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 MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT

4 SEC. 3001. SHORT TITLE.

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

7 SEC. 3002. REVIEW OF REGULATORY AUTHORITY.

8 (a) CONSULTATION.—

9 (1) CFTC.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult with the Securities and Exchange Commission and the Prudential Regulators.

18 (2) SEC.—Before commencing any rulemaking or issuing an order regarding security-based swaps,
security-based swap dealers, major security-based
swap participants, security-based swap repositories,
persons associated with a security-based swap dealer
or major security-based swap participant, eligible
contract participants with regard to security-based
swaps, or swap execution facilities pursuant to sub-
title B, the Securities and Exchange Commission
shall consult with the Commodity Futures Trading
Commission and the Prudential Regulators.

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

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

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

(b) LIMITATION.—
(1) CFTC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to their activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap repositories;

(iv) persons associated with a security-based swap dealer or major security-based swap participant;

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

(vi) swap execution facilities.

(2) SEC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Securities and Exchange Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or
(B) with regard to their activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap repositories;

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

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

(vi) swap execution facilities.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—If either Commission referred to in this section believes that a final rule, regulation, or order of the other such Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review thereof in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside. Any such proceeding shall be expedited by the Court of Appeals.

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

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

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

(d) DEFINITIONS.—In this section, the terms "Pru-
dential Regulators", "swap", "swap dealer", "major swap
participant", "swap repository", "person associated with
a swap dealer or major swap participant", "eligible con-
tract participant”, “swap execution facility”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, “security-based swap repository”, and “person associated with a security-based swap dealer or major security-based swap participant” shall have the meanings provided, respectively, in the Commodity Exchange Act, including any modification of the meanings under section 3101(b) of this Act.

(e)(1) Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities Exchange Commission shall jointly adopt rules to—

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

(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and

(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.

(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a
timely manner, at the request of either Commission, the
Financial Services Oversight Council shall resolve the dis-
pute—
(A) within a reasonable time after receiving the
request;
(B) after consideration of relevant information
provided by each Commission; and
(C) by agreeing with one of the Commissions
regarding the entirety of the matter or by deter-
mining a compromise position.

SEC. 3003. INTERNATIONAL HARMONIZATION.
(a) In order to promote effective and consistent global
regulation of contracts of sale of swaps and security-based
swaps, the Commodity Futures Trading Commission, the
Securities and Exchange Commission, and the Prudential
Regulators (as defined in section 1a(42) of the Commodity
Exchange Act), as appropriate, shall consult and coordi-
nate with foreign regulatory authorities on the establish-
ment of consistent international standards with respect to
the regulation of contracts of sale of swaps and security-
based swaps, and may agree to such information-sharing
arrangements as may be deemed to be necessary or appro-
priate in the public interest or for the protection of inves-
tors, swap counterparties, and security-based swap
counterparties.
(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.

SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act or a clearing agency described in the Securities Exchange Act of 1934, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term "Federal assistance” means the use of public funds for the purposes of—
(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(2) purchasing assets of a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(3) assuming or guaranteeing the obligations of a derivatives clearing organization, a clearing agency, or a subsidiary of either; or

(4) acquiring any type of equity interest or security of a derivatives clearing organization, a clearing agency, or a subsidiary of either.

SEC. 3005. STUDIES.

(a) Study on Effects of Position Limits on Trading on Exchanges in the United States.—

(1) Study.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.
(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market par-
participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) Study on Feasibility of Requiring Use of Standardized Algorithmic Descriptions for Financial Derivatives.—

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

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

(A) commercial users and traders of derivatives;

(B) derivative clearing houses, exchanges and electronic trading platforms;
(C) trade repositories and regulator investigations of market activities; and

(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Com-
mittees on Agriculture, Nutrition, and Forestry and
on Banking, Housing, and Urban Affairs of the Sen-
ate a written report which contains the results of the
study required by paragraphs (1) through (3).
(c) STUDY OF DESIRABILITY AND FEASIBILITY OF
ESTABLISHING SINGLE REGULATOR FOR ALL TRANS-
STRUCTIONS INVOLVING FINANCIAL DERIVATIVES.—
(1) IN GENERAL.—The Secretary of the Treas-
ury, the Commodity Futures Trading Commission,
and the Securities and Exchange Commission shall
conduct a joint study of the desirability and feasi-
bility of establishing, by January 1, 2012, a single
regulator for all transactions involving financial de-
rivatives.
(2) REPORT TO THE CONGRESS.—Not later
than December 1, 2010, Secretary of the Treasury,
the Commodity Futures Trading Commission, and
the Securities and Exchange Commission shall joint-
ly submit to the Committees on Agriculture and on
Financial Services of the House of Representatives
and the Committees on Agriculture, Nutrition, and
Forestry and on Banking, Housing, and Urban Af-
fairs of the Senate a written report that contains the
results of the study required by paragraph (1).
SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 11a of the Commodity Exchange Act, as amended by section 3111 of this Act) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or
dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

SEC. 3007. ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.
SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.

If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.

SEC. 3009. MEMORANDUM.

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

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest,

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

(C) avoiding, to the extent possible, conflicting or duplicative regulation.
(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight.

Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

Subtitle A—Regulation of Swap Markets

SEC. 3101. DEFINITIONS.

(a) Amendments to Definitions in the Commodity Exchange Act.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (12)(A)—

(A) in clause (vii)(III), by striking "$25,000,000" and inserting "$50,000,000"; and
(B) in clause (xi), by striking “total assets in an amount” and inserting “amounts invested on a discretionary basis”;

(2) in paragraph (29)—

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

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

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

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

“(F) a swap repository; and”; and

(3) by adding at the end the following:

“(35) SWAP.—

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

“(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures,
or other financial or economic interests or property of any kind;

"(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

"(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or invest-
ment pool) or liability that incorporates the financial risk so transferred, and includes any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

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

"(v) meets the definition of ‘swap agreement’ as defined in section 206A of the Gramm-Leach-Bliley Act of which a material term of which is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

"(vi) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).
“(B) EXCLUSIONS.—The term ‘swap’ does not include—

“(i) any contract of sale of a commodity for future delivery (or any option on such a contract) or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

“(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the

"(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq);

"(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

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

"(viii) any agreement, contract, or transaction that is—

"(I) based on a security; and

"(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of the security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital-raising;

"(ix) any foreign exchange forward;

"(x) any foreign exchange swap;

"(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government or an agency of the United States government that is expressly backed by the full faith and credit of the United States; and

"(xii) any security-based swap.
“(C) Rule of construction regarding master agreements.—The term ‘swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).

“(D) Foreign exchange swaps and forwards exception.—

“(i) In general.—Notwithstanding clauses (ix) and (x) of subparagraph (B), foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph if the Commission makes a determination that either foreign exchange swaps or foreign exchange forwards or both should be regulated as
swaps under this Act and the Secretary concurs with such determination.

(ii) SCOPE OF AUTHORITY.—

(I) The Commission and the Secretary shall jointly determine which of the authorities under this Act regarding swaps the Commission shall exercise over foreign exchange swaps and foreign exchange forwards. Such authorities shall subsequently be exercised solely by the Commission. The Commission and the Secretary may jointly amend any previously made determination under this sub-clause.

(II) Notwithstanding clause (i), the Commission and the Secretary of the Treasury may determine that either foreign exchange swaps or foreign exchange forwards or both should not be regulated as swaps under this Act if such determination is jointly made.

(iii) REPORTING.—Notwithstanding clauses (ix) and (x) of subparagraph (B)
and subparagraph (D)(ii), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap repository, or, if there is no swap repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

"(iv) SECRETARY.—For purposes of this subparagraph only, the term ‘Secretary’ means the Secretary of the Treasury.

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

"(37) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the same meaning as in section 3(a)(68) of the Securities and Exchange Act of 1934.

"(38) SWAP DEALER.—

"(A) IN GENERAL.—The term ‘swap dealer’ means any person who—

"(i) holds itself out as a dealer in swaps;

"(ii) makes a market in swaps;
"(iii) regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business; or

"(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

"(B) A person may be designated a swap dealer for a single type or single class or category of swap and considered not a swap dealer for other types, classes, or categories of swaps.

"(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a swap dealer an entity that engages in a de minimus amount of swap dealing in connection with transactions with or on the behalf of its customers.

"(39) MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

"(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing
or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

"(ii) whose outstanding swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

"(B) Definition of substantial net position.—The Commission shall define by rule or regulation the terms 'substantial net position', 'substantial net counterparty exposure', and 'significant credit losses' at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps.

"(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.
“(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based swap participant’ has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934.

“(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

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

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

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

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

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

“(i) a national bank; or

“(ii) a federally chartered branch or agency of a foreign bank; and
"(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.

"(43) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934.

"(44) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.

"(45) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.

"(46) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED
SWAP PARTICIPANT.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934.

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

“(48) SWAP REPOSITORY.—The term ‘swap repository’ means any person that collects, calculates,
prepares or maintains information or records with respect to transactions or positions in or the terms and conditions of swaps entered into by third parties.

"(49) SWAP EXECUTION FACILITY.—The term 'swap execution facility' means a person or entity that facilitates the execution or trading of swaps between two persons through any means of interstate commerce, but which is not a designated contract market, including any electronic trade execution or voice brokerage facility.

"(50) DERIVATIVE.—The term 'derivative' means—

"(A) a contract of sale of a commodity for future delivery; or

"(B) a swap."

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Commodity Futures Trading Commission shall adopt a rule further defining the terms "swap", "swap dealer", "major swap participant", and "eligible contract participant" for the purpose of including transactions and entities that have been structured to evade this title.

