

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

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

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

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

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

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

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

8 (a) CONSULTATION.—

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

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

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

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

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

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

25 (b) LIMITATION.—

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

6 (A) security-based swaps; or

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

9 (i) security-based swap dealers;

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

12 (iii) security-based swap repositories;

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

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

18 (vi) swap execution facilities.

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

24 (A) swaps; or

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

3 (i) swap dealers;

4 (ii) major swap participants;

5 (iii) swap repositories;

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

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

10 (vi) swap execution facilities.

11 (c) OBJECTION TO COMMISSION REGULATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 3005. STUDIES.**

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

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

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

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

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

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

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

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

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

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

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

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

3 (D) systemic risk regulators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **SEC. 3009. MEMORANDUM.**

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

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

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

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

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

4 (2) in paragraph (29)—

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

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

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

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

13 “(F) a swap repository; and”;

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

15 “(35) SWAP.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(I) based on a security; and

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

15 “(ix) any foreign exchange forward;

16 “(x) any foreign exchange swap;

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

24 “(xii) any security-based swap.

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

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

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

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

3 “(ii) SCOPE OF AUTHORITY.—

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

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

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

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

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

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

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

20 “(38) SWAP DEALER.—

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

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

25 “(ii) makes a market in swaps;

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

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

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

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

19 “(39) MAJOR SWAP PARTICIPANT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(i) a national bank; or

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(B) a swap.”

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

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

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

17 **SEC. 3102. JURISDICTION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(ii) a swap; or”.

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

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

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

3 “(A) a swap; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(j) CLEARING REQUIREMENT.—

5 “(1) IN GENERAL.—

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

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

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

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

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

3 “(2) COMMISSION REVIEW.—

4 “(A) COMMISSION-INITIATED REVIEW.—

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

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

15 “(B) SWAP SUBMISSIONS.—

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

23 “(ii) The Commission shall—

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

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

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

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

22 “(D) DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

1 “(3) STAY OF CLEARING REQUIREMENT.—

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

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

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

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

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

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

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

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

20 “(5) REQUIRED REPORTING.—

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

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

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

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

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

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

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

23 or

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

4 “(7) CLEARING TRANSITION RULES.—

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

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

15 “(8) EXCEPTIONS.—

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

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

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

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

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

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

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

15 “(k) EXECUTION TRANSPARENCY.—

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

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

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

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

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

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

1 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

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

5 “(a) REGISTRATION REQUIREMENT.—

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

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

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

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

24 “(B) a swap.

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

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

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

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

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

5 “(h) EXEMPTIONS.—

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

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

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

3 “(i) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

11 “(B) shall—

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

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

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

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

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

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

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

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

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

15 “(B) FINANCIAL RESOURCES.—

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

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

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

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

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

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

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

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

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

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

13 “(D) RISK MANAGEMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(F) TREATMENT OF FUNDS.—

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

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

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

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

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

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

1 to continue meeting the obligations of the
2 organization.

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

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

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

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

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

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

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

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

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

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

24 “(L) PUBLIC INFORMATION.—

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

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

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

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

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

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

1 the financial resource package of the
2 organization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(j) REPORTING.—

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

25 The Commission shall share the information, upon

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **“SEC. 21. SWAP REPOSITORIES.**

14 “(a) REGISTRATION REQUIREMENT.—

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

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

24 “(b) STANDARD SETTING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 shall meet the requirements in subsection (b).

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

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

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

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

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

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

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

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

16 “(a) REGISTRATION.—

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

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

24 “(b) REQUIREMENTS.—

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

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

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

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

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

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

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

19 “(c) RULES.—

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

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

9 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

10 “(1) IN GENERAL.—

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

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

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

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

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

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

15 “(2) RULES.—

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

1 swap participant for which there is a Prudential
2 Regulator

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

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

17 “(e) REPORTING AND RECORDKEEPING.—

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

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

24 “(B) for which—

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

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

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

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

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

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

3 “(f) DAILY TRADING RECORDS.—

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

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

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

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

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

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

5 “(g) BUSINESS CONDUCT STANDARDS.—

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

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

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

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

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

20 “(2) BUSINESS CONDUCT REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

7 “(h) DOCUMENTATION STANDARDS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(b) REQUIREMENTS FOR TRADING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(13) FINANCIAL RESOURCES.—

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

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

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

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

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

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

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

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

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

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

15 “(ii) shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(2) COMPLIANCE WITH RULES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(9) EXECUTION OF TRANSACTIONS.—

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

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

18 “(i) transfer trades or office trades;

19 “(ii) an exchange of—

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

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

24 “(III) futures for swaps; or

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

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

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

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

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

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

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

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

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

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

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

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

15 **SEC. 3112. MARGIN.**

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

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

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

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

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

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

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

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

12 (1) inserting “(1)” after “(a)”;

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

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

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

1 (5) inserting at the end the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 and

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

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

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

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

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

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

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

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

21 “(e) FOREIGN BOARDS OF TRADE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 stitutes a violation of the prudential requirements of sec-
2 tion 4s or rules adopted thereunder, the Commission may
3 recommend in writing to the Prudential Regulator that
4 the Prudential Regulator initiate an enforcement pro-
5 ceeding as authorized under this Act. The recommenda-
6 tion shall be accompanied by a written explanation of the
7 concerns given rise to the recommendation.”.

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

10 “(3) DISRUPTIVE PRACTICES.—It shall be un-
11 lawful for any person to engage in any trading or
12 practice on or subject to the rules of a registered en-
13 tity that—

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

18 “(B) is, is of the character of, or is com-
19 monly known to the trade as ‘marking the
20 close’ (bidding or offering during or near the
21 market’s closing period with the intent to influ-
22 ence the settlement price);

23 “(C) is, is of the character of, or is com-
24 monly known to the trade as ‘spoofing’ (bidding

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

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

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

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

13 **SEC. 3119. ENFORCEMENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(II) any security;

13 “(III) a contract of sale that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **SEC. 3124. ANTITRUST.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (5) in paragraph (39)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 "(68) SECURITY-BASED SWAP.—

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

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

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

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

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

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

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

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

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

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

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

12 “(71) SECURITY-BASED SWAP DEALER.—

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

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

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

19 “(iii) regularly engages in the pur-
20 chase of security-based swaps and their re-
21 sale to customers in the ordinary course of
22 a business; or

23 “(iv) engages in any activity causing
24 it to be commonly known in the trade as

1 a dealer or market maker in security-based
2 swaps.

3 “(B) DESIGNATION BY TYPE OR CLASS.—
4 A person may be designated a security-based
5 swap dealer for a single type or single class or
6 category of security-based swap and considered
7 not a security-based swap dealer for other
8 types, classes, or categories of security-based
9 swaps.

10 “(C) DE MINIMUS EXCEPTION.—The Com-
11 mission shall make a determination to exempt
12 from designation as a security-based swap deal-
13 er an entity that engages in a de minimus
14 amount of security-based swap dealing in con-
15 nection with transactions with or on the behalf
16 of its customers.

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

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

23 “(74) PRUDENTIAL REGULATOR.—The term
24 ‘Prudential Regulator’ means—

1 “(A) the Board in the case of a swap deal-
2 er, major swap participant, security-based swap
3 dealer or major security-based swap participant
4 that is—

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

7 “(ii) a State-chartered branch or
8 agency of a foreign bank;

9 “(B) the Office of the Comptroller of the
10 Currency in the case of a swap dealer, major
11 swap participant, security-based swap dealer or
12 major security-based swap participant that is—

13 “(i) a national bank; or

14 “(ii) a federally chartered branch or
15 agency of a foreign bank; and

16 “(C) the Federal Deposit Insurance Cor-
17 poration in the case of a swap dealer, major
18 swap participant, security-based swap dealer or
19 major security-based swap participant that is a
20 state-chartered bank that is not a member of
21 the Federal Reserve System.

22 “(75) SWAP DEALER.—The term ‘swap dealer’
23 has the same meaning as in section 1a(38) of the
24 Commodity Exchange Act (7 U.S.C. 1a(38)).

25 “(76) SECURITY-BASED SWAP AGREEMENT.—

1 “(A) IN GENERAL.—For purposes of sec-
2 tions 10, 16, 20, and 21A of this Act, and sec-
3 tion 17 of the Securities Act of 1933 (15
4 U.S.C. 77q), the term ‘security-based swap
5 agreement’ means a swap agreement as defined
6 in section 206A of the Gramm-Leach-Bliley Act
7 (15 U.S.C. 78c note) of which a material term
8 is based on the price, yield, value, or volatility
9 of any security or any group or index of securi-
10 ties, or any interest therein.

11 “(B) EXCLUSIONS.—The term ‘security-
12 based swap agreement’ does not include any se-
13 curity-based swap.

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

21 “(77) SWAP EXECUTION FACILITY.—The term
22 ‘swap execution facility’ means a person or entity
23 that facilitates the execution or trading of security-
24 based swaps between two persons through any
25 means of interstate commerce, but which is not a

1 national securities exchange, including any electronic
2 trade execution or voice brokerage facility.”’”’.

3 (b) **AUTHORITY TO FURTHER DEFINE TERMS.**—The
4 Securities and Exchange Commission may adopt a rule
5 further defining the terms “security-based swap”, “secu-
6 rity-based swap dealer”, “major security-based swap par-
7 ticipant”, and “eligible contract participant” with regard
8 to security-based swaps (as such terms are defined in the
9 amendments made by subsection (a)) for the purpose of
10 including transactions and entities that have been struc-
11 tured to evade this title.

12 **SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF**
13 **SECURITY-BASED SWAPS.**

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

16 (b) **CONFORMING AMENDMENTS TO THE SECURITIES**
17 **ACT OF 1933.**—

18 (1) Section 2A(b) of the Securities Act of 1933
19 (15 U.S.C. 77b–1) is amended by striking “(as de-
20 fined in section 206B of the Gramm-Leach-Bliley
21 Act)” each place that such term appears.

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

24 (A) in subsection (a)—

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

3 (ii) by striking “206B of the Gramm-
4 Leach-Bliley Act” and inserting “3(a)(76)
5 of the Securities Exchange Act of 1934”;
6 and

7 (B) in subsection (d), by striking “206B of
8 the Gramm-Leach-Bliley Act” and inserting
9 “3(a)(76) of the Securities Exchange Act of
10 1934”.

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

14 (1) Section 3A (15 U.S.C. 78c–1) is amended
15 by striking “(as defined in section 206B of the
16 Gramm-Leach-Bliley Act)” each place that the term
17 appears.

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

21 “(2) To effect, alone or with one or more other per-
22 sons, a series of transactions in any security registered
23 on a national securities exchange or in connection with
24 any security-based swap or security-based swap agreement
25 with respect to such security creating actual or apparent

1 active trading in such security, or raising or depressing
2 the price of such security, for the purpose of inducing the
3 purchase or sale of such security by others.

4 “(3) If a dealer, broker, security-based swap dealer,
5 major security-based swap participant or other person sell-
6 ing or offering for sale or purchasing or offering to pur-
7 chase the security, or a security-based swap or security-
8 based swap agreement with respect to such security, to
9 induce the purchase or sale of any security registered on
10 a national securities exchange or any security-based swap
11 or security-based swap agreement with respect to such se-
12 curity by the circulation or dissemination in the ordinary
13 course of business of information to the effect that the
14 price of any such security will or is likely to rise or fall
15 because of market operations of any one or more persons
16 conducted for the purpose of raising or depressing the
17 price of such security.

