight Council**], and the Department of
13 Justice or to other persons the Commission deems
14 appropriate, including foreign financial supervisors
15 (including foreign futures authorities), foreign cen-
16 tral banks, and foreign ministries.

17 “(2) PUBLIC INFORMATION.—A clearing agency
18 that clears security-based swaps shall provide to the
19 Commission, or its designee, such information as is
20 required by, and in a form and at a frequency to be
21 determined by, the Commission, in order to comply
22 with the public reporting requirements contained in
23 section 13.

24 “(d) DESIGNATION OF COMPLIANCE OFFICER.—

1 “(1) IN GENERAL.—Each clearing agency that
2 clears security-based swaps shall designate an indi-
3 vidual to serve as a compliance officer.

4 “(2) DUTIES.—The compliance officer shall—

5 “(A) report directly to the board or to the
6 senior officer of the clearing agency;

7 “(B) in consultation with the board of the
8 clearing agency, a body performing a function
9 similar to that of a board, or the senior officer
10 of the clearing agency, resolve any conflicts of
11 interest that may arise;

12 “(C) be responsible for administering the
13 policies and procedures required to be estab-
14 lished pursuant to this section;

15 “(D) ensure compliance with securities
16 laws and the rules and regulations issued there-
17 under, including rules prescribed by the Com-
18 mission pursuant to this section; and

19 “(E) establish procedures for remediation
20 of non-compliance issues found during compli-
21 ance office reviews, lookbacks, internal or exter-
22 nal audit findings, self-reported errors, or
23 through validated complaints. Procedures will
24 establish the handling, management response,

1 remediation, re-testing, and closing of non-com-
2 pliant issues.

3 “(3) ANNUAL REPORTS REQUIRED.—The com-
4 pliance officer shall annually prepare and sign a re-
5 port on the compliance of the clearing agency with
6 the securities laws and its policies and procedures,
7 including its code of ethics and conflict of interest
8 policies, in accordance with rules prescribed by the
9 Commission. Such compliance report shall accom-
10 pany the financial reports of the clearing agency
11 that are required to be furnished to the Commission
12 pursuant to this section and shall include a certifi-
13 cation that, under penalty of law, the report is accu-
14 rate and complete.

15 “(e) RULES.—Not later than 180 days after the ef-
16 fective date of the Over-the-Counter Derivatives Markets
17 Act of 2009, the Commission shall adopt rules governing
18 persons that are registered as clearing agencies for secu-
19 rity-based swaps under this Act.

20 “(f) EXEMPTIONS.—The Commission may exempt,
21 conditionally or unconditionally, a clearing agency from
22 registration under this section for the clearing of security-
23 based swaps if the Commission finds that such clearing
24 agency is subject to comparable, comprehensive super-
25 vision and regulation on a consolidated basis by the Com-

1 modify Futures Trading Commission, a Prudential Regu-
2 lator, or the appropriate governmental authorities in the
3 organization's home country.

4 “(g) CORE PRINCIPLES FOR CLEARING AGENCIES.—

5 “(1) IN GENERAL.—To be registered and to
6 maintain registration as a clearing agency, a clear-
7 ing agency shall comply with the core principles
8 specified in this subsection. The Commission may
9 conform the core principles to reflect evolving United
10 States and international standards. Except where
11 the Commission determines otherwise by rule or reg-
12 ulation, a clearing agency shall have reasonable dis-
13 cretion in establishing the manner in which it com-
14 plies with the core principles.

15 “(2) FINANCIAL RESOURCES.—

16 “(A) The clearing agency shall have ade-
17 quate financial, operational, and managerial re-
18 sources to discharge its responsibilities.

19 “(B) Financial resources shall at a min-
20 imum exceed the total amount that would—

21 “(i) enable the clearing agency to
22 meet its financial obligations to its mem-
23 bers and participants notwithstanding a
24 default by the member or participant cre-
25 ating the largest financial exposure for

1 that clearing agency in extreme but plau-
2 sible market conditions; and

3 “(ii) enable the clearing agency to
4 cover its operating costs for a period of
5 one year, calculated on a rolling basis.

6 “(3) PARTICIPANT AND PRODUCT ELIGI-
7 BILITY.—

8 “(A) The clearing agency shall establish—

9 “(i) appropriate admission and con-
10 tinuing eligibility standards (including suf-
11 ficient financial resources and operational
12 capacity to meet obligations arising from
13 participation in the clearing agency) for
14 members of and participants in the organi-
15 zation; and

16 “(ii) appropriate standards for deter-
17 mining eligibility of agreements, contracts,
18 or transactions submitted to the clearing
19 agency for clearing.

20 “(B) The clearing agency shall have proce-
21 dures in place to verify that participation and
22 membership requirements are met on an ongo-
23 ing basis.

24 “(C) The clearing agency’s participation
25 and membership requirements shall be objec-

1 tive, publicly disclosed, and permit fair and
2 open access.

3 “(D) The rules of the clearing agency shall
4 provide for acceptance of a standardized secu-
5 rity-based swap regardless of the system on
6 which the transaction was executed.

7 “(4) RISK MANAGEMENT.—

8 “(A) The clearing agency shall have the
9 ability to manage the risks associated with dis-
10 charging the responsibilities of a clearing agen-
11 cy through the use of appropriate tools and pro-
12 cedures.

13 “(B) The clearing agency shall measure its
14 credit exposures to its members and partici-
15 pants at least once each business day and shall
16 monitor such exposures throughout the business
17 day.

18 “(C) Through margin requirements and
19 other risk control mechanisms, a clearing agen-
20 cy shall limit its exposures to potential losses
21 from defaults by its members and participants
22 so that the operations of the clearing agency
23 would not be disrupted and nondefaulting mem-
24 bers or participants would not be exposed to
25 losses that they cannot anticipate or control.

1 “(D) Margin required from all members
2 and participants shall be sufficient to cover po-
3 tential exposures in normal market conditions.

4 “(E) The models and parameters used in
5 setting margin requirements shall be risk-based
6 and reviewed regularly.

7 “(5) SETTLEMENT PROCEDURES.—The clearing
8 agency shall—

9 “(A) complete money settlements on a
10 timely basis, and not less than once each busi-
11 ness day;

12 “(B) employ money settlement arrange-
13 ments that eliminate or strictly limit the clear-
14 ing agency’s exposure to settlement bank risks,
15 such as credit and liquidity risks from the use
16 of banks to effect money settlements;

17 “(C) ensure money settlements are final
18 when effected;

19 “(D) maintain an accurate record of the
20 flow of funds associated with each money settle-
21 ment;

22 “(E) have the ability to comply with the
23 terms and conditions of any permitted netting
24 or offset arrangements with other clearing orga-
25 nizations; and

1 “(F) for physical settlements, establish
2 rules that clearly state the clearing agency’s ob-
3 ligations with respect to physical deliveries. The
4 risks from these obligations shall be identified
5 and managed.

6 “(6) TREATMENT OF FUNDS.—

7 “(A) The clearing agency shall have stand-
8 ards and procedures designed to protect and en-
9 sure the safety of member and participant
10 funds and assets.

11 “(B) The clearing agency shall hold mem-
12 ber and participant funds and assets in a man-
13 ner whereby risk of loss or of delay in the clear-
14 ing agency’s access to the assets and funds is
15 minimized.

16 “(C) Assets and funds invested by the
17 clearing agency shall be held in instruments
18 with minimal credit, market, and liquidity risks.

19 “(7) DEFAULT RULES AND PROCEDURES.—

20 “(A) The clearing agency shall have rules
21 and procedures designed to allow for the effi-
22 cient, fair, and safe management of events
23 when members or participants become insolvent
24 or otherwise default on their obligations to the
25 clearing agency.

1 “(B) The clearing agency’s default proce-
2 dures shall be clearly stated, and they shall en-
3 sure that the clearing agency can take timely
4 action to contain losses and liquidity pressures
5 and to continue meeting its obligations.

6 “(C) The default procedures shall be pub-
7 licly available.

8 “(8) RULE ENFORCEMENT.—The clearing agen-
9 cy shall—

10 “(A) maintain adequate arrangements and
11 resources for the effective monitoring and en-
12 forcement of compliance with rules of the clear-
13 ing agency and for resolution of disputes; and

14 “(B) have the authority and ability to dis-
15 cipline, limit, suspend, or terminate a member’s
16 or participant’s activities for violations of rules
17 of the clearing agency.