(c) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: "The Commission shall not have
the authority to grant exemptions from the provisions of 
sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109, 
3110, 3113, 3115, 3120, and 3121 of the Derivative Mar-
kets Transparency and Accountability Act of 2009, except 
as expressly authorized under the provisions of that Act. 
Notwithstanding the preceding sentence, the Commodity 
Futures Trading Commission may exempt from any provi-
sion of the Commodity Exchange Act, pursuant to this 
subsection, an agreement, contract, or transaction that is 
entered into pursuant to a tariff approved by the Federal 
Energy Regulatory Commission, if the Commodity Fu-
tures Trading Commission determines that the exemption 
would be consistent with the public interest, and shall con-
sider and not unreasonably deny any request made by the 
Federal Energy Regulatory Commission for such an ex-
emption.”.

SEC. 3102. JURISDICTION.

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

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

(A) by striking “(e) through (i)” and in-
serting “(e) and (f)”;

(B) by inserting “swaps, or” before “con-
tracts of sale”;
(C) by striking "derivatives transaction execution facility" and inserting "swap execution facility"; and

(D) by striking "5a" and inserting "5h";
and

(2) by adding at the end the following:

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

(ii) In addition to the authority of the Securities Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

(H)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission with respect to an agreement, contract, or transaction that is—
“(I) not executed, traded, or cleared on a registered entity or trading facility;
and
“(II) entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission.
“(ii) In addition to the authority of the Federal Energy Regulatory Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).”.

(b) ADDITIONS.—Section 2(e)(2)(A) of such Act (7 U.S.C. 2(e)(2)(A)) is amended—
(1) in clause (i) by striking “or” at the end;
(2) by redesignating clause (ii) as clause (iii);
and
(3) by inserting after clause (i) the following:
“(ii) a swap; or”.

(c) Section 12(e) of such Act (7 U.S.C. 16(e)) is amended—
(1) in paragraph (1)(B), by inserting “or (3)” after “paragraph (2)”;
(2) in paragraph (2), by striking subparagraphs
(A) and (B) and inserting the following:

"(A) a swap; and

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

(3) by adding at the end the following:

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

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

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

"(B) contravene such rules or regulations
as the Commission may prescribe as necessary
or appropriate to prevent the evasion of any
provision of this Act that was enacted by the
Derivative Markets Transparency and Account-
ability Act of 2009.’’
(d) Nothing in the Derivative Markets Transparency
and Accountability Act of 2009 or the amendments to the
Commodity Exchange Act made by such Act shall limit
or affect any statutory enforcement authority of the Fed-
eral Energy Regulatory Commission pursuant to Section
222 of the Federal Power Act and Section 4A of the Nat-
ural Gas Act that existed prior to the date of enactment
of the Derivative Markets Transparency and Account-
ability Act of 2009.

SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.
(a) CLEARING AND EXECUTION TRANSPARENCY RE-
QUIREMENTS.—
(1) Section 2 of the Commodity Exchange Act
(7 U.S.C. 2) is amended by striking subsections (d),
(e), (g), and (h).
(2)(A) Prior to the final effective dates in this
title, a person may petition the Commodity Futures
Trading Commission to remain subject to para-
graphs (3) through (7) of section 2(h) of the Com-
modity Exchange Act.
(B) The Commodity Futures Trading Commission shall consider any petition submitted under subparagraph (A) in a prompt manner and may allow a person to continue operating subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act for up to one year after the effective date of this subtitle.

(3) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

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

"(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on or subject to the rules of a board of trade designated as a contract market under section 5.".
(4) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

"(j) CLEARING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) STANDARD FOR CLEARING.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) that the swap is required to be cleared.

"(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

"(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

"(ii) provide for non-discriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated
designated contract market or swap execution facility.

"(2) COMMISSION REVIEW.—

"(A) COMMISSION-INITIATED REVIEW.—

"(i) The Commission shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

"(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

"(B) SWAP SUBMISSIONS.—

"(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

"(ii) The Commission shall—
“(I) make available to the public any submission received under clause (i);

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

“(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

“(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(ii) not later than 90 days after receiving a submission made under subparagraph (B)(i), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

“(D) DETERMINATION.—

“(i) In reviewing a submission made under subparagraph (B), the Commission
shall review whether the submission is consistent with section 5b(c)(2),

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

"(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

"(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

"(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.
"(IV) The effect on competition, including appropriate fees and charges applied to clearing.

"(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

"(iii) In making a determination under subparagraph (B)(ii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

"(E) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a derivatives clearing organization’s submission for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.
“(3) STAY OF CLEARING REQUIREMENT.—

“(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.

“(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type or class of swaps, must be cleared pursuant
to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

"(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.

"(D) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization’s clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.

"(4) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this subsection.

"(5) REQUIRED REPORTING.—

"(A) IN GENERAL.—All swaps that are not accepted for clearing by any derivatives clearing organization shall be reported either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the
Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe. Counterparties to a swap may agree which counterparty will report the swap as required by this paragraph.

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

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

"(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of this subsection; and

"(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of—

"(i) 90 days after such effective date;

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

“(7) CLEARING TRANSITION RULES.—

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

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

“(8) EXCEPTIONS.—

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

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

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

“(iii) notifies the Commission, in a
manner set forth by the Commission, how
it generally meets its financial obligations associated with entering into non-cleared swaps.

"(B) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.

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

"(k) EXECUTION TRANSPARENCY.—

"(1) REQUIREMENT.—A swap that is subject to the clearing requirement of subsection (j) shall not be traded except on or through a board of trade designated as a contract market under section 5, or on or through a swap execution facility registered under section 5h, that makes the swap available for trading.

"(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a swap if no designated
contract market or swap execution facility makes the swap available for trading.

"(3) AGRICULTURAL SWAPS.—No person shall offer to enter into, enter into or confirm the execution of, any swap in an agricultural commodity (as defined by the Commission) that is subject to paragraphs (1) and (2) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

"(4) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

"(5) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements, or transactions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market."
(b) Derivatives Clearing Organizations.—

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

"(a) Registration Requirement.—

"(1) In general.—It shall be unlawful for any entity, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(10) of this Act with respect to—

"(A) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

"(i) excluded from this Act by section 2(a)(1)(C)(i), 2(e), or 2(f); or

"(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

"(B) a swap."
“(2) Existing banks and clearing agencies.—A bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that the bank cleared swaps, as defined in this Act, as a multilateral clearing organization or the clearing agency cleared swaps, as defined in this Act, before the enactment of this subsection. A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

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

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

“(g) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency
and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection.

"(h) EXEMPTIONS.—

"(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.

"(2) A person that is required to be registered as a derivatives clearing organization under this section, whose principal business is clearing securities and options on securities and which is a clearing agency registered with the Securities Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing swaps, unless the Commission finds that the clearing agency is not subject
to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission.

"(i) DESIGNATION OF COMPLIANCE OFFICER.—

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

"(2) DUTIES.—The compliance officer—

"(A) shall report directly to the board or to the senior officer of the derivatives clearing organization; and

"(B) shall—

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

"(ii) in consultation with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

"(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

"(iv) ensure compliance with this Act and the rules and regulations issued under this Act; and
“(C) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. The procedures shall establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with this Act and the policies and procedures of the derivatives clearing organization, including the code of ethics and conflict of interest policies of the derivatives clearing organization, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.”.

(3) Section 5b(e)(2) of such Act (7 U.S.C. 7a-1(e)(2)) is amended to read as follows:
"(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

"(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which the organization complies with the core principles.

"(B) FINANCIAL RESOURCES.—

"(i) The derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge the responsibilities of the organization.

"(ii) The financial resources of the derivatives clearing organization shall at a minimum exceed the total amount that would—"
“(I) enable the organization to meet the financial obligations of the organization to the members of, and participants in, the organization, notwithstanding a default by the member or participant creating the largest financial exposure for the organization in extreme but plausible market conditions; and

“(II) enable the organization to cover the operating costs of the organization for a period of 1 year, calculated on a rolling basis.

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

“(i) The derivatives clearing organization shall establish—

“(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the organization) for members of and participants in the organization; and
“(II) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the organization for clearing.

“(ii) The derivatives clearing organization shall have procedures in place to verify that participation and membership requirements are met on an ongoing basis.

“(iii) The participation and membership requirements of the derivatives clearing organization shall be objective, publicly disclosed, and permit fair and open access.

“(D) RISK MANAGEMENT.—

“(i) The derivatives clearing organization shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

“(ii) The derivatives clearing organization shall measure the credit exposures of the organization to the members of, and participants in, the organization at least once each business day and shall monitor the exposures throughout the business day.
“(iii) Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit the exposures of the organization to potential losses from defaults by the members of, and participants in, the organization so that the operations of the organization would not be disrupted and non-defaulting members or participants would not be exposed to losses that they cannot anticipate or control.

“(iv) Margin required from all members and participants shall be sufficient to cover potential exposures in normal market conditions.

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

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

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

“(ii) employ money settlement arrangements that eliminate or strictly limit
the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

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

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

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

“(vi) for physical settlements, establish rules that clearly state the obligations of the organization with respect to physical deliveries, including how risks from these obligations shall be identified and managed.

“(F) TREATMENT OF FUNDS.—

“(i) The derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.
(ii) The derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the access of the organization to the assets and funds is minimized.

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

(G) Default rules and procedures.—

(i) The derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the organization.

(ii) The default procedures of the derivatives clearing organization shall be clearly stated, and they shall ensure that the organization can take timely action to contain losses and liquidity pressures and
to continue meeting the obligations of the organization.