18 “(4) If a dealer, broker, security-based swap dealer,
19 major security-based swap participant or other person sell-
20 ing or offering for sale or purchasing or offering to pur-
21 chase the security, or a security-based swap or security-
22 based swap agreement with respect to such security, to
23 make, regarding any security registered on a national se-
24 curities exchange or any security-based swap or security-
25 based swap agreement with respect to such security, for

1 the purpose of inducing the purchase or sale of such secu-
2 rity or such security-based swap or security-based swap
3 agreement, any statement which was at the time and in
4 the light of the circumstances under which it was made,
5 false or misleading with respect to any material fact, and
6 which he knew or had reasonable ground to believe was
7 so false or misleading.

8 “(5) For a consideration, received directly or indi-
9 rectly from a dealer, broker, security-based swap dealer,
10 major security-based swap participant or other person sell-
11 ing or offering for sale or purchasing or offering to pur-
12 chase the security, or a security-based swap or security-
13 based swap agreement with respect to such security, to
14 induce the purchase of any security registered on a na-
15 tional securities exchange or any security-based swap or
16 security-based swap agreement with respect to such secu-
17 rity by the circulation or dissemination of information to
18 the effect that the price of any such security will or is
19 likely to rise or fall because of the market operations of
20 any one or more persons conducted for the purpose of rais-
21 ing or depressing the price of such security.”

22 (3) Section 9(i) (15 U.S.C. 78i(i)) is amended
23 by striking “(as defined in section 206B of the
24 Gramm-Leach-Bliley Act)”;

1 (4) Section 10 (15 U.S.C. 78j) is amended by
2 striking “(as defined in section 206B of the Gramm-
3 Leach-Bliley Act)” each place that the term appears.

4 (5) Section 15(c)(1) is amended—

5 (A) in subparagraph (A), by striking “, or
6 any security-based swap agreement (as defined
7 in section 206B of the Gramm-Leach-Bliley
8 Act),”; and

9 (B) in subparagraphs (B) and (C), by
10 striking “agreement (as defined in section 206B
11 of the Gramm-Leach-Bliley Act)” in each place
12 that the term appears.

13 (6) Section 15(i) (15 U.S.C. 78o(i), as added
14 by section 303(f) of the Commodity Futures Mod-
15 ernization Act of 2000 (Public Law 106–554; 114
16 Stat. 2763A–455) is amended by striking “(as de-
17 fined in section 206B of the Gramm-Leach-Bliley
18 Act)”.

19 (7) Section 16 (15 U.S.C. 78p) is amended—

20 (A) in subsection (a)(2)(C), by striking
21 “(as defined in section 206(b) of the Gramm-
22 Leach-Bliley Act (15 U.S.C. 78c note))”;

23 (B) in subsection (b), by striking “(as de-
24 fined in section 206B of the Gramm-Leach-Bli-

1 ley Act)” in each place that the term appears;

2 and

3 (C) in subsection (g), by striking “(as de-
4 fined in section 206B of the Gramm-Leach-Bli-
5 ley Act)”;

6 (8) Section 20 (15 U.S.C. 78t) is amended—

7 (A) in subsection (d), by striking “(as de-
8 fined in section 206B of the Gramm-Leach-Bli-
9 ley Act)”; and

10 (B) in subsection (f), by striking “(as de-
11 fined in section 206B of the Gramm-Leach-Bli-
12 ley Act)”; and

13 (9) Section 21A (15 U.S.C. 78u-1) is amend-
14 ed—

15 (A) in subsection (a)(1), by striking “(as
16 defined in section 206B of the Gramm-Leach-
17 Bliley Act)”; and

18 (B) in subsection (g), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)”.

21 **SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE**

22 **ACT OF 1934.**

23 (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The
24 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)

1 is amended by adding the following section after section

2 3A:

3 **“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

4 “(a) IN GENERAL.—

5 “(1) STANDARD FOR CLEARING.—A security-
6 based swap shall be submitted for clearing if a clear-
7 ing agency that is registered under this Act will ac-
8 cept the security-based swap for clearing, and the
9 Commission has determined under paragraph
10 (2)(B)(ii) of subsection (b) that the security-based
11 swap is required to be cleared.

12 “(2) OPEN ACCESS.—The rules of a clearing
13 agency described in paragraph (1) shall—

14 “(A) prescribe that all security-based
15 swaps submitted to the clearing agency with the
16 same terms and conditions are economically
17 equivalent within the clearing agency and may
18 be offset with each other within the clearing
19 agency; and

20 “(B) provide for non-discriminatory clear-
21 ing of a security-based swap executed bilaterally
22 or on or through the rules of an unaffiliated na-
23 tional securities exchange or swap execution fa-
24 cility.

25 “(b) COMMISSION REVIEW.—

1 “(1) COMMISSION-INITIATED REVIEW.—

2 “(A) The Commission shall review each se-
3 curity-based swap, or any group, category, type
4 or class of security-based swaps to make a de-
5 termination that such security-based swap, or
6 group, category, type or class of security-based
7 swaps should be required to be cleared.

8 “(B) The Commission shall provide at
9 least a 30-day public comment period regarding
10 any determination under subparagraph (A).

11 “(2) SWAP SUBMISSIONS.—

12 “(A) A clearing agency shall submit to the
13 Commission each security-based swap, or any
14 group, category, type or class of security-based
15 swaps that it plans to accept for clearing and
16 provide notice to its members (in a manner to
17 be determined by the Commission) of such sub-
18 mission.

19 “(B) The Commission shall—

20 “(i) make available to the public any
21 submission received under subparagraph
22 (A);

23 “(ii) review each submission made
24 under subparagraph (A), and determine
25 whether the security-based swap, or group,

1 category, type, or class of security-based
2 swaps, described in the submission is re-
3 quired to be cleared; and

4 “(iii) provide at least a 30-day public
5 comment period regarding its determina-
6 tion whether the clearing requirement
7 under subsection (a)(1) shall apply to the
8 submission.

9 “(3) DEADLINE.—The Commission shall make
10 its determination under paragraph (2)(B) not later
11 than 90 days after receiving a submission made
12 under paragraph (2)(A), unless the submitting clear-
13 ing agency agrees to an extension for the time limi-
14 tation established under this paragraph.

15 “(4) DETERMINATION.—

16 “(A) In reviewing a submission made
17 under paragraph (2), the Commission shall re-
18 view whether the submission is consistent with
19 section 5b(c)(2).

20 “(B) In reviewing a security-based swap,
21 group of security-based swaps or class of secu-
22 rity-based swaps pursuant to paragraph (1) or
23 a submission made under paragraph (2), the
24 Commission shall take into account the fol-
25 lowing factors:

1 “(i) The existence of significant out-
2 standing notional exposures, trading liquid-
3 ity and adequate pricing data.

4 “(ii) The availability of rule frame-
5 work, capacity, operational expertise and
6 resources, and credit support infrastruc-
7 ture to clear the contract on terms that are
8 consistent with the material terms and
9 trading conventions on which the contract
10 is then traded.

11 “(iii) The effect on the mitigation of
12 systemic risk, taking into account the size
13 of the market for such contract and the re-
14 sources of the clearing agency available to
15 clear the contract.

16 “(iv) The effect on competition, in-
17 cluding appropriate fees and charges ap-
18 plied to clearing.

19 “(v) The existence of reasonable legal
20 certainty in the event of the insolvency of
21 the relevant clearing agency or 1 or more
22 of its clearing members with regard to the
23 treatment of customer and security-based
24 swap counterparty positions, funds, and
25 property.

1 “(C) In making a determination under
2 paragraph (2)(B) that the clearing requirement
3 shall apply, the Commission may require such
4 terms and conditions to the requirement as the
5 Commission determines to be appropriate.

6 “(5) RULES.—Not later than 1 year after the
7 date of the enactment of the Derivative Markets
8 Transparency and Accountability Act of 2009, the
9 Commission shall adopt rules for a clearing agency’s
10 submission for review, pursuant to this subsection,
11 of a security-based swap, or a group, category, type
12 or class of security-based swaps, that it seeks to ac-
13 cept for clearing.

14 “(c) STAY OF CLEARING REQUIREMENT.—

15 “(1) After an determination pursuant to sub-
16 section (b)(2), the Commission, on application of a
17 counterparty to a security-based swap or on its own
18 initiative, may stay the clearing requirement of sub-
19 section (a)(1) until the Commission completes a re-
20 view of the terms of the security-based swap (or the
21 group, category, type or class of security-based
22 swaps) and the clearing arrangement.

23 “(2) DEADLINE.—The Commission shall com-
24 plete a review undertaken pursuant to paragraph (1)
25 not later than 90 days after issuance of the stay, un-

1 less the clearing agency that clears the security-
2 based swap, or group, category, type or class of se-
3 curity-based swaps, agrees to an extension of the
4 time limitation established under this paragraph.

5 “(3) DETERMINATION.—Upon completion of
6 the review undertaken pursuant to paragraph (1),
7 the Commission may—

8 “(A) determine, unconditionally or subject
9 to such terms and conditions as the Commis-
10 sion determines to be appropriate, that the se-
11 curity-based swap, or group, category, type or
12 class of security-based swaps, must be cleared
13 pursuant to this subsection if it finds that such
14 clearing is consistent with subsection (b)(4); or

15 “(B) determine that the clearing require-
16 ment of subsection (a)(1) shall not apply to the
17 security-based swap, or group, category, type or
18 class of security-based swaps.

19 “(4) RULES.—Not later than 1 year after the
20 date of the enactment of the Derivative Markets
21 Transparency and Accountability Act of 2009, the
22 Commission shall adopt rules for reviewing, pursu-
23 ant to this subsection, a clearing agency’s clearing of
24 a security-based swap, or a group, category, type or

1 class of security-based swaps, that it has accepted
2 for clearing.

3 “(d) PREVENTION OF EVASION.—The Commission
4 may prescribe rules under this subsection, or issue inter-
5 pretations of the rules, as necessary to prevent evasions
6 of this section.

7 “(e) REQUIRED REPORTING.—

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

19 “(2) SWAP DEALER DESIGNATION.—With re-
20 gard to security-based swaps where only 1
21 counterparty is a security-based swap dealer, the se-
22 curity-based swap dealer shall report the security-
23 based swap as required by this subsection.

1 “(f) REPORTING TRANSITION RULES.—Rules adopt-
2 ed by the Commission under this section shall provide for
3 the reporting of data, as follows:

4 “(1) Security-based swaps entered into before
5 the date of the enactment of this section shall be re-
6 ported to a registered security-based swap repository
7 or the Commission no later than 180 days after the
8 effective date of this section; and

9 “(2) Security-based swaps entered into on or
10 after such date of enactment shall be reported to a
11 registered security-based swap repository or the
12 Commission no later than the later of—

13 “(A) 90 days after such effective date; or

14 “(B) such other time after entering into
15 the security-based swap as the Commission may
16 prescribe by rule or regulation.

17 “(g) CLEARING TRANSITION RULES.—

18 “(1) Security-based swaps entered into before
19 the date of the enactment of this section are exempt
20 from the clearing requirements of this subsection if
21 reported pursuant to subsection (f)(1).

22 “(2) Security-based swaps entered into before
23 application of the clearing requirement pursuant to
24 this section are exempt from the clearing require-

1 ments of this section if reported pursuant to sub-
2 section (f)(2).