18 “(9) SYSTEM SAFEGUARDS.—The clearing
19 agency shall—

20 “(A) establish and maintain a program of
21 risk analysis and oversight to identify and mini-
22 mize sources of operational risk through the de-
23 velopment of appropriate controls and proce-
24 dures, and the development of automated sys-

1 tems, that are reliable, secure, and have ade-
2 quate scalable capacity;

3 “(B) establish and maintain emergency
4 procedures, backup facilities, and a plan for dis-
5 aster recovery that allows for the timely recov-
6 ery and resumption of operations and the ful-
7 fillment of the clearing agency’s responsibilities
8 and obligations; and

9 “(C) periodically conduct tests to verify
10 that backup resources are sufficient to ensure
11 continued order processing and trade matching,
12 price reporting, market surveillance, and main-
13 tenance of a comprehensive and accurate audit
14 trail.

15 “(10) REPORTING.—The clearing agency shall
16 provide to the Commission all information necessary
17 for the Commission to conduct oversight of the
18 clearing agency.

19 “(11) RECORDKEEPING.—The clearing agency
20 shall maintain records of all activities related to the
21 business of the clearing agency as a clearing agency
22 in a form and manner acceptable to the Commission
23 for a period of 5 years.

24 “(12) PUBLIC INFORMATION.—

1 “(A) The clearing agency shall provide
2 market participants with sufficient information
3 to identify and evaluate accurately the risks and
4 costs associated with using the clearing agen-
5 cy’s services.

6 “(B) The clearing agency shall make infor-
7 mation concerning the rules and operating pro-
8 cedures governing its clearing and settlement
9 systems (including default procedures) available
10 to market participants.

11 “(C) The clearing agency shall disclose
12 publicly and to the Commission information
13 concerning—

14 “(i) the terms and conditions of con-
15 tracts, agreements, and transactions
16 cleared and settled by the clearing agency;

17 “(ii) clearing and other fees that the
18 clearing agency charges its members and
19 participants;

20 “(iii) the margin-setting methodology
21 and the size and composition of the finan-
22 cial resource package of the clearing agen-
23 cy;

1 “(iv) other information relevant to
2 participation in the settlement and clearing
3 activities of the clearing agency; and

4 “(v) daily settlement prices, volume,
5 and open interest for all contracts settled
6 or cleared by it.

7 “(13) INFORMATION-SHARING.—The clearing
8 agency shall—

9 “(A) enter into and abide by the terms of
10 all appropriate and applicable domestic and
11 international information-sharing agreements;
12 and

13 “(B) use relevant information obtained
14 from the agreements in carrying out the clear-
15 ing organization’s risk management program.

16 “(14) ANTITRUST CONSIDERATIONS.—Unless
17 appropriate to achieve the purposes of this chapter,
18 the clearing agency shall avoid—

19 “(A) adopting any rule or taking any ac-
20 tion that results in any unreasonable restraint
21 of trade; or

22 “(B) imposing any material anticompeti-
23 tive burden.

24 “(15) GOVERNANCE FITNESS STANDARDS.—

1 “(A) The clearing agency shall establish
2 governance arrangements that are transparent
3 in order to fulfill public interest requirements
4 and to support the objectives of owners and
5 participants.

6 “(B) The clearing agency shall establish
7 and enforce appropriate fitness standards for
8 directors, members of any disciplinary com-
9 mittee, and members of the clearing agency,
10 and any other persons with direct access to the
11 settlement or clearing activities of the clearing
12 agency, including any parties affiliated with any
13 of the persons described in this subparagraph.

14 “(16) CONFLICTS OF INTEREST.—The clearing
15 agency shall establish and enforce rules to minimize
16 conflicts of interest in the decisionmaking process of
17 the clearing agency and establish a process for re-
18 solving such conflicts of interest.

19 “(17) COMPOSITION OF THE BOARDS.—The
20 clearing agency shall ensure that the composition of
21 the governing board or committee includes market
22 participants.

23 “(18) LEGAL RISK.—The clearing agency shall
24 have a well-founded, transparent, and enforceable
25 legal framework for each aspect of its activities.”.

1 (b) ALTERNATIVE SWAP EXECUTION FACILITIES.—
2 The Securities Exchange Act of 1934 (15 U.S.C. 78a, et
3 seq.) is amended by adding after section 3B (as added
4 by subsection (a)) the following:

5 **“SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.**

6 “(a) REGISTRATION.—No person may operate a facil-
7 ity for the trading of security-based swaps unless the facil-
8 ity is registered as an alternative swap execution facility
9 under this section.

10 “(b) REQUIREMENTS FOR TRADING.—

11 “(1) IN GENERAL.—An alternative swap execu-
12 tion facility that is registered under subsection (a)
13 may list for trading any security-based swap.

14 “(2) RULES FOR TRADING THROUGH THE FA-
15 CILITY.—Not later than 180 days after the date of
16 enactment of the Over-the-Counter Derivatives Mar-
17 kets Act of 2009, the Commission shall adopt rules
18 to allow a security-based swap to be traded through
19 the facilities of an exchange or an alternative swap
20 execution facility. Such rules shall permit an inter-
21 mediary, acting as principal or agent, to enter into
22 or execute a security-based swap, notwithstanding
23 section 3B(b), if the security-based swap is reported,
24 recorded, or confirmed in accordance with the rules

1 of the exchange or alternative swap execution facil-
2 ity.

3 “(c) TRADING BY EXCHANGES.—An exchange shall,
4 to the extent that the exchange also operates an alter-
5 native swap execution facility and uses the same electronic
6 trade execution system for trading on the exchange and
7 the alternative swap execution facility, identify whether
8 the electronic trading is taking place on the exchange or
9 the alternative swap execution facility.

10 “(d) CORE PRINCIPLES FOR ALTERNATIVE SWAP
11 EXECUTION FACILITIES.—

12 “(1) IN GENERAL.—To be registered as, and to
13 maintain its registration as, an alternative swap exe-
14 cution facility, the facility shall comply with the core
15 principles specified in this subsection and any re-
16 quirement that the Commission may impose by rule
17 or regulation pursuant to section 8a(5). Except
18 where the Commission determines otherwise by rule
19 or regulation, the facility shall have reasonable dis-
20 cretion in establishing the manner in which it com-
21 plies with these core principles.

22 “(2) COMPLIANCE WITH RULES.—The alter-
23 native swap execution facility shall—

24 “(A) monitor and enforce compliance with
25 any of the rules of the facility, including the

1 terms and conditions of the swaps traded on or
2 through the facility and any limitations on ac-
3 cess to the facility; and

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

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

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

13 “(3) SECURITY-BASED SWAPS NOT READILY
14 SUSCEPTIBLE TO MANIPULATION.—The alternative
15 swap execution facility shall permit trading only in
16 security-based swaps that are not readily susceptible
17 to manipulation.

18 “(4) MONITORING OF TRADING.—The alter-
19 native swap execution facility shall—

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

1 “(B) monitor trading in swaps to prevent
2 manipulation, price distortion, and disruptions
3 of the delivery or cash settlement process
4 through surveillance, compliance, and discipli-
5 nary practices and procedures, including meth-
6 ods for conducting real-time monitoring of trad-
7 ing and comprehensive and accurate trade re-
8 constructions.

9 “(5) ABILITY TO OBTAIN INFORMATION.—The
10 alternative swap execution facility shall—

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

15 “(B) provide the information to the Com-
16 mission upon request; and

17 “(C) have the capacity to carry out such
18 international information-sharing agreements as
19 the Commission may require.

20 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

21 “(A) To reduce the potential threat of
22 market manipulation or congestion, the alter-
23 native swap execution facility shall adopt for
24 each of its contracts, where necessary and ap-

1 appropriate, position limitations or position ac-
2 countability.

3 “(B) For any contract that is subject to a
4 position limitation established by the Commis-
5 sion pursuant to section 10B, the alternative
6 swap execution facility shall set its position lim-
7 itation at a level no higher than the Commis-
8 sion limitation.

9 “(7) FINANCIAL INTEGRITY OF TRANS-
10 ACTIONS.—The alternative swap execution facility
11 shall establish and enforce rules and procedures for
12 ensuring the financial integrity of security-based
13 swaps entered on or through its facilities, including
14 the clearance and settlement of the security-based
15 swaps pursuant to section 3B.