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

“(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

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

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

“(I) SYSTEM SAFEGUARDS.—The derivatives clearing organization shall—

“(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;
(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization; and

(iii) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

(J) REPORTING.—The derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct oversight of the organization.

(K) RECORDKEEPING.—The derivatives clearing organization shall maintain records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

(L) PUBLIC INFORMATION.—
“(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization.

“(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants.

“(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning—

“(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization;

“(II) clearing and other fees that the organization charges the members of, and participants in, the organization;

“(III) the margin-setting methodology and the size and composition of
the financial resource package of the
organization;

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

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

“(M) INFORMATION-SHARING.—The der-
ivatives clearing organization shall—

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

“(ii) use relevant information obtained
from the agreements in carrying out the
risk management program of the organi-
Zation.

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

“(i) adopting any rule or taking any
action that results in any unreasonable re-
straint of trade; or
“(ii) imposing any material anti-competitive burden.

“(O) GOVERNANCE FITNESS STANDARDS.—

“(i) The derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of the owners of, and participants in, the organization.

“(ii) The derivatives clearing organization shall establish and enforce appropriate fitness standards for the directors, members of any disciplinary committee, and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this sub-paragraph.

“(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the orga-
nization and establish a process for resolving
the conflicts of interest.

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

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

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

"(j) REPORTING.—

“(1) IN GENERAL.—A derivatives clearing orga-
nization that clears swaps shall provide to the Com-
mmission all information determined by the Commiss-
ion to be necessary to perform the responsibilities
of the Commission under this Act. The Commission
shall adopt data collection and maintenance require-
ments for swaps cleared by derivatives clearing orga-
nizations that are comparable to the corresponding
requirements for swaps accepted by swap reposi-
tories and swaps traded on swap execution facilities.
The Commission shall share the information, upon
request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries that comply with the provisions of section 8.

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

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

(5) Section 8(e) of such Act (7 U.S.C. 12(e)) is amended in the last sentence by inserting “central bank and ministries” after “department” each place it appears.
(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

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

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

"SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

"(a) EXCLUSION.—Except as provided in subsection (b) or (e)—

"(1) the Commodity Exchange Act shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under such Act with respect to, an identified banking product; and

"(2) the definitions of 'security-based swap' in section 3(a)(68) of the Securities Exchange Act of 1934 and 'security-based swap agreement' in section 3(a)(76) of the Securities Exchange Act of 1934 do not include any identified banking product.

"(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusions
in subsection (a) if the agency determines, in consultation
with the Commodity Futures Trading Commission and the
Securities and Exchange Commission, that the product—
“(1) would meet the definition of swap in sec-
tion 1a(35) of the Commodity Exchange Act (7
U.S.C. 1a(35)) or security-based swap in section
3(a)(68) of the Securities and Exchange Act of
1934; and
“(2) has become known to the trade as a swap
or security-based swap, or otherwise has been struc-
tured as an identified banking product for the pur-
pose of evading the provisions of the Commodity Ex-
change Act (7 U.S.C. 1 et seq.), the Securities Act
of 1933 (15 U.S.C. 77a et seq.), or the Securities
“(c) EXCEPTION.—The exclusions in subsection (a)
shall not apply to an identified banking product that—
“(1) is a product of a bank that is not under
the regulatory jurisdiction of an appropriate Federal
banking agency;
“(2) meets the definition of swap in section
1a(35) of the Commodity Exchange Act or security-
based swap in section 3(a)(68) of the Securities and
Exchange Act of 1934; and
“(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”

SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

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

“(j) Public Reporting of Aggregate Swap Data.—

“(1) In General.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) Designee of the Commission.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).
"(3) Sources of information.—The sources of the information to be publicly reported as described in paragraph (1) are—

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

"(B) swap repositories pursuant to section 21(e)(3); and

"(C) reports received by the Commission pursuant to section 4r."

SEC. 3105. SWAP REPOSITORIES.

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

"SEC. 21. SWAP REPOSITORIES.

"(a) Registration Requirement.—

"(1) In general.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

"(2) Inspection and Examination.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

"(b) Standard Setting.—
“(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

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

“(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

“(c) DUTIES.—A swap repository shall—

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

“(2) maintain the data in such form and manner and for such period as may be required by the Commission;

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

“(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap
repository, including individual counterparty trade
and position data, to the Commission, the appro-
priate Federal banking agencies, the Financial Serv-
ices Oversight Council, the Securities and Exchange
Commission, and the Department of Justice or to
other persons the Commission deems appropriate,
including foreign financial supervisors (including for-

eign futures authorities), foreign central banks, and
foreign ministries.

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

“(e) EXEMPTIONS.—The Commission may exempt,
conditionally or unconditionally, a swap repository from
the requirements of this section if the Commission finds
that the swap repository is subject to comparable, com-
prehensive supervision and regulation on a consolidated
basis by the Securities and Exchange Commission, a Pru-
dential Regulator or the appropriate governmental au-

thorities in the organization’s home country.”.
SEC. 3106. REPORTING AND RECORDKEEPING.

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

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

(a) In general.—Any person who enters into a swap and—

"(1) did not have the swap cleared in accordance with section 2(j)(1); and

"(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

(b) Reports.—Any person described in subsection (a) shall—

"(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

"(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securi-
ties and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21."

SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

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

"SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

"(a) REGISTRATION.—

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

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

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

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

“(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

“(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants. Except with regard to subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or
requirements prescribed under this section for swap
dealers and major swap participants.

"(5) TRANSITION.—Rules adopted under this
section shall provide for the registration of swap
dealers and major swap participants no later than 1
year after the effective date of the Derivative Mar-

"(6) STATUTORY DISQUALIFICATION.—Except
to the extent otherwise specifically provided by rule,
regulation, or order, it shall be unlawful for a swap
dealer or a major swap participant to permit any
person associated with a swap dealer or a major
swap participant who is subject to a statutory dis-
qualification to effect or be involved in effecting
swaps on behalf of the swap dealer or major swap
participant, if the swap dealer or major swap partici-

pant knew, or in the exercise of reasonable care
should have known, of the statutory disqualification.

"(c) RULES.—

"(1) IN GENERAL.—Not later than 1 year after
the date of the enactment of this section, the Com-
mission shall adopt rules for persons that are reg-
istered as swap dealers or major swap participants
under this section.
“(2) Exception for prudential requirements.—The Commission shall not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(d) Capital and margin requirements.—

“(1) In general.—

“(A) Bank swap dealers and major swap participants.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that:

“(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

“(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.
(B) NON-BANK SWAP DEALERS AND
MAJOR SWAP PARTICIPANTS.—Each registered
swap dealer and major swap participant for
which there is not a Prudential Regulator shall
meet such minimum capital requirements and
minimum initial and variation margin require-
ments as the Commission shall by rule or regu-
lation prescribe that—

"(i) help ensure the safety and sound-
ness of the swap dealer or major swap par-
ticipant; and

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

(2) RULES.—

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

"(B) NON-BANK SWAP DEALERS AND
MAJOR SWAP PARTICIPANTS.—No later than 1
year after the date of the enactment of the Der-
ivative Markets Transparency and Account-
ability Act of 2009, the Commission shall adopt
rules imposing capital and margin requirements
under this subsection for swap dealers and
major swap participants for which there is no
Prudential Regulator.

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

"(e) REPORTING AND RECORDKEEPING.—

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

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

"(B) for which—
“(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

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

“(C) shall keep the books and records open to inspection and examination by any representative of the Commission and

“(D) shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

“(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting
and recordkeeping for swap dealers and major swap participants.

"(f) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

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

"(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

"(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(5) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets
Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

“(g) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

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

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

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.— Business conduct requirements adopted by the Commission shall—

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

"(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer or major swap participant) of—

"(i) information about the material risks and characteristics of the swap;

"(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization, and for non-cleared swaps, upon request of the counterparty, the daily mark of the swap dealer or major swap participant; and

"(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

"(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.
"(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants no later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009.

"(h) DOCUMENTATION STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

"(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing the standards described in paragraph (1) for swap dealers and major swap participants.

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

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

“(2) Disclosure of general information.—The swap dealer or major swap participant shall disclose to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

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

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

“(D) other information relevant to its trading in swaps.

“(3) Ability to obtain information.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, upon request.
“(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

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

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

“(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.”.

SEC. 3106. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—
1. redesignating subsection (c) as subsection (d); and
2. inserting after subsection (b) the following:
   "(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—
   "(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and
   "(2) address such other issues as the Commission determines appropriate."

SEC. 3109. SWAP EXECUTION FACILITIES.

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

"SEC. 5h. SWAP EXECUTION FACILITIES.

(a) REGISTRATION.—A person may not operate a swap execution facility unless the facility is registered under this section or is registered with the Commission
as a designated contract market under section 5 or a swap
execution facility under section 5.

"(b) REQUIREMENTS FOR TRADING.—

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

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

"(3) AGRICULTURAL SWAPS.—A swap execution
facility may not list for trading or confirm the exe-
cution of any swap in an agricultural commodity (as
defined by the Commission) except pursuant to a
rule or regulation of the Commission allowing the
swap under such terms and conditions as the Com-
mission shall prescribe.
(c) Trading by Contract Markets.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

(d) Core Principles for Swap Execution Facilities.—

(1) In general.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

(2) Compliance with rules.—The swap execution facility shall—

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

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

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

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

“(3) SwapS not readily susceptible to ma-
ipulation.—The swap execution facility shall per-
mit trading only in swaps that are not readily sus-
ceptible to manipulation.