3 “(h) EXCEPTIONS.—

4 “(1) IN GENERAL.—The requirements of sub-
5 section (a)(1) shall not apply to a security-based
6 swap if one of the counterparties to the security-
7 based swap—

8 “(A) is not a security-based swap dealer or
9 major security-based swap participant; and

10 “(B) is using security-based swaps to
11 hedge or mitigate commercial risk, including
12 operating or balance sheet risk; and

13 “(C) notifies the Commission, in a manner
14 set forth by the Commission, how it generally
15 meets its financial obligations associated with
16 entering into non-cleared security-based swaps.

17 “(2) ABUSE OF EXCEPTION.—The Commission
18 may prescribe rules under this subsection, or issue
19 interpretations of the rules, as necessary to prevent
20 abuse of the exemption in paragraph (1) by security-
21 based swap dealers and major security-based swap
22 participants.

23 “(3) OPTION TO CLEAR.—The application of
24 the clearing exception in paragraph (1) is solely at
25 the discretion the counterparty to the swap that

1 meets the conditions of subparagraphs (A) through
2 (C) of paragraph (1).”.

3 (b) CLEARING AGENCY REQUIREMENTS.—Section
4 17A of the Securities Exchange Act of 1934 (15 U.S.C.
5 78q) is amended by adding at the end the following new
6 subsections:

7 “(g) REGISTRATION REQUIREMENT.—It shall be un-
8 lawful for a clearing agency, unless registered with the
9 Commission, directly or indirectly to make use of the mails
10 or any means or instrumentality of interstate commerce
11 to perform the functions of a clearing agency with respect
12 to a swap.

13 “(h) VOLUNTARY REGISTRATION.—A person that
14 clears agreements, contracts, or transactions that are not
15 required to be cleared under this Act may register with
16 the Commission as a clearing agency.

17 “(i) EXISTING BANKS AND DERIVATIVES CLEARING
18 ORGANIZATIONS.—A bank or a derivatives clearing orga-
19 nization registered with the Commodity Futures Trading
20 Commission under the Commodity Exchange Act required
21 to be a registered as a clearing agency under this title,
22 solely because it clears security-based swaps, is deemed to
23 be a registered clearing agency under this title solely for
24 the purpose of clearing security-based swaps to the extent
25 that the bank cleared security-based swaps, as defined in

1 this Act, as a multilateral clearing organization or the de-
2 rivatives clearing organization cleared security-based
3 swaps, as defined in this title pursuant to an exemption
4 from registration as a clearing agency, before the enact-
5 ment of this section. A bank or derivative clearing organi-
6 zation to which this subsection applies shall continue to
7 comply with the requirements in section 17A(b)(3) of this
8 title. A bank to which this subsection applies may, by the
9 vote of the shareholders owning not less than 51 percent
10 of the voting interests of such bank, be converted into a
11 State corporation, partnership, limited liability company,
12 or other similar legal form pursuant to a plan of conver-
13 sion, if the conversion is not in contravention of applicable
14 State law.

15 “(j) REPORTING.—

16 “(1) IN GENERAL.—A clearing agency that
17 clears security-based swaps shall provide to the
18 Commission all information determined by the Com-
19 mission to be necessary to perform its responsibil-
20 ities under this Act. The Commission shall adopt
21 data collection and maintenance requirements for se-
22 curity-based swaps cleared by clearing agencies that
23 are comparable to the corresponding requirements
24 for security-based swaps accepted by security-based
25 swap repositories and security-based swaps traded

1 on swap execution facilities. Subject to section 24,
2 the Commission shall share such information, upon
3 request, with the Board, the Commodity Futures
4 Trading Commission, the appropriate Federal bank-
5 ing agencies, the Financial Services Oversight Coun-
6 cil, and the Department of Justice or to other per-
7 sons the Commission deems appropriate, including
8 foreign financial supervisors (including foreign fu-
9 tures authorities), foreign central banks, and foreign
10 ministries.

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

18 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

1 “(B) in consultation with the board of the
2 clearing agency, a body performing a function
3 similar to that of a board, or the senior officer
4 of the clearing agency, resolve any conflicts of
5 interest that may arise;

6 “(C) be responsible for administering the
7 policies and procedures required to be estab-
8 lished pursuant to this section;

9 “(D) ensure compliance with securities
10 laws and the rules and regulations issued there-
11 under, including rules prescribed by the Com-
12 mission pursuant to this section; and

13 “(E) establish procedures for remediation
14 of non-compliance issues found during compli-
15 ance office reviews, lookbacks, internal or exter-
16 nal audit findings, self-reported errors, or
17 through validated complaints. Procedures will
18 establish the handling, management response,
19 remediation, re-testing, and closing of non-com-
20 pliant issues.

21 “(3) ANNUAL REPORTS REQUIRED.—The com-
22 pliance officer shall annually prepare and sign a re-
23 port on the compliance of the clearing agency with
24 the securities laws and its policies and procedures,
25 including its code of ethics and conflict of interest

1 policies, in accordance with rules prescribed by the
2 Commission. Such compliance report shall accom-
3 pany the financial reports of the clearing agency
4 that are required to be furnished to the Commission
5 pursuant to this section and shall include a certifi-
6 cation that, under penalty of law, the report is accu-
7 rate and complete.

8 “(l) STANDARDS FOR CLEARING AGENCIES CLEAR-
9 ING SWAP TRANSACTIONS.—To be registered and to main-
10 tain registration as a clearing agency that clears swap
11 transactions, a clearing agency shall comply with such
12 standards as the Commission may establish by rule. In
13 establishing any such standards, and in the exercise of its
14 oversight of such a clearing agency pursuant to this title,
15 the Commission may conform such standards or oversight
16 to reflect evolving United States and international stand-
17 ards. Except where the Commission determines otherwise
18 by rule or regulation, a clearing agency shall have reason-
19 able discretion in establishing the manner in which it com-
20 plies with any such standards.

21 “(m) RULES.—Not later than 1 year after the date
22 of the enactment of the Derivative Markets Transparency
23 and Accountability Act of 2009, the Commission shall
24 adopt rules governing persons that are registered as clear-
25 ing agencies for security-based swaps under this Act.

1 “(n) EXEMPTIONS.—

2 “(1) IN GENERAL.—The Commission may ex-
3 empt, conditionally or unconditionally, a clearing
4 agency from registration under this section for the
5 clearing of security-based swaps if the Commission
6 finds that such clearing agency is subject to com-
7 parable, comprehensive supervision and regulation
8 on a consolidated basis by the Commodity Futures
9 Trading Commission, a Prudential Regulator, or the
10 appropriate governmental authorities in the organi-
11 zation’s home country or if necessary or appropriate
12 in the public interest and consistent with the pur-
13 pose of this Act.

14 “(2) A person that is required to be registered
15 as clearing agency under this section, whose prin-
16 cipal business is clearing commodity futures and op-
17 tions on commodity futures transactions and which
18 is a derivatives clearing organization registered with
19 the Commodity Futures Trading Commission under
20 the Commodity Exchange Act (7 U.S.C. 1, et seq.),
21 shall be unconditionally exempt from registration
22 under this section solely for the purpose of clearing
23 security-based swaps, unless the Commission finds
24 that such derivatives clearing organization is not
25 subject to comparable, comprehensive supervision

1 and regulation by the Commodity Futures Trading
2 Commission.”.

3 (c) EXECUTION OF SECURITY-BASED SWAPS.—The
4 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)
5 is amended by inserting after section 5 the following:

6 **“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**

7 **“(a) EXECUTION TRANSPARENCY.—**

8 **“(1) REQUIREMENT.—**A security-based swap
9 that is subject to the clearing requirement of section
10 3B shall not be traded except on or through a na-
11 tional securities exchange or on or through an swap
12 execution facility registered under section 5h, that
13 makes the security-based swap available for trading.

14 **“(2) EXCEPTIONS.—**The requirement of para-
15 graph (1) shall not apply to a security-based swap
16 if no national securities exchange or swap execution
17 facility makes the security-based swap available for
18 trading.

19 **“(3) REQUIRED REPORTING.—**If the exception
20 of paragraph (2) applies and there is no national se-
21 curities exchange or swap execution facility that
22 makes the security-based swap available to trade,
23 the counterparties shall comply with any record-
24 keeping and transaction reporting requirements as
25 may be prescribed by the Commission with respect

1 to security-based swaps subject to the requirements
2 of paragraph (1).

3 “(b) EXCHANGE TRADING.—In adopting rules and
4 regulations, the Commission shall endeavor to eliminate
5 unnecessary impediments to the trading on national secu-
6 rities exchanges of contracts, agreements, or transactions
7 that would be swaps but for the trading of such contracts,
8 agreements or transactions on such a national securities
9 exchange.”.

10 (d) SWAP EXECUTION FACILITIES.—The Securities
11 Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended
12 by adding after section 3B (as added by subsection (a))
13 the following:

14 **“SEC. 3C. SWAP EXECUTION FACILITIES.**

15 “(a) REGISTRATION.—No person may operate a facil-
16 ity for the trading of security-based swaps unless the facil-
17 ity is registered as a swap execution facility under this
18 section.

19 “(b) REQUIREMENTS FOR TRADING.—

20 “(1) IN GENERAL.—A swap execution facility
21 that is registered under subsection (a) may list for
22 trading any security-based swap.

23 “(2) RULES FOR TRADING THROUGH THE FA-
24 CILITY.—Not later than 1 year after the date of the
25 enactment of the Derivative Markets Transparency

1 and Accountability Act of 2009, the Commission
2 shall adopt rules to allow a security-based swap to
3 be traded through the facilities of an exchange or a
4 swap execution facility. Such rules shall permit an
5 intermediary, acting as principal or agent, to enter
6 into or execute a security-based swap, notwith-
7 standing section 3B(b), if the security-based swap is
8 reported, recorded, or confirmed in accordance with
9 the rules of the exchange or swap execution facility.

10 “(c) TRADING BY EXCHANGES.—An exchange shall,
11 to the extent that the exchange also operates a swap exe-
12 cution facility and uses the same electronic trade execution
13 system for trading on the exchange and the swap execu-
14 tion facility, identify whether the electronic trading is tak-
15 ing place on the exchange or the swap execution facility.

16 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
17 CILITIES.—

18 “(1) IN GENERAL.—To be registered as, and to
19 maintain its registration as, a swap execution facil-
20 ity, the facility shall comply with the core principles
21 specified in this subsection and any requirement that
22 the Commission may impose by rule or regulation
23 pursuant to section 8a(5). Except where the Com-
24 mission determines otherwise by rule or regulation,
25 the facility shall have reasonable discretion in estab-

1 lishing the manner in which it complies with these
2 core principles.

3 “(2) COMPLIANCE WITH RULES.—The swap
4 execution facility shall—

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

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

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

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

19 “(3) SECURITY-BASED SWAPS NOT READILY
20 SUSCEPTIBLE TO MANIPULATION.—The swap execu-
21 tion facility shall permit trading only in security-
22 based swaps that are not readily susceptible to ma-
23 nipulation.

24 “(4) MONITORING OF TRADING.—The swap
25 execution facility shall—

1 “(A) establish and enforce rules or terms
2 and conditions defining, or specifications detail-
3 ing, trading procedures to be used in entering
4 and executing orders traded on or through its
5 facilities; and

6 “(B) monitor trading in swaps to prevent
7 manipulation, price distortion, and disruptions
8 of the delivery or cash settlement process
9 through surveillance, compliance, and discipli-
10 nary practices and procedures, including meth-
11 ods for conducting real-time monitoring of trad-
12 ing and comprehensive and accurate trade re-
13 constructions.