16 “(8) EMERGENCY AUTHORITY.—The alternative
17 swap execution facility shall adopt rules to provide
18 for the exercise of emergency authority, in consulta-
19 tion or cooperation with the Commission, where nec-
20 essary and appropriate, including the authority to
21 suspend or curtail trading in a security-based swap.

22 “(9) TIMELY PUBLICATION OF TRADING INFOR-
23 MATION.—The alternative swap execution facility
24 shall make public timely information on price, trad-

1 ing volume, and other trading data to the extent
2 prescribed by the Commission.

3 “(10) RECORDKEEPING AND REPORTING.—The
4 alternative swap execution facility shall maintain
5 records of all activities related to the business of the
6 facility, including a complete audit trail, in a form
7 and manner acceptable to the Commission for a pe-
8 riod of 5 years, and report to the Commission all in-
9 formation determined by the Commission to be nec-
10 essary or appropriate for the Commission to perform
11 its responsibilities under this Act in a form and
12 manner acceptable to the Commission. The Commis-
13 sion shall adopt data collection and reporting re-
14 quirements for alternative swap execution facilities
15 that are comparable to corresponding requirements
16 for clearing agencies and security-based swap reposi-
17 tories.

18 “(11) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this Act, the alternative swap execution facility shall
21 avoid—

22 “(A) adopting any rules or taking any ac-
23 tions that result in any unreasonable restraints
24 of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading on the alternative swap
3 execution facility.

4 “(12) CONFLICTS OF INTEREST.—The alter-
5 native swap execution facility shall—

6 “(A) establish and enforce rules to mini-
7 mize conflicts of interest in its decision-making
8 process; and

9 “(B) establish a process for resolving the
10 conflicts of interest.

11 “(13) FINANCIAL RESOURCES.—The alternative
12 swap execution facility shall have adequate financial,
13 operational, and managerial resources to discharge
14 its responsibilities. Such financial resources shall be
15 considered adequate if their value exceeds the total
16 amount that would enable the facility to cover its op-
17 erating costs for a period of one year, calculated on
18 a rolling basis.

19 “(14) SYSTEM SAFEGUARDS.—The alternative
20 swap execution facility shall—

21 “(A) establish and maintain a program of
22 risk analysis and oversight to identify and mini-
23 mize sources of operational risk, through the
24 development of appropriate controls and proce-
25 dures, and the development of automated sys-

1 tems, that are reliable, secure, and have ade-
2 quate scalable capacity;

3 “(B) establish and maintain emergency
4 procedures, backup facilities, and a plan for dis-
5 aster recovery that allow for the timely recovery
6 and resumption of operations and the fulfill-
7 ment of the alternative swap execution facility’s
8 responsibilities and obligation; and

9 “(C) periodically conduct tests to verify
10 that backup resources are sufficient to ensure
11 continued order processing and trade matching,
12 price reporting, market surveillance, and main-
13 tenance of a comprehensive and accurate audit
14 trail.

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

17 “(A) IN GENERAL.—Each alternative swap
18 execution facility shall designate an individual
19 to serve as a compliance officer.

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

21 “(i) shall report directly to the board
22 or to the senior officer of the facility; and

23 “(ii) shall—

24 “(I) review compliance with the
25 core principles in section 3B(e).

1 “(II) in consultation with the
2 board of the facility, a body per-
3 forming a function similar to that of
4 a board, or the senior officer of the
5 facility, resolve any conflicts of inter-
6 est that may arise;

7 “(III) be responsible for admin-
8 istering the policies and procedures
9 required to be established pursuant to
10 this section; and

11 “(IV) ensure compliance with se-
12 curities laws and the rules and regula-
13 tions issued thereunder, including
14 rules prescribed by the Commission
15 pursuant to this section; and

16 “(iii) shall establish procedures for re-
17 mediation of non-compliance issues found
18 during compliance office reviews,
19 lookbacks, internal or external audit find-
20 ings, self-reported errors, or through vali-
21 dated complaints and to establish the han-
22 dling, management response, remediation,
23 re-testing, and closing of non-compliant
24 issues.

1 “(C) ANNUAL REPORTS REQUIRED.—The
2 compliance officer shall annually prepare and
3 sign a report on the compliance of the facility
4 with the securities laws and its policies and pro-
5 cedures, including its code of ethics and conflict
6 of interest policies, in accordance with rules
7 prescribed by the Commission. Such compliance
8 report shall accompany the financial reports of
9 the facility that are required to be furnished to
10 the Commission pursuant to this section and
11 shall include a certification that, under penalty
12 of law, the report is accurate and complete.

13 “(e) EXEMPTIONS.—The Commission may exempt,
14 conditionally or unconditionally, an alternative swap exe-
15 cution facility from registration under this section if the
16 Commission finds that such organization is subject to
17 comparable, comprehensive supervision and regulation on
18 a consolidated basis by the Commodity Futures Trading
19 Commission, a Prudential Regulator or the appropriate
20 governmental authorities in the organization’s home coun-
21 try.

22 “(f) RULES.—Not later than 180 days after the date
23 of enactment of the Over-the-Counter Derivatives Markets
24 Act of 2009, the Commission shall prescribe rules gov-

1 ernening the regulation of alternative swap execution facili-
2 ties under this section.”.

3 (c) SEGREGATION OF ASSETS HELD AS COLLATERAL
4 IN SWAP TRANSACTIONS.—The Securities Exchange Act
5 of 1934 (15 U.S.C. 78a, et seq.) is further amended by
6 adding after section 3C (as added by subsection (b) the
7 following:

8 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
9 **IN SWAP TRANSACTIONS.**

10 “(a) CLEARED SWAPS.—A security-based swap deal-
11 er or clearing agency by or through which funds or other
12 property are held as margin or collateral to secure the obli-
13 gations of a counterparty under a security-based swap to
14 be cleared by or through a derivatives clearing agency
15 shall segregate, maintain, and use the funds or other prop-
16 erty for the benefit of the counterparty, in accordance with
17 such rules and regulations as the Commission or Pruden-
18 tial Regulator shall prescribe. Any such funds or other
19 property shall be treated as customer property under this
20 Act.

21 “(b) 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 swap dealer as margin or
24 collateral to secure the obligations of the counterparty
25 under a security-based swap between the counterparty and

1 the swap dealer that is not submitted for clearing to a
2 derivatives clearing agency, the swap dealer shall seg-
3 regate the funds or other property for the benefit of the
4 counterparty, and maintain the funds or other property
5 in an account which is carried by a third-party custodian
6 and designated as a segregated account for the
7 counterparty, in accordance with such rules and regula-
8 tions as the Commission or Prudential Regulator may pre-
9 scribe. This subsection shall not be interpreted to preclude
10 commercial arrangements regarding the investment of the
11 segregated funds or other property and the related alloca-
12 tion of gains and losses resulting from any such invest-
13 ment.”.

14 (d) TRADING IN SECURITY-BASED SWAPS.—Section
15 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
16 is amended by adding at the end the following:

17 “(l) It shall be unlawful for any person to effect a
18 transaction in a security-based swap with or for a person
19 that is not an eligible contract participant unless such
20 transaction is effected on a national securities exchange
21 registered pursuant to subsection (b).”.

22 (e) REGISTRATION AND REGULATION OF SWAP
23 DEALERS AND MAJOR SWAP PARTICIPANTS.—The Secu-
24 rities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is

1 amended by inserting after section 15E (15 U.S.C. 78o–
2 7) the following:

3 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-
4 BASED SWAP DEALERS AND MAJOR SECU-
5 RITY-BASED SWAP PARTICIPANTS.**

6 “(a) REGISTRATION.—

7 “(1) It shall be unlawful for any person to act
8 as a security-based swap dealer unless such person
9 is registered as a security-based swap dealer with
10 the Commission.

11 “(2) It shall be unlawful for any person to act
12 as a major security-based swap participant unless
13 such person is registered as a major security-based
14 swap participant with the Commission.

15 “(b) REQUIREMENTS.—

16 “(1) IN GENERAL.—A person shall register as
17 a security-based swap dealer or major security-based
18 swap participant by filing a registration application
19 with the Commission.

20 “(2) CONTENTS.—The application shall be
21 made in such form and manner as prescribed by the
22 Commission, giving any information and facts as the
23 Commission may deem necessary concerning the
24 business in which the applicant is or will be engaged.
25 Such person, when registered as a security-based

1 swap dealer or major security-based swap partici-
2 pant, shall continue to report and furnish to the
3 Commission such information pertaining to such
4 person's business as the Commission may require.