“(4) Monitoring of Trading.—The swap
execution facility shall—

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

“(B) monitor trading in swaps to prevent
manipulation, price distortion, and disruptions
of the delivery or cash settlement process
through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

"(B) provide the information to the Commission upon request; and

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

"(6) POSITION LIMITS OR ACCOUNTABILITY.—

"(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of its contracts made available for trading on the trading facility, where necessary and appropriate, position limitations or
position accountability for speculators who establish positions in the contract.

“(B) For any contract of a swap execution facility that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility—

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

“(ii) shall monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

“(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

“(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or
transfer open positions in any swap or to suspend or
curtail trading in a swap.

"(9) TIMELY PUBLICATION OF TRADING INFORM-
ATION.—The swap execution facility shall make
public timely information on price, trading volume,
and other trading data on swaps to the extent pre-
scribed by the Commission. The Commission shall
evaluate the impact of public disclosure on market
liquidity in the relevant market, and shall seek to
avoid public disclosure of information in a manner
that would significantly reduce market liquidity. The
Commission shall not disclose information related to
the internal business decisions of particular market
participants.

"(10) RECORDKEEPING AND REPORTING.—The
swap execution facility shall maintain records of all
activities related to the business of the facility, in-
cluding a complete audit trail, in a form and manner
acceptable to the Commission for a period of 5
years, and report to the Commission all information
determined by the Commission to be necessary or
appropriate for the Commission to perform its re-
 sponsibilities under this Act in a form and manner
acceptable to the Commission. The swap execution
facility shall keep any such records relating to swaps
defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

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

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap execution facility.

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

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

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

“(13) FINANCIAL RESOURCES.—
“(A) The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities.

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

“(14) System safeguards.—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility’s responsibilities and obligation; and
“(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(15) DESIGNATION OF COMPLIANCE OFFICER.—

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

“(B) DUTIES.—The compliance officer—

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

“(ii) shall—

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

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures
required to be established pursuant to this section; and

"(IV) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

"(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints, and for the handling, management response, remediation, re-testing, and closing of non-compliant issues.

"(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with this Act and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the facility that are required to be furnished to the Com-
mission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(e) Exemptions.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.

"(f) Rules.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section."

SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

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

(b)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.
(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

SEC. 3111. DESIGNATED CONTRACT MARKETS.

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

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

"(2) COMPLIANCE WITH RULES.—

"(A) The board of trade shall monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be
traded on the contract market and the contract market's abusive trade practice prohibitions.

"(B) The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to, any person or entity that violates the rules.

"(C) The rules shall provide the board of trade with the ability and authority to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require."

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

"(4) PREVENTION OF MARKET DISRUPTION.— The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions."
“(5) Position limitations or accountability.—

“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

“(B) For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set its position limitation at a level no higher than the Commission-established limitation.”.

(e) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (7) and inserting the following:

“(7) Availability of general information.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

“(A) the terms and conditions of the contracts of the contract market; and
“(B) the rules, regulations and mechanisms for executing transactions on or through the facilities of the contract market, and the rules and specifications describing the operation of the board of trade’s electronic matching platform or other trade execution facility.”

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

“(9) EXECUTION OF TRANSACTIONS.—

“(A) The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade’s centralized market.

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

“(i) transfer trades or office trades;

“(ii) an exchange of—

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

“(II) futures for cash commodities; or

“(III) futures for swaps; or
“(iii) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.”.

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

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

“(19) FINANCIAL RESOURCES.—The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the financial resources of a board of trade to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.
“(20) **SYSTEM SAFEGUARDS.**—The board of trade shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade’s responsibilities and obligations; and

“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(21) **DIVERSITY OF BOARDS OF DIRECTORS.**—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making
bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

"(22) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.”.

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

SEC. 3112. MARGIN.

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

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

“(D) margin requirements, provided that such rules, regulations, or orders shall—
“(i) be limited to protecting the financial integrity of the derivatives clearing organization;

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

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

SEC. 3113. POSITION LIMITS.

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

(1) inserting “(1)” after “(a)”;

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

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

(4) striking “on an electronic trading facility with respect to a significant price discovery contract,” in the second sentence and inserting “swaps that perform or affect a significant price discovery function with respect to registered entities,”; and
(5) inserting at the end the following:

“(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

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

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

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

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

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

"(B) to the maximum extent practicable,
in its discretion—

"(i) to diminish, eliminate, or prevent
excessive speculation as described under
this section;

"(ii) to deter and prevent market ma-
ipulation, squeezes, and corners;

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

"(iv) to ensure that the price dis-
cover function of the underlying market is
not disrupted.

"(4)(A) Not later than 150 days after the es-
establishment of position limits pursuant to paragraph
(2), and biannually thereafter, the Commission shall
hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).

“(B) Each public hearing held pursuant to subparagraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from—

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

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

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

“(iv) each designated contract market upon which a contract in the commodity for future delivery is traded.

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

"(5) Significant Price Discovery Function.—In making a determination whether a swap
performs or affects a significant price discovery
function with respect to regulated markets, the Com-
mission shall consider, as appropriate:

"(A) Price Linkage.—The extent to
which the swap uses or otherwise relies on a
daily or final settlement price, or other major
price parameter, of another contract traded on
a regulated market based upon the same under-
lying commodity, to value a position, transfer or
convert a position, financially settle a position,
or close out a position;

"(B) Arbitrage.—The extent to which
the price for the swap is sufficiently related to
the price of another contract traded on a regu-
lated market based upon the same underlying
commodity so as to permit market participants
to effectively arbitrage between the markets by
simultaneously maintaining positions or exe-
cuting trades in the swaps on a frequent and
recurring basis;
"(C) Material Price Reference.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap;

"(D) Material Liquidity.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market; and

"(E) Other Material Factors.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

"(6) Economically Equivalent Contracts.—

"(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that
are economically equivalent to contracts of sale
for future delivery or to options on the con-
tracts or commodities traded on or subject to
the rules of a designated contract market sub-
ject to paragraph (2).

"(B) In establishing limits pursuant to
subparagraph (A), the Commission shall—

"(i) develop the limits concurrently
with limits established under paragraph
(2), and the limits shall have similar re-
quirements as under paragraph (3)(B);
and

"(ii) establish the limits simulta-
neously with limits established under para-
graph (2).

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

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

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

“(8) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.”.

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

(1) in paragraph (1), by striking “or derivatives transaction execution facility or facilities or elec-
tronic trading facility” and inserting “or swap exe-
cution facility or facilities”; and
(2) in paragraph (2), by striking “or derivatives
transaction execution facility or facilities or elec-
tronic trading facility” and inserting “or swap exe-
cution facility”.
(c) Section 4a(e) of such Act is amended—
(1) by inserting “(1)” after “(e)”; and
(2) by adding after and below the end the fol-
lowing:
“(2) For the purposes of implementation of
subsection (a)(2) for contracts of sale for future de-
livery or options on the contracts or commodities,
the Commission shall define what constitutes a bona
fide hedging transaction or position as a transaction
or position that—
“(A)(i) represents a substitute for trans-
actions made or to be made or positions taken
or to be taken at a later time in a physical mar-
keting channel;
“(ii) is economically appropriate to the re-
duction of risks in the conduct and manage-
ment of a commercial enterprise; and
“(iii) arises from the potential change in
the value of—
“(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

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

“(III) services that a person provides, purchases, or anticipates providing or purchasing; or

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

“(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

“(ii) meets the requirements of subparagraph (A).”.

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

SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is amended—
(1) in paragraph (1), by striking “5a(d) and 5b(c)(2)” and inserting “5b(c)(2) and 5b(e)”; and
(2) in paragraph (2), by striking “shall not” and inserting “may”.
(b) Section 5c(b) of such Act (7 U.S.C. 7a-2(b)) is amended in each of paragraphs (1), (2), and (3) by inserting “or swap execution facility” after “contract market” each place it appears.
(c) Section 5c(e)(1) of such Act (7 U.S.C. 7a-2(e)(1)) is amended—
(1) by inserting “(A)” after “IN GENERAL.—”; and
(2) by adding at the end the following:
“(3) The new rule or rule amendment shall become effective, pursuant to the registered entity’s certification and notice of such certification to its members (in a manner to be determined by the Commission), 10 business days after the Commission’s receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered enti-
(C)(i) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of the notification.

(ii) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in clause (i), whenever it reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph."

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

SEC. 3115. FOREIGN BOARDS OF TRADE.

(a) In General.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended by adding at the end the following:

"(e) FOREIGN BOARDS OF TRADE.—

"(1) In general.—The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access
to the electronic trading and order-matching system
of the foreign board of trade with respect to an
agreement, contract, or transaction that settles
against any price (including the daily or final settle-
ment price) of 1 or more contracts listed for trading
on a registered entity, unless the Commission deter-
mines that—

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

"(B) the foreign board of trade (or the for-
eign futures authority that oversees the foreign
board of trade)—

"(i) adopts position limits (including
related hedge exemption provisions) for the
agreement, contract, or transaction that
are comparable, taking into consideration
the relative sizes of the respective markets,
to the position limits (including related
hedge exemption provisions) adopted by
the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

"(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

"(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

"(I) the information that the foreign board of trade will make publicly available;
“(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agree-
ment, contract, or transaction traded on
the foreign board of trade that are com-
parable to the reports on aggregate trader
positions for the 1 or more contracts
against which the agreement, contract, or
transaction traded on the foreign board of
trade settles.

“(2) Existing Foreign Boards of Trade.—
Paragraph (1) shall not be effective with respect to
any foreign board of trade to which the Commission
has granted direct access permission before the date
of the enactment of this subsection until the date
that is 180 days after such date of enactment.

“(3) Persons Located in the United
States.—”.