14 “(5) ABILITY TO OBTAIN INFORMATION.—The
15 swap execution facility shall—

16 “(A) establish and enforce rules that will
17 allow the facility to obtain any necessary infor-
18 mation to perform any of the functions de-
19 scribed in this section;

20 “(B) provide the information to the Com-
21 mission upon request; and

22 “(C) have the capacity to carry out such
23 international information-sharing agreements as
24 the Commission may require.

1 “(6) FINANCIAL INTEGRITY OF TRANS-
2 ACTIONS.—The swap execution facility shall estab-
3 lish and enforce rules and procedures for ensuring
4 the financial integrity of security-based swaps en-
5 tered on or through its facilities, including the clear-
6 ance and settlement of the security-based swaps pur-
7 suant to section 3B.

8 “(7) EMERGENCY AUTHORITY.—The swap exe-
9 cution facility shall adopt rules to provide for the ex-
10 ercise of emergency authority, in consultation or co-
11 operation with the Commission, where necessary and
12 appropriate, including the authority to suspend or
13 curtail trading in a security-based swap.

14 “(8) TIMELY PUBLICATION OF TRADING INFOR-
15 MATION.—The swap execution facility shall make
16 public timely information on price, trading volume,
17 and other trading data to the extent prescribed by
18 the Commission. The Commission shall evaluate the
19 impact of public disclosure on market liquidity in the
20 relevant market, and shall seek to avoid public dis-
21 closure of information in a manner that would sig-
22 nificantly reduce market liquidity. The Commission
23 shall not disclose information related to the internal
24 business decisions of particular market participants.

1 “(9) RECORDKEEPING AND REPORTING.—The
2 swap execution facility shall maintain records of all
3 activities related to the business of the facility, in-
4 cluding a complete audit trail, in a form and manner
5 acceptable to the Commission for a period of 5
6 years, and report to the Commission all information
7 determined by the Commission to be necessary or
8 appropriate for the Commission to perform its re-
9 sponsibilities under this Act in a form and manner
10 acceptable to the Commission. The Commission shall
11 adopt data collection and reporting requirements for
12 swap execution facilities that are comparable to cor-
13 responding requirements for clearing agencies and
14 security-based swap repositories.

15 “(10) CONFLICTS OF INTEREST.—The swap
16 execution facility shall—

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

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

22 “(11) FINANCIAL RESOURCES.—The swap exe-
23 cution facility shall have adequate financial, oper-
24 ational, and managerial resources to discharge its
25 responsibilities. Such financial resources shall be

1 considered adequate if their value exceeds the total
2 amount that would enable the facility to cover its op-
3 erating costs for a period of one year, calculated on
4 a rolling basis.

5 “(12) SYSTEM SAFEGUARDS.—The swap execu-
6 tion facility shall—

7 “(A) establish and maintain a program of
8 risk analysis and oversight to identify and mini-
9 mize sources of operational risk, through the
10 development of appropriate controls and proce-
11 dures, and the development of automated sys-
12 tems, that are reliable, secure, and have ade-
13 quate scalable capacity;

14 “(B) establish and maintain emergency
15 procedures, backup facilities, and a plan for dis-
16 aster recovery that allow for the timely recovery
17 and resumption of operations and the fulfill-
18 ment of the swap execution facility’s respon-
19 sibilities and obligation; and

20 “(C) periodically conduct tests to verify
21 that backup resources are sufficient to ensure
22 continued order processing and trade matching,
23 price reporting, market surveillance, and main-
24 tenance of a comprehensive and accurate audit
25 trail.

1 “(13) DESIGNATION OF COMPLIANCE OFFI-
2 CER.—

3 “(A) IN GENERAL.—Each swap execution
4 facility shall designate an individual to serve as
5 a compliance officer.

6 “(B) DUTIES.—The compliance officer—

7 “(i) shall report directly to the board
8 or to the senior officer of the facility; and

9 “(ii) shall—

10 “(I) review compliance with the
11 core principles in section 3B(e).

12 “(II) in consultation with the
13 board of the facility, a body per-
14 forming a function similar to that of
15 a board, or the senior officer of the
16 facility, resolve any conflicts of inter-
17 est that may arise;

18 “(III) be responsible for admin-
19 istering the policies and procedures
20 required to be established pursuant to
21 this section; and

22 “(IV) ensure compliance with se-
23 curities laws and the rules and regula-
24 tions issued thereunder, including

1 rules prescribed by the Commission
2 pursuant to this section; and

3 “(iii) shall establish procedures for re-
4 mediation of non-compliance issues found
5 during compliance office reviews,
6 lookbacks, internal or external audit find-
7 ings, self-reported errors, or through vali-
8 dated complaints and to establish the han-
9 dling, management response, remediation,
10 re-testing, and closing of non-compliant
11 issues.

12 “(C) ANNUAL REPORTS REQUIRED.—The
13 compliance officer shall annually prepare and
14 sign a report on the compliance of the facility
15 with the securities laws and its policies and pro-
16 cedures, including its code of ethics and conflict
17 of interest policies, in accordance with rules
18 prescribed by the Commission. Such compliance
19 report shall accompany the financial reports of
20 the facility that are required to be furnished to
21 the Commission pursuant to this section and
22 shall include a certification that, under penalty
23 of law, the report is accurate and complete.

24 “(e) EXEMPTIONS.—The Commission may exempt,
25 conditionally or unconditionally, a swap execution facility

1 counterparty and the security-based swap dealer that is
2 not submitted for clearing to a derivatives clearing agency,
3 the security-based swap dealer shall segregate the funds
4 or other property for the benefit of the counterparty, and
5 maintain the funds or other property in an account which
6 is carried by a third-party custodian and designated as
7 a segregated account for the counterparty, in accordance
8 with such rules and regulations as the Commission or Pru-
9 dential Regulator may prescribe. If a security-based swap
10 counterparty is a security-based swap dealer or major se-
11 curity-based swap participant who owns more than 20 per-
12 cent of, or has more than 50 percent representation on
13 the board of directors of a custodian, the custodian shall
14 not be considered independent from the security-based
15 swap counterparties for purposes of the preceding sen-
16 tence. This subsection shall not be interpreted to preclude
17 commercial arrangements regarding the investment of the
18 segregated funds or other property and the related alloca-
19 tion of gains and losses resulting from any such invest-
20 ment.

21 “(b) FURTHER AUDIT REPORTING.—If a security-
22 based swap dealer does not segregate funds pursuant to
23 the request of a security-based swap counterparty in ac-
24 cordance with subsection (a), the security-based swap
25 dealer shall report to its counterparty on a quarterly basis

1 that its procedures relating to margin and collateral re-
2 quirements are in compliance with the agreement of the
3 counterparties.”.

4 (f) TRADING IN SECURITY-BASED SWAPS.—Section 6
5 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
6 is amended by adding at the end the following:

7 “(l) It shall be unlawful for any person to effect a
8 transaction in a security-based swap with or for a person
9 that is not an eligible contract participant unless such
10 transaction is effected on a national securities exchange
11 registered pursuant to subsection (b).”.

12 (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
13 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)
14 through (3) of section 9(b) of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
16 as follows:

17 “(1) any transaction in connection with any se-
18 curity whereby any party to such transaction ac-
19 quires (A) any put, call, straddle, or other option or
20 privilege of buying the security from or selling the
21 security to another without being bound to do so;
22 (B) any security futures product on the security; or
23 (C) any security-based swap involving the security or
24 the issuer of the security; or

1 “(2) any transaction in connection with any se-
2 curity with relation to which he has, directly or indi-
3 rectly, any interest in any (A) such put, call, strad-
4 dle, option, or privilege; (B) such security futures
5 product; or (C) such security-based swap; or

6 “(3) any transaction in any security for the ac-
7 count of any person who he has reason to believe
8 has, and who actually has, directly or indirectly, any
9 interest in any (A) such put, call, straddle, option,
10 or privilege; (B) such security futures product with
11 relation to such security; or (C) any security-based
12 swap involving such security or the issuer of such se-
13 curity.”.

14 (h) RULEMAKING AUTHORITY TO PREVENT FRAUD,
15 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
16 BASED SWAPS.—Section 9 of the Securities Exchange Act
17 of 1934 (15 U.S.C. 78i) is amended by adding at the end
18 the following:

19 “(i) It shall be unlawful for any person, directly or
20 indirectly, by the use of any means or instrumentality of
21 interstate commerce or of the mails, or of any facility of
22 any national securities exchange, to effect any transaction
23 in, or to induce or attempt to induce the purchase or sale
24 of, any security-based swap, in connection with which such
25 person engages in any fraudulent, deceptive, or manipula-

1 tive act or practice, makes any fictitious quotation, or en-
2 gages in any transaction, practice, or course of business
3 which operates as a fraud or deceit upon any person. The
4 Commission shall, for the purposes of this paragraph, by
5 rules and regulations define, and prescribe means reason-
6 ably designed to prevent, such transactions, acts, prac-
7 tices, and courses of business as are fraudulent, deceptive,
8 or manipulative, and such quotations as are fictitious.”.

9 (i) POSITION LIMITS AND POSITION ACCOUNT-
10 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
11 Exchange Act of 1934 is amended by inserting after sec-
12 tion 10A (15 U.S.C. 78j-1) the following new section:

13 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
14 **ABILITY FOR SECURITY-BASED SWAPS AND**
15 **LARGE TRADER REPORTING.**

16 “(a) POSITION LIMITS.—As a means reasonably de-
17 signed to prevent fraud and manipulation, the Commission
18 may, by rule or regulation, as necessary or appropriate
19 in the public interest or for the protection of investors,
20 establish limits (including related hedge exemption provi-
21 sions) on the size of positions in any security-based swap
22 that may be held by any person. In establishing such lim-
23 its, the Commission may require any person to aggregate
24 positions in—

1 “(1) any security-based swap and any security
2 or loan or group or index of securities or loans on
3 which such security-based swap is based, which such
4 security-based swap references, or to which such se-
5 curity-based swap is related as described in section
6 3(a)(68), and any other instrument relating to such
7 security or loan or group or index of securities or
8 loans; or

9 “(2) any security-based swap and (A) any secu-
10 rity or group or index of securities, the price, yield,
11 value, or volatility of which, or of which any interest
12 therein, is the basis for a material term of such se-
13 curity-based swap as described in section 3(a)(76)
14 and (B) any security-based swap and any other in-
15 strument relating to the same security or group or
16 index of securities.

17 “(b) EXEMPTIONS.—The Commission, by rule, regu-
18 lation, or order, may conditionally or unconditionally ex-
19 empt any person or class of persons, any security-based
20 swap or class of security-based swaps, or any transaction
21 or class of transactions from any requirement it may es-
22 tablish under this section with respect to position limits.

23 “(c) SRO RULES.—

24 “(1) IN GENERAL.—As a means reasonably de-
25 signed to prevent fraud or manipulation, the Com-

1 mission, by rule, regulation, or order, as necessary
2 or appropriate in the public interest, for the protec-
3 tion of investors, or otherwise in furtherance of the
4 purposes of this title, may direct a self-regulatory
5 organization—

6 “(A) to adopt rules regarding the size of
7 positions in any security-based swap that may
8 be held by—

9 “(i) any member of such self-regu-
10 latory organization; or

11 “(ii) any person for whom a member
12 of such self-regulatory organization effects
13 transactions in such security-based swap;
14 and

15 “(B) to adopt rules reasonably designed to
16 ensure compliance with requirements prescribed
17 by the Commission under subsection (c)(1)(A).