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

8 “(4) RULES.—Except as provided in sub-
9 sections (c) and (d), the Commission may prescribe
10 rules applicable to security-based swap dealers and
11 major security-based swap participants, including
12 rules that limit the activities of security-based swap
13 dealers and major security-based swap participants.
14 Except as provided in [subsection (d)], the Commis-
15 sion may provide conditional or unconditional ex-
16 emptions from rules prescribed under this section for
17 security-based swap dealers and major security-
18 based swap participants that are subject to substan-
19 tially similar requirements as brokers or dealers.

20 “(5) TRANSITION.—Rules adopted under this
21 section shall provide for the registration of security-
22 based swap dealers and major security-based swap
23 participants no later than 1 year after the effective
24 date of the Over-the-Counter Derivatives Markets
25 Act of 2009.

1 “(c) RULES.—

2 “(1) IN GENERAL.—Not later than 180 days
3 after the effective date of the Over-the-Counter De-
4 rivatives Markets Act of 2009, the Commission shall
5 adopt rules for persons that are registered as secu-
6 rity-based swap dealers or major security-based swap
7 participants under this Act.

8 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
9 MENTS.—The Commission shall not prescribe rules
10 imposing prudential requirements (including activity
11 restrictions) on security-based swap dealers or major
12 security-based swap participants for which there is a
13 Prudential Regulator. This provision shall not be
14 construed as limiting the authority of the Commis-
15 sion to prescribe appropriate business conduct, re-
16 porting, and recordkeeping requirements to protect
17 investors.

18 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

19 “(1) IN GENERAL.—

20 “(A) BANK SECURITY-BASED SWAP DEAL-
21 ERS AND MAJOR SECURITY-BASED SWAP PAR-
22 TICIPANTS.—Each registered security-based
23 swap dealer and major security-based swap par-
24 ticipant for which there is a Prudential Regu-
25 lator shall meet such minimum capital require-

1 ments and minimum initial and variation mar-
2 gin requirements as the Prudential Regulators
3 shall by rule or regulation jointly prescribe
4 that—

5 “(i) help ensure the safety and sound-
6 ness of the security-based swap dealer or
7 major security-based swap participant; and

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

11 “(B) NON-BANK SECURITY-BASED SWAP
12 DEALERS AND MAJOR SECURITY-BASED SWAP
13 PARTICIPANTS.—Each registered security-based
14 swap dealer and major security-based swap par-
15 ticipant for which there is not a Prudential
16 Regulator shall meet such minimum capital re-
17 quirements and minimum initial and variation
18 margin requirements as the Commission shall
19 by rule or regulation prescribe that—

20 “(i) help ensure the safety and sound-
21 ness of the security-based swap dealer or
22 major security-based swap participant; and

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

1 “(2) RULES.—

2 “(A) BANK SECURITY-BASED SWAP DEAL-
3 ERS AND MAJOR SECURITY-BASED SWAP PAR-
4 TICIPANTS.—Not later than 180 days after the
5 date of enactment of the Over-the-Counter De-
6 rivatives Markets Act of 2009, the Prudential
7 Regulators, in consultation with the Commis-
8 sion and the Commodity Futures Trading Com-
9 mission, shall jointly adopt rules imposing cap-
10 ital and margin requirements under this sub-
11 section for security-based swap dealers and
12 major security-based swap participants, with re-
13 spect to their activities as a security-based swap
14 dealer or major security-based swap participant
15 for which there is a Prudential Regulator.

16 “(B) NON-BANK SECURITY-BASED SWAP
17 DEALERS AND MAJOR SECURITY-BASED SWAP
18 PARTICIPANTS.—Not later than 180 days after
19 the date of enactment of the Over-the-Counter
20 Derivatives Markets Act of 2009, the Commis-
21 sion shall adopt rules imposing capital and mar-
22 gin requirements under this subsection for secu-
23 rity-based swap dealers and major security-
24 based swap participants for which there is no
25 Prudential Regulator.

1 “(3) AUTHORITY.—Nothing in this section shall
2 limit the authority of the Commission to set capital
3 requirements for a broker or dealer registered in ac-
4 cordance with section 15 of this Act.

5 “(e) REPORTING AND RECORDKEEPING.—

6 “(1) IN GENERAL.—Each registered security-
7 based swap dealer and major security-based swap
8 participant—

9 “(A) shall make such reports as are pre-
10 scribed by the Commission by rule or regulation
11 regarding the transactions and positions and fi-
12 nancial condition of such person;

13 “(B) for which—

14 “(i) there is a Prudential Regulator
15 shall keep books and records of all activi-
16 ties related to its business as a security-
17 based swap dealer or major security-based
18 swap participant in such form and manner
19 and for such period as may be prescribed
20 by the Commission by rule or regulation;

21 “(ii) there is no Prudential Regulator
22 shall keep books and records in such form
23 and manner and for such period as may be
24 prescribed by the Commission by rule or
25 regulation; and

1 “(C) shall keep such books and records
2 open to inspection and examination by any rep-
3 resentative of the Commission.

4 “(2) RULES.—Not later than 1 year after the
5 date of enactment of the Over-the-Counter Deriva-
6 tives Markets Act of 2009, the Commission shall
7 adopt rules governing reporting and recordkeeping
8 for security-based swap dealers and major security-
9 based swap participants.

10 “(f) DAILY TRADING RECORDS.—

11 “(1) IN GENERAL.—Each registered security-
12 based swap dealer and major security-based swap
13 participant shall maintain daily trading records of
14 its security-based swaps and all related records (in-
15 cluding related transactions) and recorded commu-
16 nications including but not limited to electronic mail,
17 instant messages, and recordings of telephone calls,
18 for such period as may be prescribed by the Com-
19 mission by rule or regulation.

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

23 “(3) CUSTOMER RECORDS.—Each registered se-
24 curity-based swap dealer or major security-based
25 swap participant shall maintain daily trading records

1 for each customer or counterparty in such manner
2 and form as to be identifiable with each security-
3 based swap transaction.

4 “(4) AUDIT TRAIL.—Each registered security-
5 based swap dealer or major security-based swap par-
6 ticipant shall maintain a complete audit trail for
7 conducting comprehensive and accurate trade recon-
8 structions.

9 “(5) RULES.—Not later than 1 year after the
10 date of the enactment of the Over-the-Counter De-
11 rivatives Markets Act of 2009, the Commission shall
12 adopt rules governing daily trading records for secu-
13 rity-based swap dealers and major security-based
14 swap participants.

15 “(g) BUSINESS CONDUCT STANDARDS.—

16 “(1) IN GENERAL.—Each registered security-
17 based swap dealer and major security-based swap
18 participant shall conform with business conduct
19 standards as may be prescribed by the Commission
20 by rule or regulation addressing—

21 “(A) fraud, manipulation, and other abu-
22 sive practices involving security-based swaps
23 (including security-based swaps that are offered
24 but not entered into);

1 “(B) diligent supervision of its business as
2 a security-based swap dealer;

3 “(C) adherence to all applicable position
4 limits; and

5 “(D) such other matters as the Commis-
6 sion shall determine to be necessary or appro-
7 priate.

8 “(2) BUSINESS CONDUCT REQUIREMENTS.—
9 Business conduct requirements adopted by the Com-
10 mission shall—

11 “(A) establish the standard of care for a
12 security-based swap dealer or major security-
13 based swap participant to verify that any secu-
14 rity-based swap counterparty meets the eligi-
15 bility standards for an eligible contract partici-
16 pant;

17 “(B) require disclosure by the security-
18 based swap dealer or major security-based swap
19 participant to any counterparty to the security-
20 based swap (other than a security-based swap
21 dealer or major security-based swap partici-
22 pant) of:

23 “(i) information about the material
24 risks and characteristics of the security-
25 based swap;

1 “(ii) the source and amount of any
2 fees or other material remuneration that
3 the security-based swap dealer or major se-
4 curity-based swap participant would di-
5 rectly or indirectly expect to receive in con-
6 nection with the security-based swap; and

7 “(iii) any other material incentives or
8 conflicts of interest that the security-based
9 swap dealer or major security-based swap
10 participant may have in connection with
11 the security-based swap; and

12 “(C) establish such other standards and
13 requirements as the Commission may determine
14 are necessary or appropriate in the public inter-
15 est, for the protection of investors, or otherwise
16 in furtherance of the purposes of this title.