(b) Liability of Registered Persons Trading
On a Foreign Board of Trade.—

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

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

“(f)(1) A person registered with the Commission, or
exempt from registration by the Commission, under this
Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

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

"(i) legally organized under the laws of a foreign country;

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

"(iii) subject to regulation by the foreign futures authority; and

"(B) has not been determined by the Commission to be operating in violation of subsection (a).

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

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

"(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a com-
modity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”

SEC. 3116. LEGAL CERTAINTY FOR SWAPS.

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

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

“(A) A hybrid instrument sold to any investor shall not be void, voidable, or unenforceable, and a party to such a hybrid instrument shall not be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission; and
"(B) An agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall not be void, voidable, or unenforceable, and a party thereto shall not be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth in section 1a, be traded in the manner set forth in section 2(k)(1), or be cleared pursuant to 2(j)(1) or regulations of the Commission pursuant thereto."

SEC. 3117. FDICIA AMENDMENTS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421 and 4422) are repealed.

SEC. 3118. ENFORCEMENT AUTHORITY.

(a) The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4b the following:
"SEC. 4b-1. ENFORCEMENT AUTHORITY.

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

(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

(c) REFERRAL.—(1) If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) If the Commission has cause to believe that a swap dealer or major swap participant that has a Prudential Regulator may have engaged in conduct that con-
stitutes a violation of the prudential requirements of section 4s or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns given rise to the recommendation.”.

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

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

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

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

“(C) is, is of the character of, or is commonly known to the trade as ‘spoofing’ (bidding
or offering with the intent to cancel the bid or
offer before execution); or

"(D) constitutes uneconomic trading (trading
that has no legitimate economic purpose but
for the effect on price).

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

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

SEC. 3119. ENFORCEMENT.

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

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

(c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is
amended by inserting "or swap" before "if the transaction
is used or may be used".
(d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2)) is amended by inserting “or of any swap,” before “or to corner”.

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

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

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

“(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository, security-based swap repository, or swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential
Regulator for purposes of the Derivative Markets
Transparency and Accountability Act of 2009.”.

SEC. 3120. RETAIL COMMODITY TRANSACTIONS.

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

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

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

“(D) RETAIL COMMODITY TRANS-
ACTIONS.—

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

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

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

"(ii) Clause (i) shall not apply to—

"(I) an agreement, contract, or
transaction described in paragraph (1)
or subparagraphs (A), (B), or (C), in-
cluding any agreement, contract, or
transaction specifically excluded from
subparagraph (A), (B), or (C);

"(II) any security;

"(III) a contract of sale that—

"(aa) results in actual deliv-
ergy within 28 days or such other
longer period as the Commission
may determine by rule or regula-
tion based upon the typical com-
mercial practice in cash or spot
markets for the commodity in-
volved; or

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

“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

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

“(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a
contract of sale of a commodity for future delivery;

“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;

“(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.”.

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this section.

SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 3107 of this Act) the following:
"SEC. 41. LARGE SWAP TRADER REPORTING.

(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to registered entities if—

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

(2) such person directly or indirectly has or obtains a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

(b) The books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.
“(c) The books and records shall be open at all times to inspection and examination by any representative of the Commission.

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

“(e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).”

SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

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

"SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

“(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the
swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

“(b) FURTHER AUDIT REPORTING.—If a swap dealer does not segregate funds pursuant to the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”
SEC. 3123. OTHER AUTHORITY.

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

SEC. 3124. ANTITRUST.

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

SEC. 3125. REVIEW OF PRIOR ACTIONS.

Notwithstanding any other provision of the Commodity Exchange Act, the Commodity Futures Trading Commission shall review, as appropriate, all regulations, rules, exemptions, exclusions, guidance, no action letters, orders, other actions taken by or on behalf of the Commission, and any action taken pursuant to the Commodity Exchange Act by an exchange, self-regulatory organization, or any other registered entity, that are currently in effect, to ensure that such prior actions are in compliance with the provisions of this title.
SEC. 3126. EXPEDITED PROCESS.

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

SEC. 3127. EFFECTIVE DATE.

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

(b) Subsection (a) shall not preclude the Commodity Futures Trading Commission from any rulemaking required or directed under this subtitle to implement the provisions of this subtitle.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

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

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

(3) in paragraph (13), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(4) in paragraph (14), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(5) in paragraph (39)—

(A) by striking “or government securities dealer” and adding “government securities dealer, security-based swap dealer or major security-based swap participant” in its place in subparagraph (B)(i)(I);
(B) by adding "security-based swap dealer, major security-based swap participant," after "government securities dealer," in subparagraph (B)(i)(II);

(C) by striking "or government securities dealer" and adding "government securities dealer, security-based swap dealer or major security-based swap participant" in its place in subparagraph (C); and

(D) by adding "security-based swap dealer, major security-based swap participant," after "government securities dealer," in subparagraph (D); and

(6) by adding at the end the following:

"(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).

"(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

"(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—
"(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer, and—

"(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

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

"(B) DEFINITION OF ‘SUBSTANTIAL NET POSITION’.—The Commission shall define by rule or regulation the terms ‘substantial net position’, ‘substantial net counterparty exposure’, and ‘significant credit losses’ at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the
person’s relative position in uncleared as opposed to cleared swaps.

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

"(68) SECURITY-BASED SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under section 1a(35) of the Commodity Exchange Act, and that—

"(i) is primarily based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

"(ii) is primarily based on a single security or loan, including any interest therein or based on the value thereof; or

"(iii) is primarily based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single
issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

"(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

"(C) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because it
references, is based upon, or settles through the
transfer, delivery, or receipt of an exempted se-
curity under section 3(a)(12) of the Securities
Exchange Act of 1934 as in effect on the date
of enactment of the Futures Trading Act of
1982 (other than any municipal security as de-
defined in section 3(a)(29) as in effect on the date
of enactment of the Futures Trading Act of
1982), unless such agreement, contract, or
transaction is of the character of, or is com-
monly known in the trade as, a put, call, or
other option.

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

"(70) PERSON ASSOCIATED WITH A SECURITY-
BASED SWAP DEALER OR MAJOR SECURITY-BASED
SWAP PARTICIPANT.—The term ‘person associated
with a security-based swap dealer or major security-
based swap participant’ or ‘associated person of a
security-based swap dealer or major security-based
swap participant’ means any partner, officer, direc-
tor, or branch manager of such security-based swap
dealer or major security-based swap participant (or
any person occupying a similar status or performing
similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2).

"(71) SECURITY-BASED SWAP DEALER.—

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

"(i) holds itself out as a dealer in security-based swaps;

"(ii) makes a market in security-based swaps;

"(iii) regularly engages in the purchase of security-based swaps and their resale to customers in the ordinary course of a business; or

"(iv) engages in any activity causing it to be commonly known in the trade as
a dealer or market maker in security-based
swaps.

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

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

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

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

"(74) PRUDENTIAL REGULATOR.—The term
‘Prudential Regulator’ means—
“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a State-chartered bank that is a member of the Federal Reserve System; or
“(ii) a State-chartered branch or agency of a foreign bank;

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

“(i) a national bank; or
“(ii) a federally chartered branch or agency of a foreign bank; and

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.

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

“(76) SECURITY-BASED SWAP AGREEMENT.—
"(A) In general.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term ‘security-based swap agreement’ means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

"(B) Exclusions.—The term ‘security-based swap agreement’ does not include any security-based swap.

"(76) Security-based swap repository.—The term ‘security-based swap repository’ means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.

"(77) Swap execution facility.—The term ‘swap execution facility’ means a person or entity that facilitates the execution or trading of security-based swaps between two persons through any means of interstate commerce, but which is not a
national securities exchange, including any electronic
trade execution or voice brokerage facility.""".

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The
Securities and Exchange Commission may adopt a rule
further defining the terms "security-based swap", "secu-
rity-based swap dealer", "major security-based swap par-
ticipant", and "eligible contract participant" with regard
to security-based swaps (as such terms are defined in the
amendments made by subsection (a)) for the purpose of
including transactions and entities that have been struc-
tured to evade this title.

SEC. 3232. REPEAL OF PROHIBITION ON REGULATION OF
SECURITY-BASED SWAPS.

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

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

(1) Section 2A(b) of the Securities Act of 1933
(15 U.S.C. 77b–1) is amended by striking "(as de-
defined in section 206B of the Gramm-Leach-Bliley
Act)" each place that such term appears.

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

(A) in subsection (a)—
(i) by inserting "(including security-based swaps)" after "securities"; and

(ii) by striking "206B of the Gramm-Leach-Bliley Act" and inserting "3(a)(76) of the Securities Exchange Act of 1934";

and

(B) in subsection (d), by striking "206B of the Gramm-Leach-Bliley Act" and inserting "3(a)(76) of the Securities Exchange Act of 1934".

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

(1) Section 3A (15 U.S.C. 78c–1) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

"(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent
active trading in such security, or raising or depressing
the price of such security, for the purpose of inducing the
purchase or sale of such security by others.

"(3) If a dealer, broker, security-based swap dealer,
major security-based swap participant or other person sell-
ing or offering for sale or purchasing or offering to pur-
chase the security, or a security-based swap or security-
based swap agreement with respect to such security, to
induce the purchase or sale of any security registered on
a national securities exchange or any security-based swap
or security-based swap agreement with respect to such se-
curity by the circulation or dissemination in the ordinary
course of business of information to the effect that the
price of any such security will or is likely to rise or fall
because of market operations of any one or more persons
conducted for the purpose of raising or depressing the
price of such security.