18 “(2) REQUIREMENT TO AGGREGATE POSI-
19 TIONS.—In establishing such limits, the self-regu-
20 latory organization may require such member or per-
21 son to aggregate positions in—

22 “(A) any security-based swap and any se-
23 curity or loan or group or index of securities or
24 loans on which such security-based swap is
25 based, which such security-based swap ref-

1 erences, or to which such security-based swap is
2 related as described in section 3(a)(68), and
3 any other instrument relating to such security
4 or loan or group or index of securities or loans;
5 or

6 “(B)(i) any security-based swap; and

7 “(ii) any security-based swap and any
8 other instrument relating to the same security
9 or group or index of securities.

10 “(d) LARGE TRADER REPORTING.—The Commis-
11 sion, by rule or regulation, may require any person that
12 effects transactions for such person’s own account or the
13 account of others in any securities-based swap or
14 uncleared security-based swap agreement and any security
15 or loan or group or index of securities or loans as set forth
16 in paragraphs (1) and (2) of subsection (a) under this sec-
17 tion to report such information as the Commission may
18 prescribe regarding any position or positions in any secu-
19 rity-based swap or uncleared security-based swap agree-
20 ment and any security or loan or group or index of securi-
21 ties or loans and any other instrument relating to such
22 security or loan or group or index of securities or loans
23 as set forth in paragraphs (1) and (2) of subsection (a)
24 under this section.”.

1 (j) PUBLIC REPORTING AND REPOSITORIES FOR SE-
2 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78m) is amended by add-
4 ing at the end the following:

5 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
6 BASED SWAP DATA.—

7 “(1) IN GENERAL.—The Commission, or a per-
8 son designated by the Commission pursuant to para-
9 graph (2), shall make available to the public, in a
10 manner that does not disclose the business trans-
11 actions and market positions of any person, aggre-
12 gate data on security-based swap trading volumes
13 and positions from the sources set forth in para-
14 graph (3).

15 “(2) DESIGNEE OF THE COMMISSION.—The
16 Commission may designate a clearing agency or a
17 security-based swap repository to carry out the pub-
18 lic reporting described in paragraph (1).

19 “(3) SOURCES OF INFORMATION.—The sources
20 of the information to be publicly reported as de-
21 scribed in paragraph (1) are—

22 “(A) clearing agencies pursuant to section
23 3A;

24 “(B) security-based swap repositories pur-
25 suant to subsection (n); and

1 “(C) reports received by the Commission
2 pursuant to section 13A.

3 “(n) SECURITY-BASED SWAP REPOSITORIES.—

4 “(1) REGISTRATION REQUIREMENT.—

5 “(A) IN GENERAL.—It shall be unlawful
6 for a security-based swap repository, unless reg-
7 istered with the Commission, directly or indi-
8 rectly to make use of the mails or any means
9 or instrumentality of interstate commerce to
10 perform the functions of a security-based swap
11 repository.

12 “(B) INSPECTION AND EXAMINATION.—
13 Registered security-based swap repositories
14 shall be subject to inspection and examination
15 by any representatives of the Commission.

16 “(2) STANDARD SETTING.—

17 “(A) DATA IDENTIFICATION.—The Com-
18 mission shall prescribe standards that specify
19 the data elements for each security-based swap
20 that shall be collected and maintained by each
21 security-based swap repository.

22 “(B) DATA COLLECTION AND MAINTEN-
23 NANCE.—The Commission shall prescribe data
24 collection and data maintenance standards for
25 security-based swap repositories.

1 “(C) COMPARABILITY.—The standards
2 prescribed by the Commission under this sub-
3 section shall be comparable to the data stand-
4 ards imposed by the Commission on clearing
5 agencies that clear security-based swaps.

6 “(3) DUTIES.—A security-based swap reposi-
7 tory shall—

8 “(A) accept data prescribed by the Com-
9 mission for each security-based swap under this
10 paragraph (2);

11 “(B) maintain such data in such form and
12 manner and for such period as may be required
13 by the Commission;

14 “(C) provide to the Commission, or its des-
15 ignee, such information as is required by, and
16 in a form and at a frequency to be determined
17 by, the Commission, in order to comply with the
18 public reporting requirements contained in sub-
19 section (m); and

20 “(D) make available, on a confidential
21 basis, all data obtained by the security-based
22 swap repository, including individual
23 counterparty trade and position data, to the
24 Commission, the appropriate Federal banking
25 agencies, the Commodity Futures Trading

1 Commission, the Financial Services Oversight
2 Council, and the Department of Justice or to
3 other persons the Commission deems appro-
4 priate, including foreign financial supervisors
5 (including foreign futures authorities), foreign
6 central banks, and foreign ministries.

7 “(4) RULES.—Not later than 1 year after the
8 date of the enactment of the Derivative Markets
9 Transparency and Accountability Act of 2009, the
10 Commission shall adopt rules governing persons that
11 are registered under this section, including rules
12 that specify the data elements that shall be collected
13 and maintained.

14 “(5) EXEMPTIONS.—The Commission may ex-
15 empt, conditionally or unconditionally, a security-
16 based swap repository from the requirements of this
17 section if the Commission finds that such security-
18 based swap repository is subject to comparable, com-
19 prehensive supervision or regulation on a consoli-
20 dated basis by the Commodity Futures Trading
21 Commission, a Prudential Regulator or the appro-
22 priate governmental authorities in the organization’s
23 home country or if necessary or appropriate in the
24 public interest and consistent with the purpose of
25 this Act.”

1 **SEC. 3204. REGISTRATION AND REGULATION OF SWAP**
2 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a,
4 et seq.) is amended by inserting after section 15E (15
5 U.S.C. 78o-7) the following:

6 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
7 **BASED SWAP DEALERS AND MAJOR SECU-**
8 **RITY-BASED SWAP PARTICIPANTS.**

9 **“(a) REGISTRATION.—**

10 **“(1) It shall be unlawful for any person to act**
11 **as a security-based swap dealer unless such person**
12 **is registered as a security-based swap dealer with**
13 **the Commission.**

14 **“(2) It shall be unlawful for any person to act**
15 **as a major security-based swap participant unless**
16 **such person is registered as a major security-based**
17 **swap participant with the Commission.**

18 **“(b) REQUIREMENTS.—**

19 **“(1) IN GENERAL.—A person shall register as**
20 **a security-based swap dealer or major security-based**
21 **swap participant by filing a registration application**
22 **with the Commission.**

23 **“(2) CONTENTS.—The application shall be**
24 **made in such form and manner as prescribed by the**
25 **Commission, giving any information and facts as the**
26 **Commission may deem necessary concerning the**

1 business in which the applicant is or will be engaged.
2 Such person, when registered as a security-based
3 swap dealer or major security-based swap partici-
4 pant, shall continue to report and furnish to the
5 Commission such information pertaining to such
6 person's business as the Commission may require.

7 “(3) EXPIRATION.—Each registration shall ex-
8 pire at such time as the Commission may by rule or
9 regulation prescribe.

10 “(4) RULES.—Except as provided in sub-
11 sections (c) and (d), the Commission may prescribe
12 rules applicable to security-based swap dealers and
13 major security-based swap participants, including
14 rules that limit the activities of security-based swap
15 dealers and major security-based swap participants.
16 Except as provided in subsection (d)(1)(A), the
17 Commission may provide conditional or uncondi-
18 tional exemptions from some or all of the rules or
19 requirements prescribed under this section for secu-
20 rity-based swap dealers and major security-based
21 swap participants.

22 “(5) TRANSITION.—Rules adopted under this
23 section shall provide for the registration of security-
24 based swap dealers and major security-based swap
25 participants no later than 1 year after the effective

1 date of the Derivative Markets Transparency and
2 Accountability Act of 2009.

3 “(c) RULES.—

4 “(1) IN GENERAL.—Not later than 1 year after
5 the date of the enactment of the Derivative Markets
6 Transparency and Accountability Act of 2009, the
7 Commission shall adopt rules for persons that are
8 registered as security-based swap dealers or major
9 security-based swap participants under this Act.

10 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
11 MENTS.—The Commission shall not prescribe rules
12 imposing prudential requirements on security-based
13 swap dealers or major security-based swap partici-
14 pants for which there is a Prudential Regulator.
15 This provision shall not be construed as limiting the
16 authority of the Commission to prescribe appropriate
17 business conduct, reporting, and recordkeeping re-
18 quirements to protect investors.

19 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

20 “(1) IN GENERAL.—

21 “(A) BANK SECURITY-BASED SWAP DEAL-
22 ERS AND MAJOR SECURITY-BASED SWAP PAR-
23 TICIPANTS.—Each registered security-based
24 swap dealer and major security-based swap par-
25 ticipant for which there is a Prudential Regu-

1 lator shall meet such minimum capital require-
2 ments and minimum initial and variation mar-
3 gin requirements as the Prudential Regulators
4 shall by rule or regulation jointly prescribe
5 that—

6 “(i) help ensure the safety and sound-
7 ness of the security-based swap dealer or
8 major security-based swap participant; and

9 “(ii) are appropriate for the risk asso-
10 ciated with the non-cleared swaps held as
11 a swap dealer or major swap participant.

12 “(B) NON-BANK SECURITY-BASED SWAP
13 DEALERS AND MAJOR SECURITY-BASED SWAP
14 PARTICIPANTS.—Each registered security-based
15 swap dealer and major security-based swap par-
16 ticipant for which there is not a Prudential
17 Regulator shall meet such minimum capital re-
18 quirements and minimum initial and variation
19 margin requirements as the Commission shall
20 by rule or regulation prescribe that—

21 “(i) help ensure the safety and sound-
22 ness of the security-based swap dealer or
23 major security-based swap participant; and

1 “(ii) are appropriate for the risk asso-
2 ciated with the non-cleared swaps held as
3 the swap dealer or major swap participant.

4 “(2) RULES.—

5 “(A) BANK SECURITY-BASED SWAP DEAL-
6 ERS AND MAJOR SECURITY-BASED SWAP PAR-
7 TICIPANTS.—Not later than 1 year after the
8 date of the enactment of the Derivative Markets
9 Transparency and Accountability Act of 2009,
10 the Prudential Regulators, in consultation with
11 the Commission, shall jointly adopt rules impos-
12 ing capital and margin requirements under this
13 subsection for security-based swap dealers and
14 major security-based swap participants, with re-
15 spect to their activities as a security-based swap
16 dealer or major security-based swap participant
17 for which there is a Prudential Regulator.

18 “(B) NON-BANK SECURITY-BASED SWAP
19 DEALERS AND MAJOR SECURITY-BASED SWAP
20 PARTICIPANTS.—Not later than 1 year after the
21 date of the enactment of the Derivative Markets
22 Transparency and Accountability Act of 2009,
23 the Commission shall adopt rules imposing cap-
24 ital and margin requirements under this sub-
25 section for security-based swap dealers and

1 major security-based swap participants for
2 which there is no Prudential Regulator.

3 “(3) AUTHORITY.—Nothing in this section shall
4 limit the authority of the Commission to set capital
5 requirements for a broker or dealer registered in ac-
6 cordance with section 15 of this Act.