17 “(3) RULES.—The Commission shall prescribe
18 rules under this subsection governing business con-
19 duct standards for security-based swap dealers and
20 major security-based swap participants not later
21 than 1 year after the date of enactment of the Over-
22 the-Counter Derivatives Markets Act of 2009.

23 “(h) DOCUMENTATION AND BACK OFFICE STAND-
24 ARDS.—

1 “(1) IN GENERAL.—Each registered security-
2 based swap dealer and major security-based swap
3 participant shall conform with standards, as may be
4 prescribed by the Commission by rule or regulation,
5 addressing timely and accurate confirmation, proc-
6 essing, netting, documentation, and valuation of all
7 security-based swaps.

8 “(2) RULES.—Not later than 1 year after the
9 date of enactment of the Over-the-Counter Deriva-
10 tives Markets Act of 2009, the Commission and the
11 appropriate Federal banking agencies, shall adopt
12 rules governing documentation and back office
13 standards for security-based swap dealers and major
14 security-based swap participants.

15 “(i) DEALER RESPONSIBILITIES.—Each registered
16 security-based swap dealer and major security-based swap
17 participant at all times shall comply with the following re-
18 quirements:

19 “(1) MONITORING OF TRADING.—The security-
20 based swap dealer or major security-based swap par-
21 ticipant shall monitor its trading in security-based
22 swaps to prevent violations of applicable position
23 limits.

24 “(2) DISCLOSURE OF GENERAL INFORMA-
25 TION.—The security-based swap dealer or major se-

1 security-based swap participant shall disclose to the
2 Commission or to the Prudential Regulator for such
3 security-based swap dealer or major security-based
4 swap participant, as applicable, information con-
5 cerning—

6 “(A) terms and conditions of its security-
7 based swaps;

8 “(B) security-based swap trading oper-
9 ations, mechanisms, and practices;

10 “(C) financial integrity protections relating
11 to security-based swaps; and

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

14 “(3) ABILITY TO OBTAIN INFORMATION.—The
15 security-based swap dealer or major swap security-
16 based 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 such
23 security-based swap dealer or major security-
24 based swap participant, as applicable, upon re-
25 quest.

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

5 “(A) establish structural and institutional
6 safeguards to assure that the activities of any
7 person within the firm relating to research or
8 analysis of the price or market for any security
9 are separated by appropriate informational par-
10 titions within the firm from the review, pres-
11 sure, or oversight of those whose involvement in
12 trading or clearing activities might potentially
13 bias their judgment or supervision; and

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

16 “(5) ANTITRUST CONSIDERATIONS.—Unless
17 necessary or appropriate to achieve the purposes of
18 this Act, the security-based swap dealer or major se-
19 curity-based swap participant shall avoid—

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

23 “(B) imposing any material anticompeti-
24 tive burden on trading.

1 “(j) STATUTORY DISQUALIFICATION.—Except to the
2 extent otherwise specifically provided by rule, regulation,
3 or order of the Commission, it shall be unlawful for a secu-
4 rity-based swap dealer or a major security-based swap par-
5 ticipant to permit any person associated with a security-
6 based swap dealer or a major security-based swap partici-
7 pant who is subject to a statutory disqualification to effect
8 or be involved in effecting security-based swaps on behalf
9 of such security-based swap dealer or major security-based
10 swap participant, if such security-based swap dealer or
11 major security-based swap participant knew, or in the ex-
12 ercise of reasonable care should have known, of such stat-
13 utory disqualification.

14 “(k) ENFORCEMENT AND ADMINISTRATIVE PRO-
15 CEEDING AUTHORITY.—

16 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

17 “(A) SEC.—Except as provided in sub-
18 paragraph (B), the Commission shall have ex-
19 clusive authority to enforce the amendments
20 made by title II of the Over-the-Counter De-
21 rivatives Markets Act of 2009 with respect to
22 any person.

23 “(B) PRUDENTIAL REGULATORS.—The
24 Prudential Regulators shall have exclusive au-
25 thority to enforce the provisions of section

1 15F(d) and other prudential requirements of
2 this Act with respect to banks, and branches or
3 agencies of foreign banks that are security-
4 based swap dealers or major security-based
5 swap participants.

6 “(C) REFERRAL.—

7 “(i) VIOLATIONS OF NONPRUDENTIAL
8 REQUIREMENTS.—If the Prudential Regu-
9 lator for a security-based swap dealer or
10 major security-based swap participant has
11 cause to believe that such security-based
12 swap dealer or major security-based swap
13 participant may have engaged in conduct
14 that constitutes a violation of the non-
15 prudential requirements of section 15F or
16 rules adopted by the Commission there-
17 under, that Prudential Regulator may rec-
18 ommend in writing to the Commission that
19 the Commission initiate an enforcement
20 proceeding as authorized under this Act.
21 The recommendation shall be accompanied
22 by a written explanation of the concerns
23 giving rise to the recommendation.

24 “(ii) VIOLATIONS OF PRUDENTIAL RE-
25 QUIREMENTS.—If the Commission has

1 cause to believe that a securities-based
2 swap dealer or major securities-based swap
3 participant that has a Prudential Regu-
4 lator may have engaged in conduct that
5 constitute a violation of the prudential re-
6 quirements of section 15F(e) or rules
7 adopted thereunder, the Commission may
8 recommend in writing to the Prudential
9 Regulator that the Prudential Regulator
10 initiate an enforcement proceeding as au-
11 thorized under this Act. The recommenda-
12 tion shall be accompanied by a written ex-
13 planation of the concerns giving rise to the
14 recommendation.

15 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
16 AND HEARING.—The Commission, by order, shall
17 censure, place limitations on the activities, functions,
18 or operations of, or revoke the registration of any se-
19 curity-based swap dealer or major security-based
20 swap participant that has registered with the Com-
21 mission pursuant to subsection (b) if it finds, on the
22 record after notice and opportunity for hearing, that
23 such censure, placing of limitations, or revocation is
24 in the public interest and that such security-based
25 swap dealer or major security-based swap partici-

1 pant, or any person associated with such security-
2 based swap dealer or major security-based swap par-
3 ticipant effecting or involved in effecting trans-
4 actions in security-based swaps on behalf of such se-
5 curity-based swap dealer or major security-based
6 swap participant, whether prior or subsequent to be-
7 coming so associated—

8 “(A) has committed or omitted any act, or
9 is subject to an order or finding, enumerated in
10 subparagraph (A), (D), or (E) of paragraph (4)
11 of section 15(b);

12 “(B) has been convicted of any offense
13 specified in subparagraph (B) of such para-
14 graph (4) within 10 years of the commencement
15 of the proceedings under this subsection;

16 “(C) is enjoined from any action, conduct,
17 or practice specified in subparagraph (C) of
18 such paragraph (4);

19 “(D) is subject to an order or a final order
20 specified in subparagraph (F) or (H), respec-
21 tively, of such paragraph (4); or

22 “(E) has been found by a foreign financial
23 regulatory authority to have committed or omit-
24 ted any act, or violated any foreign statute or

1 regulation, enumerated in subparagraph (G) of
2 such paragraph (4).

3 “(3) ASSOCIATED PERSONS.—With respect to
4 any person who is associated, who is seeking to be-
5 come associated, or, at the time of the alleged mis-
6 conduct, who was associated or was seeking to be-
7 come associated with a security-based swap dealer or
8 major security-based swap participant for the pur-
9 pose of effecting or being involved in effecting secu-
10 rity-based swaps on behalf of such security-based
11 swap dealer or major security-based swap partici-
12 pant, the Commission, by order, shall censure, place
13 limitations on the activities or functions of such per-
14 son, or suspend for a period not exceeding 12
15 months, or bar such person from being associated
16 with a security-based swap dealer or major security-
17 based swap participant, if the Commission finds, on
18 the record after notice and opportunity for a hear-
19 ing, that such censure, placing of limitations, sus-
20 pension, or bar is in the public interest and that
21 such person—

22 “(A) has committed or omitted any act, or
23 is subject to an order or finding, enumerated in
24 subparagraph (A), (D), or (E) of paragraph (4)
25 of section 15(b);

1 “(B) has been convicted of any offense
2 specified in subparagraph (B) of such para-
3 graph (4) within 10 years of the commencement
4 of the proceedings under this subsection;

5 “(C) is enjoined from any action, conduct,
6 or practice specified in subparagraph (C) of
7 such paragraph (4);

8 “(D) is subject to an order or a final order
9 specified in subparagraph (F) or (H), respec-
10 tively, of such paragraph (4); or

11 “(E) has been found by a foreign financial
12 regulatory authority to have committed or omit-
13 ted any act, or violated any foreign statute or
14 regulation, enumerated in subparagraph (G) of
15 such paragraph (4).