"(4) If a dealer, broker, security-based swap dealer,
major security-based swap participant or other person sell-
ing or offering for sale or purchasing or offering to pur-
chase the security, or a security-based swap or security-
based swap agreement with respect to such security, to
make, regarding any security registered on a national se-
curities exchange or any security-based swap or security-
based swap agreement with respect to such security, for
the purpose of inducing the purchase or sale of such secu-
ity or such security-based swap or security-based swap
agreement, any statement which was at the time and in
the light of the circumstances under which it was made,
false or misleading with respect to any material fact, and
which he knew or had reasonable ground to believe was
so false or misleading.

“(5) For a consideration, received directly or indi-
rectly from a dealer, broker, security-based swap dealer,
major security-based swap participant or other person sell-
ing or offering for sale or purchasing or offering to pur-
chase the security, or a security-based swap or security-
based swap agreement with respect to such security, to
induce the purchase of any security registered on a na-
tional securities exchange or any security-based swap or
security-based swap agreement with respect to such secu-


city by the circulation or dissemination of information to
the effect that the price of any such security will or is
likely to rise or fall because of the market operations of
any one or more persons conducted for the purpose of rais-
ing or depressing the price of such security.”.

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended
by striking “(as defined in section 206B of the
Gramm-Leach-Bliley Act)”;

f:\VHLC120909\120909.014.xml (456670110)
December 5, 2009 (9:48 a.m.)
(4) Section 10 (15 U.S.C. 78j) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking "or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),"; and

(B) in subparagraphs (B) and (C), by striking "agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)" in each place that the term appears.

(6) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)".

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

(A) in subsection (a)(2)(C), by striking "(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))";

(B) in subsection (b), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)".
(C) in subsection (g), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)";

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

(A) in subsection (d), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(B) in subsection (f), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(9) Section 21A (15 U.S.C. 78u–1) is amended—

(A) in subsection (a)(1), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(B) in subsection (g), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)".

SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

is amended by adding the following section after section
3A:

"SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

(a) In General.—

(1) Standard for Clearing.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) of subsection (b) that the security-based swap is required to be cleared.

(2) Open Access.—The rules of a clearing agency described in paragraph (1) shall—

(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility.

(b) Commission Review.—
“(1) COMMISSION-INITIATED REVIEW.—

“(A) The Commission shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.

“(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

“(2) SWAP SUBMISSIONS.—

“(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

“(B) The Commission shall—

“(i) make available to the public any submission received under subparagraph (A);

“(ii) review each submission made under subparagraph (A), and determine whether the security-based swap, or group,
category, type, or class of security-based
swaps, described in the submission is re-
quired to be cleared; and

"(iii) provide at least a 30-day public
comment period regarding its determina-
tion whether the clearing requirement
under subsection (a)(1) shall apply to the
submission.

"(3) DEADLINE.—The Commission shall make
its determination under paragraph (2)(B) not later
than 90 days after receiving a submission made
under paragraph (2)(A), unless the submitting clear-
ing agency agrees to an extension for the time limi-
tation established under this paragraph.

"(4) DETERMINATION.—

"(A) In reviewing a submission made
under paragraph (2), the Commission shall re-
view whether the submission is consistent with
section 5b(c)(2).

"(B) In reviewing a security-based swap,
group of security-based swaps or class of secu-
ritiy-based swaps pursuant to paragraph (1) or
a submission made under paragraph (2), the
Commission shall take into account the fol-
lowing factors:
"(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

"(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

"(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

"(iv) The effect on competition, including appropriate fees and charges applied to clearing.

"(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.
“(C) In making a determination under paragraph (2)(B) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a clearing agency’s submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.

“(c) STAY OF CLEARING REQUIREMENT.—

“(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

“(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, un-
less the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

"(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

"(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

"(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

"(4) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type or
class of security-based swaps, that it has accepted
for clearing.

“(d) PREVENTION OF EVASION.—The Commission
may prescribe rules under this subsection, or issue inter-
pretations of the rules, as necessary to prevent evasions
of this section.

“(e) REQUIRED REPORTING.—

“(1) IN GENERAL.—All security-based swaps
that are not accepted for clearing by any clearing
agency shall be reported either to a security-based
swap repository described in subsection 13(n) or, if
there is no security-based swap repository that
would accept the security-based swap, to the Com-
mission pursuant to section 13A within such time
period as the Commission may by rule or regulation
 prescribe. Counterparties to a security-based swap
may agree which counterparty will report the secu-

“(2) SWAP DEALER DESIGNATION.—With re-
gard to security-based swaps where only 1
counterparty is a security-based swap dealer, the se-
curity-based swap dealer shall report the security-

based swap as required by this subsection.
(f) **REPORTING TRANSITION RULES.**—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of this section; and

"(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of—

"(A) 90 days after such effective date; or

"(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

(g) **CLEARING TRANSITION RULES.**—

"(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (f)(1).

"(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing require-
ments of this section if reported pursuant to sub-
section (f)(2).

"(h) EXCEPTIONS.—

"(1) In general.—The requirements of sub-
section (a)(1) shall not apply to a security-based
swap if one of the counterparties to the security-
based swap—

"(A) is not a security-based swap dealer or
major security-based swap participant; and

"(B) is using security-based swaps to
hedge or mitigate commercial risk, including
operating or balance sheet risk; and

"(C) notifies the Commission, in a manner
set forth by the Commission, how it generally
meets its financial obligations associated with
entering into non-cleared security-based swaps.

"(2) Abuse of exception.—The Commission
may prescribe rules under this subsection, or issue
interpretations of the rules, as necessary to prevent
abuse of the exemption in paragraph (1) by security-
based swap dealers and major security-based swap
participants.

"(3) Option to clear.—The application of
the clearing exception in paragraph (1) is solely at
the discretion the counterparty to the swap that
meets the conditions of subparagraphs (A) through (C) of paragraph (1)."

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:

"(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.

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

"(i) EXISTING BANKS AND DERIVATIVES CLEARING ORGANIZATIONS.—A bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act required to be a registered as a clearing agency under this title, solely because it clears security-based swaps, is deemed to be a registered clearing agency under this title solely for the purpose of clearing security-based swaps to the extent that the bank cleared security-based swaps, as defined in
this Act, as a multilateral clearing organization or the derivatives clearing organization cleared security-based swaps, as defined in this title pursuant to an exemption from registration as a clearing agency, before the enactment of this section. A bank or derivative clearing organization to which this subsection applies shall continue to comply with the requirements in section 17A(b)(3) of this title. A bank to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of such bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

"(j) REPORTING.—

"(1) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded
on swap execution facilities. Subject to section 24, the Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

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

"(k) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall—

"(A) report directly to the board or to the senior officer of the clearing agency;
“(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;

“(C) be responsible for administering the policies and procedures required to be established pursuant to this section;

“(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(E) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest
policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(l) Standards for Clearing Agencies Clearing Swap Transactions.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

“(m) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this Act.
"(n) EXEMPTIONS.—

"(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission finds that such clearing agency is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator, or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

"(2) A person that is required to be registered as clearing agency under this section, whose principal business is clearing commodity futures and options on commodity futures transactions and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1, et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision
and regulation by the Commodity Futures Trading Commission.”.

(c) EXECUTION OF SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 5 the following:

“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.

“(a) EXECUTION TRANSPARENCY.—

“(1) REQUIREMENT.—A security-based swap that is subject to the clearing requirement of section 3B shall not be traded except on or through a national securities exchange or on or through an swap execution facility registered under section 5h, that makes the security-based swap available for trading.

“(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a security-based swap if no national securities exchange or swap execution facility makes the security-based swap available for trading.

“(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no national securities exchange or swap execution facility that makes the security-based swap available to trade, the counterparties shall comply with any record-keeping and transaction reporting requirements as may be prescribed by the Commission with respect

to security-based swaps subject to the requirements
of paragraph (1).

"(b) Exchange Trading.—In adopting rules and
regulations, the Commission shall endeavor to eliminate
unnecessary impediments to the trading on national secur-
ities exchanges of contracts, agreements, or transactions
that would be swaps but for the trading of such contracts,
agreements or transactions on such a national securities
exchange."

(d) Swap Execution Facilities.—The Securities
by adding after section 3B (as added by subsection (a))
the following:

"Sec. 3c. Swap Execution Facilities.

"(a) Registration.—No person may operate a facil-
ity for the trading of security-based swaps unless the facil-
ity is registered as a swap execution facility under this
section.

"(b) Requirements for Trading.—

"(1) In General.—A swap execution facility
that is registered under subsection (a) may list for
trading any security-based swap.

"(2) Rules for Trading Through the Fa-
cility.—Not later than 1 year after the date of the
enactment of the Derivative Markets Transparency
and Accountability Act of 2009, the Commission shall adopt rules to allow a security-based swap to be traded through the facilities of an exchange or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a security-based swap, notwithstanding section 3B(b), if the security-based swap is reported, recorded, or confirmed in accordance with the rules of the exchange or swap execution facility.

"(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.

"(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

"(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in estab-
lishing the manner in which it complies with these core principles.

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

“(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

“(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

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

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

“(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The swap execution facility shall—
“(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

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

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

“(B) provide the information to the Commission upon request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.
"(6) **Financial Integrity of Transactions.**—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps pursuant to section 3B.

"(7) **Emergency Authority.**—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

"(8) **Timely Publication of Trading Information.**—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.
176

"(9) Recordkeeping and Reporting.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

"(10) Conflicts of Interest.—The swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

"(B) establish a process for resolving the conflicts of interest.

"(11) Financial Resources.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities. Such financial resources shall be
considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of one year, calculated on a rolling basis.