7 “(e) REPORTING AND RECORDKEEPING.—

8 “(1) IN GENERAL.—Each registered security-
9 based swap dealer and major security-based swap
10 participant—

11 “(A) shall make such reports as are pre-
12 scribed by the Commission by rule or regulation
13 regarding the transactions and positions and fi-
14 nancial condition of such person;

15 “(B) for which—

16 “(i) there is a Prudential Regulator
17 shall keep books and records of all activi-
18 ties related to its business as a security-
19 based swap dealer or major security-based
20 swap participant in such form and manner
21 and for such period as may be prescribed
22 by the Commission by rule or regulation;

23 “(ii) there is no Prudential Regulator
24 shall keep books and records in such form
25 and manner and for such period as may be

1 prescribed by the Commission by rule or
2 regulation; and

3 “(C) shall keep such books and records
4 open to inspection and examination by any rep-
5 resentative of the Commission.

6 “(2) RULES.—Not later than 1 year after the
7 date of enactment of the Derivative Markets Trans-
8 parency and Accountability Act of 2009, the Com-
9 mission shall adopt rules governing reporting and
10 recordkeeping for security-based swap dealers and
11 major security-based swap participants.

12 “(f) DAILY TRADING RECORDS.—

13 “(1) IN GENERAL.—Each registered security-
14 based swap dealer and major security-based swap
15 participant shall maintain daily trading records of
16 its security-based swaps and all related records (in-
17 cluding related transactions) and recorded commu-
18 nications including but not limited to electronic mail,
19 instant messages, and recordings of telephone calls,
20 for such period as may be prescribed by the Com-
21 mission by rule or regulation.

22 “(2) INFORMATION REQUIREMENTS.—The daily
23 trading records shall include such information as the
24 Commission shall prescribe by rule or regulation.

1 “(3) CUSTOMER RECORDS.—Each registered se-
2 curity-based swap dealer or major security-based
3 swap participant shall maintain daily trading records
4 for each customer or counterparty in such manner
5 and form as to be identifiable with each security-
6 based swap transaction.

7 “(4) AUDIT TRAIL.—Each registered security-
8 based swap dealer or major security-based swap par-
9 ticipant shall maintain a complete audit trail for
10 conducting comprehensive and accurate trade recon-
11 structions.

12 “(5) RULES.—Not later than 1 year after the
13 date of the enactment of the Derivative Markets
14 Transparency and Accountability Act of 2009, the
15 Commission shall adopt rules governing daily trad-
16 ing records for security-based swap dealers and
17 major security-based swap participants.

18 “(g) BUSINESS CONDUCT STANDARDS.—

19 “(1) IN GENERAL.—Each registered security-
20 based swap dealer and major security-based swap
21 participant shall conform with business conduct
22 standards as may be prescribed by the Commission
23 by rule or regulation addressing—

24 “(A) fraud, manipulation, and other abu-
25 sive practices involving security-based swaps

1 (including security-based swaps that are offered
2 but not entered into);

3 “(B) diligent supervision of its business as
4 a security-based swap dealer;

5 “(C) adherence to all applicable position
6 limits; and

7 “(D) such other matters as the Commis-
8 sion shall determine to be necessary or appro-
9 priate.

10 “(2) BUSINESS CONDUCT REQUIREMENTS.—

11 Business conduct requirements adopted by the Com-
12 mission shall—

13 “(A) establish the standard of care for a
14 security-based swap dealer or major security-
15 based swap participant to verify that any secu-
16 rity-based swap counterparty meets the eligi-
17 bility standards for an eligible contract partici-
18 pant;

19 “(B) require disclosure by the security-
20 based swap dealer or major security-based swap
21 participant to any counterparty to the security-
22 based swap (other than a security-based swap
23 dealer or major security-based swap partici-
24 pant) of:

1 “(i) information about the material
2 risks and characteristics of the security-
3 based swap;

4 “(ii) for cleared security-based swaps,
5 upon the request of the counterparty, the
6 daily mark from the appropriate clearing
7 agency, and for non-cleared security-based
8 swaps, upon request of the counterparty,
9 the daily mark of the security-based swap
10 dealer or major security-based swap partic-
11 ipant; and

12 “(iii) any other material incentives or
13 conflicts of interest that the security-based
14 swap dealer or major security-based swap
15 participant may have in connection with
16 the security-based swap; and

17 “(C) establish such other standards and
18 requirements as the Commission may determine
19 are necessary or appropriate in the public inter-
20 est, for the protection of investors, or otherwise
21 in furtherance of the purposes of this title.

22 “(3) RULES.—The Commission shall prescribe
23 rules under this subsection governing business con-
24 duct standards for security-based swap dealers and
25 major security-based swap participants not later

1 than 1 year after the date of enactment of the De-
2 rivative Markets Transparency and Accountability
3 Act of 2009.

4 “(h) DOCUMENTATION STANDARDS.—

5 “(1) IN GENERAL.—Each registered security-
6 based swap dealer and major security-based swap
7 participant shall conform with standards, as may be
8 prescribed by the Commission by rule or regulation,
9 addressing timely and accurate confirmation, proc-
10 essing, netting, documentation, and valuation of all
11 security-based swaps.

12 “(2) RULES.—Not later than 1 year after the
13 date of enactment of the Derivative Markets Trans-
14 parency and Accountability Act of 2009, the Com-
15 mission and the appropriate Federal banking agen-
16 cies, shall adopt rules governing the standards de-
17 scribed in paragraph (1) for security-based swap
18 dealers and major security-based swap participants.

19 “(i) DEALER RESPONSIBILITIES.—Each registered
20 security-based swap dealer and major security-based swap
21 participant at all times shall comply with the following re-
22 quirements:

23 “(1) MONITORING OF TRADING.—The security-
24 based swap dealer or major security-based swap par-
25 ticipant shall monitor its trading in security-based

1 swaps to prevent violations of applicable position
2 limits.

3 “(2) DISCLOSURE OF GENERAL INFORMA-
4 TION.—The security-based swap dealer or major se-
5 curity-based swap participant shall disclose to the
6 Commission or to the Prudential Regulator for such
7 security-based swap dealer or major security-based
8 swap participant, as applicable, information con-
9 cerning—

10 “(A) terms and conditions of its security-
11 based swaps;

12 “(B) security-based swap trading oper-
13 ations, mechanisms, and practices;

14 “(C) financial integrity protections relating
15 to security-based swaps; and

16 “(D) other information relevant to its trad-
17 ing in security-based swaps.

18 “(3) ABILITY TO OBTAIN INFORMATION.—The
19 security-based swap dealer or major swap security-
20 based participant shall—

21 “(A) establish and enforce internal systems
22 and procedures to obtain any necessary infor-
23 mation to perform any of the functions de-
24 scribed in this section; and

1 “(B) provide the information to the Com-
2 mission or to the Prudential Regulator for such
3 security-based swap dealer or major security-
4 based swap participant, as applicable, upon re-
5 quest.

6 “(4) CONFLICTS OF INTEREST.—The security-
7 based swap dealer and major security-based swap
8 participant shall implement conflict-of-interest sys-
9 tems and procedures that—

10 “(A) establish structural and institutional
11 safeguards to assure that the activities of any
12 person within the firm relating to research or
13 analysis of the price or market for any security
14 are separated by appropriate informational par-
15 titions within the firm from the review, pres-
16 sure, or oversight of those whose involvement in
17 trading or clearing activities might potentially
18 bias their judgment or supervision; and

19 “(B) address such other issues as the
20 Commission determines appropriate.

21 “(j) STATUTORY DISQUALIFICATION.—Except to the
22 extent otherwise specifically provided by rule, regulation,
23 or order of the Commission, it shall be unlawful for a secu-
24 rity-based swap dealer or a major security-based swap par-
25 ticipant to permit any person associated with a security-

1 based swap dealer or a major security-based swap partici-
2 pant who is subject to a statutory disqualification to effect
3 or be involved in effecting security-based swaps on behalf
4 of such security-based swap dealer or major security-based
5 swap participant, if such security-based swap dealer or
6 major security-based swap participant knew, or in the ex-
7 ercise of reasonable care should have known, of such stat-
8 utory disqualification.

9 “(k) ENFORCEMENT AND ADMINISTRATIVE PRO-
10 CEEDING AUTHORITY.—

11 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

12 “(A) SEC.—Except as provided in sub-
13 paragraph (B), the Commission shall have ex-
14 clusive authority to enforce the amendments
15 made by subtitle B of the Derivative Markets
16 Transparency and Accountability Act of 2009
17 with respect to any person.

18 “(B) PRUDENTIAL REGULATORS.—The
19 Prudential Regulators shall have exclusive au-
20 thority to enforce the provisions of section
21 15F(d) and other prudential requirements of
22 this Act with respect to banks, and branches or
23 agencies of foreign banks that are security-
24 based swap dealers or major security-based
25 swap participants.

1 “(C) REFERRAL.—

2 “(i) VIOLATIONS OF NONPRUDENTIAL
3 REQUIREMENTS.—If the Prudential Regu-
4 lator for a security-based swap dealer or
5 major security-based swap participant has
6 cause to believe that such security-based
7 swap dealer or major security-based swap
8 participant may have engaged in conduct
9 that constitutes a violation of the non-
10 prudential requirements of section 15F or
11 rules adopted by the Commission there-
12 under, that Prudential Regulator may rec-
13 ommend in writing to the Commission that
14 the Commission initiate an enforcement
15 proceeding as authorized under this Act.
16 The recommendation shall be accompanied
17 by a written explanation of the concerns
18 giving rise to the recommendation.

19 “(ii) VIOLATIONS OF PRUDENTIAL RE-
20 QUIREMENTS.—If the Commission has
21 cause to believe that a securities-based
22 swap dealer or major securities-based swap
23 participant that has a Prudential Regu-
24 lator may have engaged in conduct that
25 constitute a violation of the prudential re-

1 requirements of section 15F(e) or rules
2 adopted thereunder, the Commission may
3 recommend in writing to the Prudential
4 Regulator that the Prudential Regulator
5 initiate an enforcement proceeding as au-
6 thorized under this Act. The recommenda-
7 tion shall be accompanied by a written ex-
8 planation of the concerns giving rise to the
9 recommendation.

10 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
11 AND HEARING.—The Commission, by order, shall
12 censure, place limitations on the activities, functions,
13 or operations of, or revoke the registration of any se-
14 curity-based swap dealer or major security-based
15 swap participant that has registered with the Com-
16 mission pursuant to subsection (b) if it finds, on the
17 record after notice and opportunity for hearing, that
18 such censure, placing of limitations, or revocation is
19 in the public interest and that such security-based
20 swap dealer or major security-based swap partici-
21 pant, or any person associated with such security-
22 based swap dealer or major security-based swap par-
23 ticipant effecting or involved in effecting trans-
24 actions in security-based swaps on behalf of such se-
25 curity-based swap dealer or major security-based

1 swap participant, whether prior or subsequent to be-
2 coming so associated—

3 “(A) has committed or omitted any act, or
4 is subject to an order or finding, enumerated in
5 subparagraph (A), (D), or (E) of paragraph (4)
6 of section 15(b);

7 “(B) has been convicted of any offense
8 specified in subparagraph (B) of such para-
9 graph (4) within 10 years of the commencement
10 of the proceedings under this subsection;

11 “(C) is enjoined from any action, conduct,
12 or practice specified in subparagraph (C) of
13 such paragraph (4);

14 “(D) is subject to an order or a final order
15 specified in subparagraph (F) or (H), respec-
16 tively, of such paragraph (4); or

17 “(E) has been found by a foreign financial
18 regulatory authority to have committed or omit-
19 ted any act, or violated any foreign statute or
20 regulation, enumerated in subparagraph (G) of
21 such paragraph (4).