16 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
17 ful—

18 “(A) for any person as to whom an order
19 under paragraph (3) is in effect, without the
20 consent of the Commission, willfully to become,
21 or to be, associated with a security-based swap
22 dealer or major security-based swap participant
23 in contravention of such order; or

24 “(B) for any security-based swap dealer or
25 major security-based swap participant to permit

1 such a person, without the consent of the Com-
2 mission, to become or remain a person associ-
3 ated with the security-based swap dealer or
4 major security-based swap participant in con-
5 travention of such order, if such security-based
6 swap dealer or major security-based swap par-
7 ticipant knew, or in the exercise of reasonable
8 care should have known, of such order.”.

9 (f) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
10 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)
11 through (3) of section 9(b) of the Securities Exchange Act
12 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
13 as follows:

14 “(1) any transaction in connection with any se-
15 curity whereby any party to such transaction ac-
16 quires (A) any put, call, straddle, or other option or
17 privilege of buying the security from or selling the
18 security to another without being bound to do so;
19 (B) any security futures product on the security; or
20 (C) any security-based swap involving the security or
21 the issuer of the security; or

22 “(2) any transaction in connection with any se-
23 curity with relation to which he has, directly or indi-
24 rectly, any interest in any (A) such put, call, strad-

1 dle, option, or privilege; (B) such security futures
2 product; or (C) such security-based swap; or
3 “(3) any transaction in any security for the ac-
4 count of any person who he has reason to believe
5 has, and who actually has, directly or indirectly, any
6 interest in any (A) such put, call, straddle, option,
7 or privilege; (B) such security futures product with
8 relation to such security; or (C) any security-based
9 swap involving such security or the issuer of such se-
10 curity.”.

11 (g) RULEMAKING AUTHORITY TO PREVENT FRAUD,
12 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
13 BASED SWAPS.—Section 9 of the Securities Exchange Act
14 of 1934 (15 U.S.C. 78i) is amended by adding at the end
15 the following:

16 “(i) It shall be unlawful for any person, directly or
17 indirectly, by the use of any means or instrumentality of
18 interstate commerce or of the mails, or of any facility of
19 any national securities exchange, to effect any transaction
20 in, or to induce or attempt to induce the purchase or sale
21 of, any security-based swap, in connection with which such
22 person engages in any fraudulent, deceptive, or manipula-
23 tive act or practice, makes any fictitious quotation, or en-
24 gages in any transaction, practice, or course of business
25 which operates as a fraud or deceit upon any person. The

1 Commission shall, for the purposes of this paragraph, by
2 rules and regulations define, and prescribe means reason-
3 ably designed to prevent, such transactions, acts, prac-
4 tices, and courses of business as are fraudulent, deceptive,
5 or manipulative, and such quotations as are fictitious.”.

6 (h) POSITION LIMITS AND POSITION ACCOUNT-
7 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
8 Exchange Act of 1934 is amended by inserting after sec-
9 tion 10A (15 U.S.C. 78j–1) the following new section:

10 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
11 **ABILITY FOR SECURITY-BASED SWAPS AND**
12 **LARGE TRADER REPORTING.**

13 “(a) POSITION LIMITS.—As a means reasonably de-
14 signed to prevent fraud and manipulation, the Commission
15 may, by rule or regulation, as necessary or appropriate
16 in the public interest or for the protection of investors,
17 establish limits (including related hedge exemption provi-
18 sions) on the size of positions in any security-based swap
19 that may be held by any person. In establishing such lim-
20 its, the Commission may require any person to aggregate
21 positions in—

22 “(1) any security-based swap and any security
23 or loan or group or index of securities or loans on
24 which such security-based swap is based, which such
25 security-based swap references, or to which such se-

1 security-based swap is related as described in section
2 (a)(3) of the Over-the-Counter Derivatives Markets
3 Act of 2009, and any other instrument relating to
4 such security or loan or group or index of securities
5 or loans; or

6 “(2) any security-based swap and (A) any secu-
7 rity or group or index of securities, the price, yield,
8 value, or volatility of which, or of which any interest
9 therein, is the basis for a material term of such se-
10 curity-based swap as described in section 3(a)(76) of
11 the Securities Exchange Act of 1934 and (B) any
12 security-based swap and any other instrument relat-
13 ing to the same security or group or index of securi-
14 ties.

15 “(b) EXEMPTIONS.—The Commission, by rule, regu-
16 lation, or order, may conditionally or unconditionally ex-
17 empt any person or class of persons, any security-based
18 swap or class of security-based swaps, or any transaction
19 or class of transactions from any requirement it may es-
20 tablish under this section with respect to position limits.

21 “(c) SRO RULES.—

22 “(1) IN GENERAL.—As a means reasonably de-
23 signed to prevent fraud or manipulation, the Com-
24 mission, by rule, regulation, or order, as necessary
25 or appropriate in the public interest, for the protec-

1 tion of investors, or otherwise in furtherance of the
2 purposes of this title, may direct a self-regulatory
3 organization—

4 “(A) to adopt rules regarding the size of
5 positions in any security-based swap that may
6 be held by—

7 “(i) any member of such self-regu-
8 latory organization; or

9 “(ii) any person for whom a member
10 of such self-regulatory organization effects
11 transactions in such security-based swap;
12 and

13 “(B) to adopt rules reasonably designed to
14 ensure compliance with requirements prescribed
15 by the Commission under paragraph (c)(1)(A).

16 “(2) REQUIREMENT TO AGGREGATE POSI-
17 TIONS.—In establishing such limits, the self-regu-
18 latory organization may require such member or per-
19 son to aggregate positions in—

20 “(A) any security-based swap and any se-
21 curity or loan or group or index of securities or
22 loans on which such security-based swap is
23 based, which such security-based swap ref-
24 erences, or to which such security-based swap is
25 related as described in section 3(a) of the Over-

1 the-Counter Derivatives Markets Act of 2009,
2 and any other instrument relating to such secu-
3 rity or loan or group or index of securities or
4 loans; or

5 “(B)(i) any security-based swap; and

6 “(ii) any security-based swap and any
7 other instrument relating to the same security
8 or group or index of securities.

9 “(d) LARGE TRADER REPORTING.—The Commis-
10 sion, by rule or regulation, may require any person that
11 effects transactions for such person’s own account or the
12 account of others in any securities-based swap and any
13 security or loan or group or index of securities or loans
14 as set forth in paragraphs (a)(1) and (2) under this sec-
15 tion to report such information as the Commission may
16 prescribe regarding any position or positions in any secu-
17 rity-based swap and any security or loan or group or index
18 of securities or loans and any other instrument relating
19 to such security or loan or group or index of securities
20 or loans as set forth in paragraphs (a)(1) and (2) under
21 this section.”.

22 (i) PUBLIC REPORTING AND REPOSITORIES FOR SE-
23 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-
24 change Act of 1934 (15 U.S.C. 78m) is amended by add-
25 ing at the end the following:

1 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
2 BASED SWAP DATA.—

3 “(1) IN GENERAL.—The Commission, or a per-
4 son designated by the Commission pursuant to para-
5 graph (2), shall make available to the public, in a
6 manner that does not disclose the business trans-
7 actions and market positions of any person, aggre-
8 gate data on security-based swap trading volumes
9 and positions from the sources set forth in para-
10 graph (3).

11 “(2) DESIGNEE OF THE COMMISSION.—The
12 Commission may designate a clearing agency or a
13 security-based swap repository to carry out the pub-
14 lic reporting described in paragraph (1).

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

18 “(A) clearing agencies pursuant to section
19 3A;

20 “(B) security-based swap repositories pur-
21 suant to subsection (n); and

22 “(C) reports received by the Commission
23 pursuant to section 13A.

24 “(n) SECURITY-BASED SWAP REPOSITORIES.—

25 “(1) REGISTRATION REQUIREMENT.—

1 “(A) IN GENERAL.—It shall be unlawful
2 for a security-based swap repository, unless reg-
3 istered with the Commission, directly or indi-
4 rectly to make use of the mails or any means
5 or instrumentality of interstate commerce to
6 perform the functions of a security-based swap
7 repository.

8 “(B) INSPECTION AND EXAMINATION.—
9 Registered security-based swap repositories
10 shall be subject to inspection and examination
11 by any representatives of the Commission.