"(12) System safeguards.—The swap execution facility shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility’s responsibilities and obligation; and

"(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.
“(13) DESIGNATION OF COMPLIANCE OFFICER.—

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

“(B) DUTIES.—The compliance officer—

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

“(ii) shall—

“(I) review compliance with the core principles in section 3B(e).

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including
rules prescribed by the Commission
pursuant to this section; and
“(iii) shall establish procedures for re-
mediation of non-compliance issues found
during compliance office reviews,
lookbacks, internal or external audit find-
ings, self-reported errors, or through vali-
dated complaints and to establish the han-
dling, management response, remediation,
re-testing, and closing of non-compliant
issues.

“(C) ANNUAL REPORTS REQUIRED.—The
compliance officer shall annually prepare and
sign a report on the compliance of the facility
with the securities laws and its policies and pro-
cedures, including its code of ethics and conflict
of interest policies, in accordance with rules
prescribed by the Commission. Such compliance
report shall accompany the financial reports of
the facility that are required to be furnished to
the Commission pursuant to this section and
shall include a certification that, under penalty
of law, the report is accurate and complete.

“(e) EXEMPTIONS.—The Commission may exempt,
conditionally or unconditionally, a swap execution facility
from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

“(f) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.”.

(e) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by subsection (b) the following:

“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

“(a) OVER-THE-COUNTER SWAPS.—At the request of a counterparty to a security-based swap who provides funds or other property to a security-based swap dealer as initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the
counterparty and the security-based swap dealer that is
not submitted for clearing to a derivatives clearing agency,
the security-based swap dealer shall segregate the funds
or other property for the benefit of the counterparty, and
maintain the funds or other property in an account which
is carried by a third-party custodian and designated as
a segregated account for the counterparty, in accordance
with such rules and regulations as the Commission or Pru-
dential Regulator may prescribe. If a security-based swap
counterparty is a security-based swap dealer or major se-
curity-based swap participant who owns more than 20 per-
cent of, or has more than 50 percent representation on
the board of directors of a custodian, the custodian shall
not be considered independent from the security-based
swap counterparties for purposes of the preceding sen-
tence. This subsection shall not be interpreted to preclude
commercial arrangements regarding the investment of the
segregated funds or other property and the related alloca-
tion of gains and losses resulting from any such invest-
ment.

(b) FURTHER AUDIT REPORTING.—If a security-
based swap dealer does not segregate funds pursuant to
the request of a security-based swap counterparty in ac-
cordance with subsection (a), the security-based swap
dealer shall report to its counterparty on a quarterly basis
that its procedures relating to margin and collateral re-
quirements are in compliance with the agreement of the
counterparties.”.

(f) TRADING IN SECURITY-BASED SWAPS.—Section 6
is amended by adding at the end the following:

“(l) It shall be unlawful for any person to effect a
transaction in a security-based swap with or for a person
that is not an eligible contract participant unless such
transaction is effected on a national securities exchange
registered pursuant to subsection (b).”.

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)
through (3) of section 9(b) of the Securities Exchange Act
of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
as follows:

“(1) any transaction in connection with any se-
curity whereby any party to such transaction ac-
quires (A) any put, call, straddle, or other option or
privilege of buying the security from or selling the
security to another without being bound to do so;
(B) any security futures product on the security; or
(C) any security-based swap involving the security or
the issuer of the security; or
"(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or

"(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security."

(h) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

"(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipula-
tive act or practice, makes any fictitious quotation, or en-
gages in any transaction, practice, or course of business
which operates as a fraud or deceit upon any person. The
Commission shall, for the purposes of this paragraph, by
rules and regulations define, and prescribe means reason-
ably designed to prevent, such transactions, acts, prac-
tices, and courses of business as are fraudulent, deceptive,
or manipulative, and such quotations as are fictitious.”.
(i) POSITION LIMITS AND POSITION ACCOUNT-
ABILITY FOR SECURITY-BASED SWAPS.—The Securities
Exchange Act of 1934 is amended by inserting after sec-
tion 10A (15 U.S.C. 78j–1) the following new section:
“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-
ABILITY FOR SECURITY-BASED SWAPS AND
LARGE TRADER REPORTING.
“(a) POSITION LIMITS.—As a means reasonably de-
signed to prevent fraud and manipulation, the Commission
may, by rule or regulation, as necessary or appropriate
in the public interest or for the protection of investors,
establish limits (including related hedge exemption provi-
sions) on the size of positions in any security-based swap
that may be held by any person. In establishing such lim-
its, the Commission may require any person to aggregate
positions in—
“(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or

“(2) any security-based swap and (A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.

“(b) Exemptions.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

“(c) SRO Rules.—

“(1) In General.—As a means reasonably designed to prevent fraud or manipulation, the Com-
mission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

“(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

“(i) any member of such self-regulatory organization; or

“(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

“(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subsection (c)(1)(A).

“(2) Requirement to aggregate positions.—In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in—

“(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap ref-
erences, or to which such security-based swap is
related as described in section 3(a)(68), and
any other instrument relating to such security
or loan or group or index of securities or loans;
or
“(B)(i) any security-based swap; and
“(ii) any security-based swap and any
other instrument relating to the same security
or group or index of securities.
“(d) LARGE TRADER REPORTING.—The Commis-
sion, by rule or regulation, may require any person that
effects transactions for such person’s own account or the
account of others in any securities-based swap or
uncleared security-based swap agreement and any security
or loan or group or index of securities or loans as set forth
in paragraphs (1) and (2) of subsection (a) under this sec-
tion to report such information as the Commission may
prescribe regarding any position or positions in any secu-

rity-based swap or uncleared security-based swap agree-
ment and any security or loan or group or index of securi-
ties or loans and any other instrument relating to such
security or loan or group or index of securities or loans
as set forth in paragraphs (1) and (2) of subsection (a)
under this section.”.
(j) Public Reporting and Repositories for Security-based Swaps.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(m) Public Reporting of Aggregate Security-based Swap Data.—

"(1) In General.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

"(2) Designee of the Commission.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

"(3) Sources of Information.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) clearing agencies pursuant to section 3A;

"(B) security-based swap repositories pursuant to subsection (n); and
"(C) reports received by the Commission pursuant to section 13A.

"(n) SECURITY-BASED SWAP REPOSITORIES.—

"(1) REGISTRATION REQUIREMENT.—

"(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

"(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

"(2) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.
“(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

“(3) DUTIES.—A security-based swap repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

“(B) maintain such data in such form and manner and for such period as may be required by the Commission;

“(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

“(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading
Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

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

“(5) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.”.
SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.


"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

"(a) Registration.—

"(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

"(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

"(b) Requirements.—

"(1) In general.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

"(2) Contents.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the
business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

"(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

"(4) RULES.—Except as provided in subsections (e) and (d), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for security-based swap dealers and major security-based swap participants.

"(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective...

"(e) Rules.—

"(1) In general.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act.

"(2) Exception for prudential requirements.—The Commission shall not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(d) Capital and Margin Requirements.—

"(1) In general.—

"(A) Bank security-based swap dealers and major security-based swap participants.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regu-
lator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that—

"(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

"(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

"(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

"(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and
(ii) are appropriate for the risk associated with the non-cleared swaps held as the swap dealer or major swap participant.

"(2) RULES.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants, with respect to their activities as a security-based swap dealer or major security-based swap participant for which there is a Prudential Regulator.

"(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and
major security-based swap participants for
which there is no Prudential Regulator.

“(3) AUTHORITY.—Nothing in this section shall
limit the authority of the Commission to set capital
requirements for a broker or dealer registered in ac-
cordance with section 15 of this Act.

“(e) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered security-
based swap dealer and major security-based swap
participant—

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

“(B) for which—

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

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

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

"(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

"(f) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

"(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.
(3) Customer Records.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

(4) Audit Trail.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

(g) Business Conduct Standards.—

(1) In General.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

(A) fraud, manipulation, and other abusive practices involving security-based swaps
(including security-based swaps that are offered but not entered into);

“(B) diligent supervision of its business as a security-based swap dealer;

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

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.—

Business conduct requirements adopted by the Commission shall—

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

“(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a security-based swap dealer or major security-based swap participant) of:
“(i) information about the material
risks and characteristics of the security-
based swap;
“(ii) for cleared security-based swaps,
upon the request of the counterparty, the
daily mark from the appropriate clearing
agency, and for non-cleared security-based
swaps, upon request of the counterparty,
the daily mark of the security-based swap
dealer or major security-based swap partic-
ipant; and
“(iii) any other material incentives or
conflicts of interest that the security-based
swap dealer or major security-based swap
participant may have in connection with
the security-based swap; and
“(C) establish such other standards and
requirements as the Commission may determine
are necessary or appropriate in the public inter-
est, for the protection of investors, or otherwise
in furtherance of the purposes of this title.
“(3) RULES.—The Commission shall prescribe
rules under this subsection governing business con-
duct standards for security-based swap dealers and
major security-based swap participants not later
than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

"(h) DOCUMENTATION STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

"(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission and the appropriate Federal banking agencies, shall adopt rules governing the standards described in paragraph (1) for security-based swap dealers and major security-based swap participants.

"(i) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:

"(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based
swaps to prevent violations of applicable position
limits.

"(2) Disclosure of General Information.—The security-based swap dealer or major se-
curity-based swap participant shall disclose to the
Commission or to the Prudential Regulator for such
security-based swap dealer or major security-based
swap participant, as applicable, information con-
cerning—

"(A) terms and conditions of its security-
based swaps;

"(B) security-based swap trading oper-
atations, mechanisms, and practices;

"(C) financial integrity protections relating
to security-based swaps; and

"(D) other information relevant to its trad-
ing in security-based swaps.