22 “(3) ASSOCIATED PERSONS.—With respect to
23 any person who is associated, who is seeking to be-
24 come associated, or, at the time of the alleged mis-
25 conduct, who was associated or was seeking to be-

1 come associated with a security-based swap dealer or
2 major security-based swap participant for the pur-
3 pose of effecting or being involved in effecting secu-
4 rity-based swaps on behalf of such security-based
5 swap dealer or major security-based swap partici-
6 pant, the Commission, by order, shall censure, place
7 limitations on the activities or functions of such per-
8 son, or suspend for a period not exceeding 12
9 months, or bar such person from being associated
10 with a security-based swap dealer or major security-
11 based swap participant, if the Commission finds, on
12 the record after notice and opportunity for a hear-
13 ing, that such censure, placing of limitations, sus-
14 pension, or bar is in the public interest and that
15 such person—

16 “(A) has committed or omitted any act, or
17 is subject to an order or finding, enumerated in
18 subparagraph (A), (D), or (E) of paragraph (4)
19 of section 15(b);

20 “(B) has been convicted of any offense
21 specified in subparagraph (B) of such para-
22 graph (4) within 10 years of the commencement
23 of the proceedings under this subsection;

1 “(C) is enjoined from any action, conduct,
2 or practice specified in subparagraph (C) of
3 such paragraph (4);

4 “(D) is subject to an order or a final order
5 specified in subparagraph (F) or (H), respec-
6 tively, of such paragraph (4); or

7 “(E) has been found by a foreign financial
8 regulatory authority to have committed or omit-
9 ted any act, or violated any foreign statute or
10 regulation, enumerated in subparagraph (G) of
11 such paragraph (4).

12 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
13 ful—

14 “(A) for any person as to whom an order
15 under paragraph (3) is in effect, without the
16 consent of the Commission, willfully to become,
17 or to be, associated with a security-based swap
18 dealer or major security-based swap participant
19 in contravention of such order; or

20 “(B) for any security-based swap dealer or
21 major security-based swap participant to permit
22 such a person, without the consent of the Com-
23 mission, to become or remain a person associ-
24 ated with the security-based swap dealer or
25 major security-based swap participant in con-

1 travention of such order, if such security-based
2 swap dealer or major security-based swap par-
3 ticipant knew, or in the exercise of reasonable
4 care should have known, of such order.”.

5 **SEC. 3205. REPORTING AND RECORDKEEPING.**

6 (a) The Securities Exchange Act of 1934 (15 U.S.C.
7 78a, et seq.) is amended by inserting after section 13 the
8 following section:

9 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
10 **TAIN SECURITY-BASED SWAPS.**

11 “(a) IN GENERAL.—Any person who enters into a se-
12 curity-based swap and—

13 “(1) did not clear the security-based swap in
14 accordance with section 3A; and

15 “(2) did not have data regarding the security-
16 based swap accepted by a security-based swap repos-
17 itory in accordance with rules adopted by the Com-
18 mission under section 13(n),

19 shall meet the requirements in subsection (b).

20 “(b) REPORTS.—Any person described in subsection
21 (a) shall—

22 “(1) make such reports in such form and man-
23 ner and for such period as the Commission shall pre-
24 scribe by rule or regulation regarding the security-
25 based swaps held by the person; and

1 “(2) keep books and records pertaining to the
2 security-based swaps held by the person in such
3 form and manner and for such period as may be re-
4 quired by the Commission, which books and records
5 shall be open to inspection by any representative of
6 the Commission, an appropriate Federal banking
7 agency, the Commodity Futures Trading Commis-
8 sion, the Financial Services Oversight Council, and
9 the Department of Justice.

10 “(c) IDENTICAL DATA.—In adopting rules under this
11 section, the Commission shall require persons described in
12 subsection (a) to report the same or more comprehensive
13 data than the Commission requires security-based swap
14 repositories to collect under subsection (n).”.

15 (b) BENEFICIAL OWNERSHIP REPORTING.—

16 (1) Section 13(d)(1) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
18 inserting “or otherwise becomes or is deemed to be-
19 come a beneficial owner of any of the foregoing upon
20 the purchase or sale of a security-based swap or
21 other derivative instrument that the Commission
22 may define by rule, and” after “Alaska Native
23 Claims Settlement Act,”; and

24 (2) Section 13(g)(1) of the Securities Exchange
25 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by

1 inserting “or otherwise becomes or is deemed to be-
2 come a beneficial owner of any security of a class de-
3 scribed in subsection (d)(1) upon the purchase or
4 sale of a security-based swap or other derivative in-
5 strument that the Commission may define by rule”
6 after “subsection (d)(1) of this section”.

7 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
8 AGERS.—Section 13(f)(1) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
10 “or otherwise becomes or is deemed to become a beneficial
11 owner of any security of a class described in subsection
12 (d)(1) upon the purchase or sale of a security-based swap
13 or other derivative instrument that the Commission may
14 define by rule,” after “subsection (d)(1) of this section”.

15 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
16 Section 15(b)(4) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78o(b)(4)) is amended—

18 (1) in subparagraph (C), by adding “security-
19 based swap dealer, major security-based swap partic-
20 ipant,” after “government securities dealer,”; and

21 (2) in subparagraph (F), by adding “, or secu-
22 rity-based swap dealer, or a major security-based
23 swap participant” after “or dealer”.

1 (e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section
2 13 of the Securities Exchange Act of 1934 (15 U.S.C.
3 78m) is amended by adding at the end the following:

4 “(o) BENEFICIAL OWNERSHIP.—For purposes of this
5 section and section 16, a person shall be deemed to acquire
6 beneficial ownership of an equity security based on the
7 purchase or sale of a security-based swap or other deriva-
8 tive instrument only to the extent that the Commission,
9 by rule, determines after consultation with the Prudential
10 Regulators and the Secretary of the Treasury, that the
11 purchase or sale of the security-based swap or other deriv-
12 ative instrument, or class of security-based swaps or other
13 derivative instruments, provides incidents of ownership
14 comparable to direct ownership of the equity security, and
15 that it is necessary to achieve the purposes of this section
16 that the purchase or sale of the security-based swaps or
17 instrument, or class of security-based swap or instru-
18 ments, be deemed the acquisition of beneficial ownership
19 of the equity security.”.

20 **SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.**

21 Section 28(a) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78bb(a)) is amended to read as follows:

23 “(a) Except as provided in subsection (f), the rights
24 and remedies provided by this title shall be in addition
25 to any and all other rights and remedies that may exist.

1 at law or in equity; but no person permitted to maintain
2 a suit for damages under the provisions of this title shall
3 recover, through satisfaction of judgment in one or more
4 actions; a total amount in excess of his actual damages
5 on account of the act complained of. Except as otherwise
6 specifically provided in this title, nothing in this title shall
7 affect the jurisdiction of the securities commission (or any
8 agency or officer performing like functions) of any State
9 over any security or any person insofar as it does not con-
10 flict with the provisions of this title or the rules and regu-
11 lations thereunder. No State law which prohibits or regu-
12 lates the making or promoting of wagering or gaming con-
13 tracts, or the operation of 'bucket shops' or other similar
14 or related activities, shall invalidate (1) any put, call,
15 straddle, option, privilege, or other security subject to this
16 title (except any security that has a pari-mutuel payout
17 or otherwise is determined by the Commission, acting by
18 rule, regulation, or order, to be appropriately subject to
19 such laws), or apply to any activity which is incidental or
20 related to the offer, purchase, sale, exercise, settlement,
21 or closeout of any such security, (2) any security-based
22 swap between eligible contract participants, or (3) any se-
23 curity-based swap effected on a national securities ex-
24 change registered pursuant to section 6(b). No provision
25 of State law regarding the offer, sale, or distribution of

1 securities shall apply to any transaction in a security-
2 based swap or a security futures product, except that this
3 sentence shall not be construed as limiting any State anti-
4 fraud law of general applicability. A security-based swap
5 may not be regulated as an insurance contract under State
6 law.”.

7 **SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933;**
8 **TREATMENT OF SECURITY-BASED SWAPS.**

9 (a) DEFINITIONS.—Section 2(a) of the Securities Act
10 of 1933 (15 U.S.C. 77b(a)) is amended—

11 (1) in paragraph (1), by inserting “security-
12 based swap,” after “security future,”;

13 (2) in paragraph (3) by adding at the end the
14 following: “Any offer or sale of a security-based
15 swap by or on behalf of the issuer of the securities
16 upon which such security-based swap is based or is
17 referenced, an affiliate of the issuer, or an under-
18 writer, shall constitute a contract for sale of, sale of,
19 offer for sale, or offer to sell such securities.”; and

20 (3) by adding at the end the following:

21 “(17) The terms ‘swap’ and ‘security-based
22 swap’ have the same meanings as provided in sec-
23 tions 1a(35) of the Commodity Exchange Act (7
24 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-
25 ties Exchange Act of 1934.

1 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
2 rity-based swap shall be deemed to mean the execu-
3 tion, termination (prior to its scheduled maturity
4 date), assignment, exchange, or similar transfer or
5 conveyance of, or extinguishing of rights or obliga-
6 tions under, a security-based swap, as the context
7 may require.”.

8 (b) EXEMPTION FROM REGISTRATION.—Section 3(a)
9 of the Securities Act of 1933 is amended by adding at
10 the end the following:

11 “(15) Any security-based swap, as defined in
12 section 2(a)(17) that is not otherwise a security as
13 defined in section 2(a)(1) and that satisfies such
14 conditions as established by rule or regulation by the
15 Commission consistent with the provisions of the
16 Derivative Markets Transparency and Accountability
17 Act of 2009. The Commission shall promulgate rules
18 implementing this exemption.”.

19 (c) REGISTRATION OF SECURITY-BASED SWAPS.—
20 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
21 is amended by adding at the end the following:

22 “(d) Notwithstanding the provisions of section 3 or
23 section 4, unless a registration statement meeting the re-
24 quirements of subsection (a) of section 10 is in effect as
25 to a security-based swap, it shall be unlawful for any per-

1 son, directly or indirectly, to make use of any means or
2 instruments of transportation or communication in inter-
3 state commerce or of the mails to offer to sell, offer to
4 buy or purchase or sell a security-based swap to any per-
5 son who is not an eligible contract participant as defined
6 in section 1a(12) of the Commodity Exchange Act (7
7 U.S.C. 1a(12)).”

8 **SEC. 3208. OTHER AUTHORITY.**

9 Unless otherwise provided by its terms, this subtitle
10 does not divest any appropriate Federal banking agency,
11 the Commission, the Commodity Futures Trading Com-
12 mission, or other Federal or State agency, of any authority
13 derived from any other applicable law.

14 **SEC. 3209. JURISDICTION.**

15 (a) Section 36 of the Securities Exchange Act of
16 1934 (15 U.S.C. 78mm) is amended by adding at the end
17 the following new subsection:

18 “(c) DERIVATIVES.—The Commission shall not grant
19 exemptions from the security-based swap provisions of the
20 Derivative Markets Transparency and Accountability Act
21 of 2009, except as expressly authorized under the provi-
22 sions of that Act.”