12 “(2) STANDARD SETTING.—

13 “(A) DATA IDENTIFICATION.—The Com-
14 mission shall prescribe standards that specify
15 the data elements for each security-based swap
16 that shall be collected and maintained by each
17 security-based swap repository.

18 “(B) DATA COLLECTION AND MAINTEN-
19 NANCE.—The Commission shall prescribe data
20 collection and data maintenance standards for
21 security-based swap repositories.

22 “(C) COMPARABILITY.—The standards
23 prescribed by the Commission under this sub-
24 section shall be comparable to the data stand-

1 ards imposed by the Commission on clearing
2 agencies that clear security-based swaps.

3 “(3) DUTIES.—A security-based swap reposi-
4 tory shall—

5 “(A) accept data prescribed by the Com-
6 mission for each security-based swap under this
7 paragraph (2);

8 “(B) maintain such data in such form and
9 manner and for such period as may be required
10 by the Commission;

11 “(C) provide to the Commission, or its des-
12 ignee, such information as is required by, and
13 in a form and at a frequency to be determined
14 by, the Commission, in order to comply with the
15 public reporting requirements contained in sub-
16 section (m); and

17 “(D) make available, on a confidential
18 basis, all data obtained by the security-based
19 swap repository, including individual
20 counterparty trade and position data, to the
21 Commission, the appropriate Federal banking
22 agencies, the Commodity Futures Trading
23 Commission, [the Financial Services Oversight
24 Council], and the Department of Justice or to
25 other persons the Commission deems appro-

1 prios, including foreign financial supervisors
2 (including foreign futures authorities), foreign
3 central banks, and foreign ministries.

4 “(4) RULES.—Not later than 180 days after
5 the effective date of the Over-the-Counter Deriva-
6 tives Markets Act of 2009, the Commission shall
7 adopt rules governing persons that are registered
8 under this section, including rules that specify the
9 data elements that shall be collected and maintained.

10 “(5) EXEMPTIONS.—The Commission may ex-
11 empt, conditionally or unconditionally, a security-
12 based swap repository from the requirements of this
13 section if the Commission finds that such security-
14 based swap repository is subject to comparable, com-
15 prehensive supervision or regulation on a consoli-
16 dated basis by the Commodity Futures Trading
17 Commission, a Prudential Regulator or the appro-
18 priate governmental authorities in the organization’s
19 home country.”.

20 **SEC. 204. REPORTING AND RECORDKEEPING.**

21 (a) The Securities Exchange Act of 1934 (15 U.S.C.
22 78a, et seq.) is amended by inserting after section 13 the
23 following section:

1 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
2 **TAIN SECURITY-BASED SWAPS.**

3 “(a) IN GENERAL.—Any person who enters into a se-
4 curity-based swap and—

5 “(1) did not clear the security-based swap in
6 accordance with section 3A; and

7 “(2) did not have data regarding the security-
8 based swap accepted by a security-based swap repos-
9 itory in accordance with rules adopted by the Com-
10 mission under section 13(n),
11 shall meet the requirements in subsection (b).

12 “(b) REPORTS.—Any person described in subsection
13 (a) shall—

14 “(1) make such reports in such form and man-
15 ner and for such period as the Commission shall pre-
16 scribe by rule or regulation regarding the security-
17 based swaps held by the person; and

18 “(2) keep books and records pertaining to the
19 security-based swaps held by the person in such
20 form and manner and for such period as may be re-
21 quired by the Commission, which books and records
22 shall be open to inspection by any representative of
23 the Commission, an appropriate Federal banking
24 agency, the Commodity Futures Trading Commis-
25 sion, the **【Financial Services Oversight Council】**,
26 and the Department of Justice.

1 “(c) IDENTICAL DATA.—In adopting rules under this
2 section, the Commission shall require persons described in
3 subsection (a) to report the same or more comprehensive
4 data than the Commission requires security-based swap
5 repositories to collect under subsection (n).”.

6 (b) BENEFICIAL OWNERSHIP REPORTING.—

7 (1) Section 13(d)(1) of the Securities Exchange
8 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
9 inserting “or otherwise becomes or is deemed to be-
10 come a beneficial owner of any of the foregoing upon
11 the purchase or sale of a security-based swap or
12 other derivative instrument that the Commission
13 may define by rule, and” after “Alaska Native
14 Claims Settlement Act,”; and

15 (2) Section 13(g)(1) of the Securities Exchange
16 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by
17 inserting “or otherwise becomes or is deemed to be-
18 come a beneficial owner of any security of a class de-
19 scribed in subsection (d)(1) upon the purchase or
20 sale of a security-based swap or other derivative in-
21 strument that the Commission may define by rule”
22 after “subsection (d)(1) of this section”.

23 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
24 AGERS.—Section 13(f)(1) of the Securities Exchange Act
25 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting

1 “or otherwise becomes or is deemed to become a beneficial
2 owner of any security of a class described in subsection
3 (d)(1) upon the purchase or sale of a security-based swap
4 or other derivative instrument that the Commission may
5 define by rule,” after “subsection (d)(1) of this section”.

6 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
7 Section 15(b)(4) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o(b)(4)) is amended—

9 (1) in subparagraph (C), by adding “security-
10 based swap dealer, major security-based swap partic-
11 ipant,” after “government securities dealer,”; and

12 (2) in subparagraph (F), by adding “, or secu-
13 rity-based swap dealer, or a major security-based
14 swap participant” after “or dealer”.

15 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Sec-
16 tion 16(f) of the Securities Exchange Act of 1934 (15
17 U.S.C. 78p) is amended by inserting “or security-based
18 swaps” after “security futures products”.

19 **SEC. 205. STATE GAMING AND BUCKET SHOP LAWS.**

20 Section 28(a) of the Securities Exchange Act of 1934
21 (15 U.S.C. 78bb(a)) is amended to read as follows:

22 “(a) Except as provided in subsection (f), the rights
23 and remedies provided by this title shall be in addition
24 to any and all other rights and remedies that may exist
25 at law or in equity; but no person permitted to maintain

1 a suit for damages under the provisions of this title shall
2 recover, through satisfaction of judgment in one or more
3 actions, a total amount in excess of his actual damages
4 on account of the act complained of. Except as otherwise
5 specifically provided in this title, nothing in this title shall
6 affect the jurisdiction of the securities commission (or any
7 agency or officer performing like functions) of any State
8 over any security or any person insofar as it does not con-
9 flict with the provisions of this title or the rules and regu-
10 lations thereunder. No State law which prohibits or regu-
11 lates the making or promoting of wagering or gaming con-
12 tracts, or the operation of 'bucket shops' or other similar
13 or related activities, shall invalidate (1) any put, call,
14 straddle, option, privilege, or other security subject to this
15 title (except any security that has a pari-mutuel payout
16 or otherwise is determined by the Commission, acting by
17 rule, regulation, or order, to be appropriately subject to
18 such laws), or apply to any activity which is incidental or
19 related to the offer, purchase, sale, exercise, settlement,
20 or closeout of any such security, (2) any security-based
21 swap between eligible contract participants, or (3) any se-
22 curity-based swap effected on a national securities ex-
23 change registered pursuant to section 6(b). No provision
24 of State law regarding the offer, sale, or distribution of
25 securities shall apply to any transaction in a security-

1 based swap or a security futures product, except that this
2 sentence shall not be construed as limiting any State anti-
3 fraud law of general applicability.”.

4 **SEC. 206. AMENDMENTS TO THE SECURITIES ACT OF 1933;**
5 **TREATMENT OF SECURITY-BASED SWAPS.**

6 (a) DEFINITIONS.—Section 2(a) of the Securities Act
7 of 1933 (15 U.S.C. 77b(a)) is amended—

8 (1) in paragraph (1), by inserting “security-
9 based swap,” after “security future,”;

10 (2) in paragraph (3) by adding at the end the
11 following: “Any offer or sale of a security-based
12 swap by or on behalf of the issuer of the securities
13 upon which such security-based swap is based or is
14 referenced, an affiliate of the issuer, or an under-
15 writer, shall constitute a contract for sale of, sale of,
16 offer for sale, or offer to sell such securities.”; and

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

18 “(17) The terms ‘swap’ and ‘security-based
19 swap’ have the same meanings as provided in sec-
20 tions 1a(35) of the Commodity Exchange Act (7
21 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-
22 ties Exchange Act of 1934.