"(3) Ability to Obtain Information.—The
security-based swap dealer or major swap security-
based participant shall—

"(A) establish and enforce internal systems
and procedures to obtain any necessary infor-
mation to perform any of the functions de-
scribed in this section; and
“(B) provide the information to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

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

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

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

“(j) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-
based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

"(k) Enforcement and Administrative Proceeding Authority.—

"(1) Primary Enforcement Authority.—

"(A) SEC.—Except as provided in subparagraph (B), the Commission shall have exclusive authority to enforce the amendments made by subtitle B of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

"(B) Prudential Regulators.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.
"(C) REFERRAL.—

"(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the non-prudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a Prudential Regulator may have engaged in conduct that constitute a violation of the prudential re-
requirements of section 15F(e) or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(2) Censure, denial, suspension; notice and hearing.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based
208

swap participant, whether prior or subsequent to be-
coming so associated—

“(A) has committed or omitted any act, or
is subject to an order or finding, enumerated in
subparagraph (A), (D), or (E) of paragraph (4)
of section 15(b);

“(B) has been convicted of any offense
specified in subparagraph (B) of such para-
graph (4) within 10 years of the commencement
of the proceedings under this subsection;

“(C) is enjoined from any action, conduct,
or practice specified in subparagraph (C) of
such paragraph (4);

“(D) is subject to an order or a final order
specified in subparagraph (F) or (H), respec-
tively, of such paragraph (4); or

“(E) has been found by a foreign financial
regulatory authority to have committed or omit-
ted any act, or violated any foreign statute or
regulation, enumerated in subparagraph (G) of
such paragraph (4).

“(3) ASSOCIATED PERSONS.—With respect to
any person who is associated, who is seeking to be-
come associated, or, at the time of the alleged mis-
conduct, who was associated or was seeking to be-
come associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

"(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);"

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;"
“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(4) UNLAWFUL CONDUCT.—It shall be unlawful—

“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

“(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in con-
travention of such order, if such security-based
swap dealer or major security-based swap par-
ticipant knew, or in the exercise of reasonable
care should have known, of such order.”.

SEC. 3205. REPORTING AND RECORDKEEPING.

78a, et seq.) is amended by inserting after section 13 the
following section:

“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERT-
TAIN SECURITY-BASED SWAPS.

“(a) IN GENERAL.—Any person who enters into a se-
curity-based swap and—

“(1) did not clear the security-based swap in
accordance with section 3A; and

“(2) did not have data regarding the security-
based swap accepted by a security-based swap repos-
itory in accordance with rules adopted by the Com-
mission under section 13(n),

shall meet the requirements in subsection (b).

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

“(1) make such reports in such form and man-
ner and for such period as the Commission shall pre-
scribe by rule or regulation regarding the security-
based swaps held by the person; and
“(2) keep books and records pertaining to the
security-based swaps held by the person in such
form and manner and for such period as may be re-
quired by the Commission, which books and records
shall be open to inspection by any representative of
the Commission, an appropriate Federal banking
agency, the Commodity Futures Trading Com-
mission, the Financial Services Oversight Council, and
the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this
section, the Commission shall require persons described in
subsection (a) to report the same or more comprehensive
data than the Commission requires security-based swap
repositories to collect under subsection (n).”.

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange
Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
inserting “or otherwise becomes or is deemed to be-
come a beneficial owner of any of the foregoing upon
the purchase or sale of a security-based swap or
other derivative instrument that the Commission
may define by rule, and” after “Alaska Native
Claims Settlement Act,”; and

(2) Section 13(g)(1) of the Securities Exchange
Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by
inserting "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule" after "subsection (d)(1) of this section".

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule," after "subsection (d)(1) of this section".


(1) in subparagraph (C), by adding "security-based swap dealer, major security-based swap participant," after "government securities dealer,"; and

(2) in subparagraph (F), by adding "or security-based swap dealer, or a major security-based swap participant" after "or dealer".
(e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.”

SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist
at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ‘bucket shops’ or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of
securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State anti-fraud law of general applicability. A security-based swap may not be regulated as an insurance contract under State law.”.

SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933;

TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3) by adding at the end the following: “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”; and

(3) by adding at the end the following:

“(17) The terms ‘swap’ and ‘security-based swap’ have the same meanings as provided in sections 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) and section 3(a)(68) of the Securities Exchange Act of 1934.
“(18) The terms ‘purchase’ or ‘sale’ of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”.

(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

“(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Derivative Markets Transparency and Accountability Act of 2009. The Commission shall promulgate rules implementing this exemption.”.

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any per-
son, directly or indirectly, to make use of any means or
instruments of transportation or communication in inter-
state commerce or of the mails to offer to sell, offer to
buy or purchase or sell a security-based swap to any per-
son who is not an eligible contract participant as defined
in section 1a(12) of the Commodity Exchange Act (7
U.S.C. 1a(12)).”.

SEC. 3208. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle
does not divest any appropriate Federal banking agency,
the Commission, the Commodity Futures Trading Com-
mission, or other Federal or State agency, of any authority
derived from any other applicable law.

SEC. 3209. JURISDICTION.

(a) Section 36 of the Securities Exchange Act of
1934 (15 U.S.C. 78mm) is amended by adding at the end
the following new subsection:

“(c) DERIVATIVES.—The Commission shall not grant
exemptions from the security-based swap provisions of the
Derivative Markets Transparency and Accountability Act
of 2009, except as expressly authorized under the provi-
sions of that Act.”.

(b) Section 30 of the Securities Exchange Act of
1934 is amended by adding at the end the following:
“(c) No provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009 or any rule or regulation thereunder shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this Act as in effect prior to enactment of the Derivative Markets Transparency and Accountability Act of 2009.”

SEC. 3210. EFFECTIVE DATE.

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

(b) Subsection (a) shall not preclude the Securities Exchange Commission from any rulemaking required to implement the provisions of this subtitle.
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.

(a) INCLUSION IN CERTAIN DEFINITIONS.—Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking “or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;” and inserting “the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission; the Chairman of the National Credit Union Administration; the Director of the Pension Benefit Guaranty Corporation; the Chairman of the Securities and Exchange Commission; or the Director of the Consumer Financial Protection Agency;”; and

(2) in paragraph (2), by striking “or the Commissions established under section 15301 of title 40,
United States Code," and inserting "the Commissions established under section 15301 of title 40, United States Code, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, or the Director of the Consumer Financial Protection Agency,\".

(b) EXCLUSION FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by striking "the Board of Governors of the Federal Reserve System,";

(2) by striking "the Commodity Futures Trading Commission,";

(3) by striking "the National Credit Union Administration,"; and

(4) by striking "the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission,".
SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO
PERSONNEL.

(a) In General.—The Inspector General Act of
1978 (5 U.S.C. App.) is amended by inserting after sec-
tion 8L the following:

"SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-
TABLISHMENTS.

(a) DEFINITION.—For purposes of this section, the
term "covered establishment" means the Board of Gov-
ernors of the Federal Reserve System, the Commodity Fu-
tures Trading Commission, the National Credit Union Ad-
ministration, the Pension Benefit Guaranty Corporation,
and the Securities and Exchange Commission.

(b) PROVISIONS RELATING TO ALL COVERED ES-
TABLISHMENTS.—

(1) PROVISIONS RELATING TO INSPECTORS
GENERAL.—In the case of the Inspector General of
a covered establishment, subsections (b) and (c) of
section 4 of the Inspector General Reform Act of
2008 (Public Law 110–409) shall apply in the same
manner as if such covered establishment were a des-
ignated Federal entity under section 8G. An Inspect-
ator General who is subject to the preceding sentence
shall not be subject to section 3(e).

(2) PROVISIONS RELATING TO OTHER PER-
SONNEL.—Notwithstanding paragraphs (7) and (8)
of section 6(a), the Inspector General of a covered establishment may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General of such establishment and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within such establishment.

"(c) PROVISION RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—The provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively."

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 8G(g) of the Inspector General Act of 1978 (5 U.S.C. App.) is repealed.
SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CERTAIN
ESTABLISHMENTS TO DEFICIENCIES
IDENTIFIED BY INSPECTORS GENERAL.

The Chairman of the Board of Governors of the Federal
Reserve System, the Chairman of the Commodity Futures
Trading Commission, the Chairman of the National
Credit Union Administration, the Director of the Pension
Benefit Guaranty Corporation, and the Chairman of the
Securities and Exchange Commission shall each—

(1) take action to address deficiencies identified
by a report or investigation of the Inspector General
of the establishment concerned; or

(2) certify to both Houses of Congress that no
action is necessary or appropriate in connection with
a deficiency described in paragraph (1).

SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.

(a) EFFECTIVE DATE.—This subtitle and the amend-
ments made by this subtitle shall take effect 30 days after
the date of the enactment of this subtitle.

(b) TRANSITION RULE.—An individual serving as Ins-
spector General of the Board of Governors of the Federal
Reserve System, the Commodity Futures Trading Com-
mission, the National Credit Union Administration, the
Pension Benefit Guaranty Corporation, or the Securities
and Exchange Commission on the effective date of this
subtitle pursuant to an appointment made under section
(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administra-
tion, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, consistent with the amendments made by section 301; and
(2) shall, while serving under paragraph (1), re-
main subject to the provisions of section 8G of such Act which, immediately before the effective date of this subtitle, applied with respect to the Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administra-
tion, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, and suffer no reduction in pay.

Page 694, beginning on line 19, strike “a designated Federal entity” and insert “an establishment”.

f:\WHLC\120969\120909.014.xml (456670110)
December 9, 2009 (9:48 a.m.)
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. 3202. Repeal of prohibition on regulation of security-based swaps.
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.