23 (b) Section 30 of the Securities Exchange Act of
24 1934 is amended by adding at the end the following:

1 “(c) No provision of this Act that was added by the
2 Derivative Markets Transparency and Accountability Act
3 of 2009 or any rule or regulation thereunder shall apply
4 to any person insofar as such person transacts a business
5 in security-based swaps without the jurisdiction of the
6 United States unless he transacts such business in con-
7 travention of such rules and regulations as the Commis-
8 sion may prescribe as necessary or appropriate to prevent
9 the evasion of any provision of this Act that was added
10 by the Derivative Markets Transparency and Account-
11 ability Act of 2009. This subsection shall not be construed
12 to limit the jurisdiction of the Commission under any pro-
13 vision of this Act as in effect prior to enactment of the
14 Derivative Markets Transparency and Accountability Act
15 of 2009.”.

16 **SEC. 3210. EFFECTIVE DATE.**

17 (a) Unless otherwise provided, the provisions of this
18 subtitle shall become effective the later of 270 days after
19 the date of the enactment of this subtitle or, to the extent
20 a provision of this subtitle requires rulemaking, no less
21 than 60 days after publication of a final rule or regulation
22 implementing such provision of this subtitle.

23 (b) Subsection (a) shall not preclude the Securities
24 Exchange Commission from any rulemaking required to
25 implement the provisions of this subtitle.

1 **Subtitle C—Improved Financial**
2 **and Commodity Markets Over-**
3 **sight and Accountability**

4 **SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL**
5 **TO APPOINTMENT PURSUANT TO SECTION 3**
6 **OF THE INSPECTOR GENERAL ACT OF 1978.**

7 (a) INCLUSION IN CERTAIN DEFINITIONS.—Section
8 12 of the Inspector General Act of 1978 (5 U.S.C. App.)
9 is amended—

10 (1) in paragraph (1), by striking “or the Fed-
11 eral Cochairpersons of the Commissions established
12 under section 15301 of title 40, United States
13 Code;” and inserting “the Federal Cochairpersons of
14 the Commissions established under section 15301 of
15 title 40, United States Code; the Chairman of the
16 Board of Governors of the Federal Reserve System;
17 the Chairman of the Commodity Futures Trading
18 Commission; the Chairman of the National Credit
19 Union Administration; the Director of the Pension
20 Benefit Guaranty Corporation; the Chairman of the
21 Securities and Exchange Commission; or the Direc-
22 tor of the Consumer Financial Protection Agency;”;
23 and

24 (2) in paragraph (2), by striking “or the Com-
25 missions established under section 15301 of title 40,

1 United States Code,” and inserting “the Commis-
2 sions established under section 15301 of title 40,
3 United States Code, the Board of Governors of the
4 Federal Reserve System, the Commodity Futures
5 Trading Commission, the National Credit Union Ad-
6 ministration, the Pension Benefit Guaranty Corpora-
7 tion, the Securities and Exchange Commission, or
8 the Director of the Consumer Financial Protection
9 Agency,”.

10 (b) EXCLUSION FROM DEFINITION OF DESIGNATED
11 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector
12 General Act of 1978 (5 U.S.C. App.) is amended—

13 (1) by striking “the Board of Governors of the
14 Federal Reserve System,”;

15 (2) by striking “the Commodity Futures Trad-
16 ing Commission,”;

17 (3) by striking “the National Credit Union Ad-
18 ministration,”; and

19 (4) by striking “the Pension Benefit Guaranty
20 Corporation, the Securities and Exchange Commis-
21 sion,”.

1 **SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO**
2 **PERSONNEL.**

3 (a) **IN GENERAL.**—The Inspector General Act of
4 1978 (5 U.S.C. App.) is amended by inserting after sec-
5 tion 8L the following:

6 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
7 **TABLISHMENTS.**

8 “(a) **DEFINITION.**—For purposes of this section, the
9 term ‘covered establishment’ means the Board of Gov-
10 ernors of the Federal Reserve System, the Commodity Fu-
11 tures Trading Commission, the National Credit Union Ad-
12 ministration, the Pension Benefit Guaranty Corporation,
13 and the Securities and Exchange Commission.

14 “(b) **PROVISIONS RELATING TO ALL COVERED ES-**
15 **TABLISHMENTS.**—

16 “(1) **PROVISIONS RELATING TO INSPECTORS**
17 **GENERAL.**—In the case of the Inspector General of
18 a covered establishment, subsections (b) and (c) of
19 section 4 of the Inspector General Reform Act of
20 2008 (Public Law 110–409) shall apply in the same
21 manner as if such covered establishment were a des-
22 ignated Federal entity under section 8G. An Inspec-
23 tor General who is subject to the preceding sentence
24 shall not be subject to section 3(e).

25 “(2) **PROVISIONS RELATING TO OTHER PER-**
26 **PERSONNEL.**—Notwithstanding paragraphs (7) and (8)

1 of section 6(a), the Inspector General of a covered
2 establishment may select, appoint, and employ such
3 officers and employees as may be necessary for car-
4 rying out the functions, powers, and duties of the
5 Office of Inspector General of such establishment
6 and to obtain the temporary or intermittent services
7 of experts or consultants or an organization of ex-
8 perts or consultants, subject to the applicable laws
9 and regulations that govern such selections, appoint-
10 ments, and employment, and the obtaining of such
11 services, within such establishment.

12 “(c) PROVISION RELATING TO THE BOARD OF GOV-
13 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-
14 visions of subsection (a) of section 8D (other than the pro-
15 visions of subparagraphs (A), (B), (C), and (E) of para-
16 graph (1) of such subsection (a)) shall apply to the Inspec-
17 tor General of the Board of Governors of the Federal Re-
18 serve System and the Chairman of the Board of Governors
19 of the Federal Reserve System in the same manner as
20 such provisions apply to the Inspector General of the De-
21 partment of the Treasury and the Secretary of the Treas-
22 ury, respectively.”

23 (b) CONFORMING AMENDMENT.—Paragraph (3) of
24 section 8G(g) of the Inspector General Act of 1978 (5
25 U.S.C. App.) is repealed.

1 **SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CER-**
2 **TAIN ESTABLISHMENTS TO DEFICIENCIES**
3 **IDENTIFIED BY INSPECTORS GENERAL.**

4 The Chairman of the Board of Governors of the Fed-
5 eral Reserve System, the Chairman of the Commodity Fu-
6 tures Trading Commission, the Chairman of the National
7 Credit Union Administration, the Director of the Pension
8 Benefit Guaranty Corporation, and the Chairman of the
9 Securities and Exchange Commission shall each—

10 (1) take action to address deficiencies identified
11 by a report or investigation of the Inspector General
12 of the establishment concerned; or

13 (2) certify to both Houses of Congress that no
14 action is necessary or appropriate in connection with
15 a deficiency described in paragraph (1).

16 **SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.**

17 (a) **EFFECTIVE DATE.**—This subtitle and the amend-
18 ments made by this subtitle shall take effect 30 days after
19 the date of the enactment of this subtitle.

20 (b) **TRANSITION RULE.**—An individual serving as In-
21 spector General of the Board of Governors of the Federal
22 Reserve System, the Commodity Futures Trading Com-
23 mission, the National Credit Union Administration, the
24 Pension Benefit Guaranty Corporation, or the Securities
25 and Exchange Commission on the effective date of this
26 subtitle pursuant to an appointment made under section

1 8G of the Inspector General Act of 1978 (5 U.S.C.
2 App.)—

3 (1) may continue so serving until the President
4 makes an appointment under section 3(a) of such
5 Act with respect to the Board of Governors of the
6 Federal Reserve System, the Commodity Futures
7 Trading Commission, the National Credit Union Ad-
8 ministration, the Pension Benefit Guaranty Corpora-
9 tion, or the Securities and Exchange Commission, as
10 the case may be, consistent with the amendments
11 made by section 301; and

12 (2) shall, while serving under paragraph (1), re-
13 main subject to the provisions of section 8G of such
14 Act which, immediately before the effective date of
15 this subtitle, applied with respect to the Inspector
16 General of the Board of Governors of the Federal
17 Reserve System, the Commodity Futures Trading
18 Commission, the National Credit Union Administra-
19 tion, the Pension Benefit Guaranty Corporation, or
20 the Securities and Exchange Commission, as the
21 case may be, and suffer no reduction in pay.

Page 694, beginning on line 19, strike “a designated
Federal entity” and insert “an establishment”.

In the table of contents, strike the items relating to title III, subtitles A, B, and C of title III, and sections 3001 through 3304 and insert the following:

TITLE III—DERIVATIVE MARKETS TRANSPARENCY AND
ACCOUNTABILITY ACT

- Sec. 3001. Short title.
- Sec. 3002. Review of regulatory authority.
- Sec. 3003. International harmonization.
- Sec. 3004. Prohibition against government assistance.
- Sec. 3005. Studies.
- Sec. 3006. Recommendations for changes to insolvency laws.
- Sec. 3007. Abusive swaps.
- Sec. 3008. Authority to prohibit participation in swap activities.
- Sec. 3009. Memorandum.

Subtitle A—Regulation of Swap Markets

- Sec. 3101. Definitions.
- Sec. 3102. Jurisdiction.
- Sec. 3103. Clearing and execution transparency.
- Sec. 3104. Public reporting of aggregate swap data.
- Sec. 3105. Swap repositories.
- Sec. 3106. Reporting and recordkeeping.
- Sec. 3107. Registration and regulation of swap dealers and major swap participants.
- Sec. 3108. Conflicts of interest.
- Sec. 3109. Swap execution facilities.
- Sec. 3110. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 3111. Designated contract markets.
- Sec. 3112. Margin.
- Sec. 3113. Position limits.
- Sec. 3114. Enhanced authority over registered entities.
- Sec. 3115. Foreign boards of trade.
- Sec. 3116. Legal certainty for swaps.
- Sec. 3117. FDICIA amendments.
- Sec. 3118. Enforcement authority.
- Sec. 3119. Enforcement.
- Sec. 3120. Retail commodity transactions.
- Sec. 3121. Large swap trader reporting.
- Sec. 3122. Segregation of assets held as collateral in swap transactions.
- Sec. 3123. Other authority.
- Sec. 3124. Antitrust.
- Sec. 3125. Review of prior actions.
- Sec. 3126. Expedited process.
- Sec. 3127. Effective date.

Subtitle B—Regulation of Security-Based Swap Markets

- Sec. 3201. Definitions under the Securities Exchange Act of 1934.
- Sec. 3202. Repeal of prohibition on regulation of security-based swaps.

- Sec. 3203. Amendments to the Securities Exchange Act of 1934.
- Sec. 3204. Registration and regulation of swap dealers and major swap participants.
- Sec. 3205. Reporting and recordkeeping.
- Sec. 3206. State gaming and bucket shop laws.
- Sec. 3207. Amendments to the Securities Act of 1933; treatment of security-based swaps.
- Sec. 3208. Other authority.
- Sec. 3209. Jurisdiction.
- Sec. 3210. Effective date.

Subtitle C—Improved Financial and Commodity Markets Oversight and
Accountability

- Sec. 3301. Elevation of certain Inspectors General to appointment pursuant to section 3 of the Inspector General Act of 1978.
- Sec. 3302. Continuation of provisions relating to personnel.
- Sec. 3303. Corrective responses by heads of certain establishments to deficiencies identified by Inspectors General.
- Sec. 3304. Effective date; transition rule.