23 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
24 rity-based swap shall be deemed to mean the execu-
25 tion, termination (prior to its scheduled maturity

1 date), assignment, exchange, or similar transfer or
2 conveyance of, or extinguishing of rights or obliga-
3 tions under, a security-based swap, as the context
4 may require.”.

5 (b) REGISTRATION OF SECURITY-BASED SWAPS.—
6 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
7 is amended by adding at the end the following:

8 “(d) Notwithstanding the provisions of section 3 or
9 section 4, unless a registration statement meeting the re-
10 quirements of subsection (a) of section 10 is in effect as
11 to a security-based swap, it shall be unlawful for any per-
12 son, directly or indirectly, to make use of any means or
13 instruments of transportation or communication in inter-
14 state commerce or of the mails to offer to sell, offer to
15 buy or purchase or sell a security-based swap to any per-
16 son who is not an eligible contract participant as defined
17 in section 1a(13) of the Commodity Exchange Act (7
18 U.S.C. 1a(13)).”.

19 **SEC. 207. OTHER AUTHORITY.**

20 Unless otherwise provided by its terms, this title does
21 not divest any appropriate Federal banking agency, the
22 Commission, the Commodity Futures Trading Commis-
23 sion, or other Federal or State agency, of any authority
24 derived from any other applicable law.

1 **SEC. 208. JURISDICTION.**

2 Section 36 of the Securities Exchange Act of 1934
3 (15 U.S.C. 78mm) is amended by adding at the end the
4 following new subsection:

5 “(c) DERIVATIVES.—The Commission shall not grant
6 exemptions from the security-based swap provisions of the
7 Over-the-Counter Derivatives Markets Act of 2009, except
8 as expressly authorized under the provisions of that Act.”.

9 **SEC. 209. EFFECTIVE DATE.**

10 This title is effective 180 days after the date of enact-
11 ment.

12 **TITLE K—IMPROVED FINANCIAL**
13 **AND COMMODITY MARKETS**
14 **OVERSIGHT AND ACCOUNT-**
15 **ABILITY**

16 **SEC. 301. ELEVATION OF CERTAIN INSPECTORS GENERAL**
17 **TO APPOINTMENT PURSUANT TO SECTION 3**
18 **OF THE INSPECTOR GENERAL ACT OF 1978.**

19 (a) INCLUSION IN CERTAIN DEFINITIONS.—Section
20 12 of the Inspector General Act of 1978 (5 U.S.C. App.)
21 is amended—

22 (1) in paragraph (1), by striking “or the Fed-
23 eral Cochairpersons of the Commissions established
24 under section 15301 of title 40, United States
25 Code;” and inserting “the Federal Cochairpersons of
26 the Commissions established under section 15301 of

1 title 40, United States Code; the Chairman of the
2 Board of Governors of the Federal Reserve System;
3 the Chairman of the Commodity Futures Trading
4 Commission; the Chairman of the National Credit
5 Union Administration; the Director of the Pension
6 Benefit Guaranty Corporation; or the Chairman of
7 the Securities and Exchange Commission;” and

8 (2) in paragraph (2), by striking “or the Com-
9 missions established under section 15301 of title 40,
10 United States Code,” and inserting “the Commis-
11 sions established under section 15301 of title 40,
12 United States Code, the Board of Governors of the
13 Federal Reserve System, the Commodity Futures
14 Trading Commission, the National Credit Union Ad-
15 ministration, the Pension Benefit Guaranty Corpora-
16 tion, or the Securities and Exchange Commission,”.

17 (b) EXCLUSION FROM DEFINITION OF DESIGNATED
18 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector
19 General Act of 1978 (5 U.S.C. App.) is amended—

20 (1) by striking “the Board of Governors of the
21 Federal Reserve System,”;

22 (2) by striking “the Commodity Futures Trad-
23 ing Commission,”;

24 (3) by striking “the National Credit Union Ad-
25 ministration,”; and

1 (4) by striking “the Pension Benefit Guaranty
2 Corporation, the Securities and Exchange Commis-
3 sion,”.

4 **SEC. 302. CONTINUATION OF PROVISIONS RELATING TO**
5 **PERSONNEL.**

6 (a) IN GENERAL.—The Inspector General Act of
7 1978 (5 U.S.C. App.) is amended by inserting after sec-
8 tion 8L the following:

9 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
10 **TABLISHMENTS.**

11 “(a) DEFINITION.—For purposes of this section, the
12 term ‘covered establishment’ means the Board of Gov-
13 ernors of the Federal Reserve System, the Commodity Fu-
14 tures Trading Commission, the National Credit Union Ad-
15 ministration, the Pension Benefit Guaranty Corporation,
16 and the Securities and Exchange Commission.

17 “(b) PROVISIONS RELATING TO ALL COVERED ES-
18 TABLISHMENTS.—

19 “(1) PROVISIONS RELATING TO INSPECTORS
20 GENERAL.—In the case of the Inspector General of
21 a covered establishment, subsections (b) and (c) of
22 section 4 of the Inspector General Reform Act of
23 2008 (Public Law 110–409) shall apply in the same
24 manner as if such covered establishment were a des-
25 ignated Federal entity under section 8G. An Inspec-

1 tor General who is subject to the preceding sentence
2 shall not be subject to section 3(e).

3 “(2) PROVISIONS RELATING TO OTHER PER-
4 SONNEL.—Notwithstanding paragraphs (7) and (8)
5 of section 6(a), the Inspector General of a covered
6 establishment may select, appoint, and employ such
7 officers and employees as may be necessary for car-
8 rying out the functions, powers, and duties of the
9 Office of Inspector General of such establishment
10 and to obtain the temporary or intermittent services
11 of experts or consultants or an organization of ex-
12 perts or consultants, subject to the applicable laws
13 and regulations that govern such selections, appoint-
14 ments, and employment, and the obtaining of such
15 services, within such establishment.

16 “(c) PROVISION RELATING TO THE BOARD OF GOV-
17 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-
18 visions of subsection (a) of section 8D (other than the pro-
19 visions of subparagraphs (A), (B), (C), and (E) of para-
20 graph (1) of such subsection (a)) shall apply to the Inspec-
21 tor General of the Board of Governors of the Federal Re-
22 serve System and the Chairman of the Board of Governors
23 of the Federal Reserve System in the same manner as
24 such provisions apply to the Inspector General of the De-

1 partment of the Treasury and the Secretary of the Treas-
2 ury, respectively.”.

3 (b) CONFORMING AMENDMENT.—Paragraph (3) of
4 section 8G(g) of the Inspector General Act of 1978 (5
5 U.S.C. App.) is repealed.

6 **SEC. 303. SUBPOENA AUTHORITY OF CERTAIN INSPECTORS**

7 **GENERAL.**

8 The Inspector General of the Board of Governors of
9 the Federal Reserve System, the Commodity Futures
10 Trading Commission, the National Credit Union Adminis-
11 tration, the Pension Benefit Guaranty Corporation, or the
12 Securities and Exchange Commission, in carrying out the
13 provisions of the Inspector General Act of 1978 (5 U.S.C.
14 App.), is authorized to require by subpoena, from any offi-
15 cer or employee of a contractor or grantee of the establish-
16 ment, any officer or employee of a subcontractor or sub-
17 grantee of such a contractor or grantee, or any person
18 or entity regulated by the establishment, any records and
19 testimony necessary in the performance of functions as-
20 signed to the Inspector General under such Act. Any such
21 subpoena, in the case of contumacy or refusal to obey,
22 shall be enforceable by order of any appropriate United
23 States district court.

1 **SEC. 304. CORRECTIVE RESPONSES BY HEADS OF CERTAIN**
2 **ESTABLISHMENTS TO DEFICIENCIES IDENTI-**
3 **FIED 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. 305. EFFECTIVE DATE; TRANSITION RULE.**

17 (a) **EFFECTIVE DATE.**—This title and the amend-
18 ments made by this title shall take effect 30 days after
19 the date of the enactment of this title.

20 (b) **TRANSITION RULE.**—An individual serving as In-
21 specter 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

1 title pursuant to an appointment made under section 8G
2 of the Inspector General Act of 1978 (5 U.S.C. 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 title, applied with respect to the Inspector Gen-
16 eral of the Board of Governors of the Federal Re-
17 serve System, the Commodity Futures Trading Com-
18 mission, the National Credit Union Administration,
19 the Pension Benefit Guaranty Corporation, or the
20 Securities and Exchange Commission, as the case
21 may be, and suffer no reduction in pay.

