

COMMITTEE PRINT

Showing the text of H.R. 3795, as Ordered Reported by the
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111TH CONGRESS
1ST SESSION

H. R. 3795

To enact the Over-the-Counter Derivatives Markets Act of 2009.

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enact the Over-the-Counter Derivatives Markets Act of
2009.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 SEC. 2. TABLE OF CONTENTS.

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

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Review of regulatory authority.
- Sec. 4. International harmonization.
- Sec. 5. Prohibition against government assistance.

TITLE I—REGULATION OF SWAP MARKETS

- Sec. 101. Definitions.
- Sec. 102. Jurisdiction.
- Sec. 103. Clearing and execution transparency.
- Sec. 104. Public reporting of aggregate swap data.
- Sec. 105. Swap repositories.
- Sec. 106. Reporting and recordkeeping.
- Sec. 107. Registration and regulation of swap dealers and major swap participants.
- Sec. 108. Conflicts of interest.
- Sec. 109. Alternative swap execution facilities.
- Sec. 110. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 111. Designated contract markets.
- Sec. 112. Margin.
- Sec. 113. Position limits.
- Sec. 114. Enhanced authority over registered entities.
- Sec. 115. Foreign boards of trade.
- Sec. 116. Legal certainty for swaps.
- Sec. 117. FDICIA amendments.
- Sec. 118. Enforcement authority.
- Sec. 119. Enforcement.
- Sec. 120. Retail commodity transactions.
- Sec. 121. Large swap trader reporting.
- Sec. 122. Other authority.
- Sec. 123. Antitrust.
- Sec. 124. Review of prior actions.
- Sec. 125. Expedited process.
- Sec. 126. Effective date.
- Sec. 127. Study on effects of position limits on trading on exchanges in the United States.

TITLE II—REGULATION OF SECURITY-BASED SWAP MARKETS

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

TITLE III—IMPROVED FINANCIAL AND COMMODITY MARKETS
OVERSIGHT AND ACCOUNTABILITY

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

1 SEC. 3. REVIEW OF REGULATORY AUTHORITY.**2 (a) CONSULTATION.—**

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

12 (2) SEC.—Before commencing any rulemaking
13 or issuing an order regarding security-based swaps,
14 security-based swap dealers, major security-based
15 swap participants, security-based swap repositories,
16 persons associated with a security-based swap dealer
17 or major security-based swap participant, eligible
18 contract participants with regard to security-based
19 swaps, or alternative swap execution facilities pursu-
20 ant to title II, the Securities and Exchange Commis-

1 sion shall consult with the Commodity Futures
2 Trading Commission and the Prudential Regulators.

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

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

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

18 (b) LIMITATION.—

19 (1) CFTC.—Nothing in this Act shall be con-
20 strued to confer jurisdiction on the Commodity Fu-
21 tures Trading Commission to issue a rule, regula-
22 tion, or order providing for oversight or regulation
23 of—

24 (A) security-based swaps; or

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

3 (i) security-based swap dealers;

4 (ii) major security-based swap partici-
5 pants;

6 (iii) security-based swap repositories;

7 (iv) persons associated with a secu-
8 rity-based swap dealer or major security-
9 based swap participant;

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

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

14 (2) SEC.—Nothing in this Act shall be con-
15 strued to confer jurisdiction on the Securities and
16 Exchange Commission to issue a rule, regulation, or
17 order providing for oversight or regulation of—

18 (A) swaps; or

19 (B) with regard to their activities or func-
20 tions concerning swaps—

21 (i) swap dealers;

22 (ii) major swap participants;

23 (iii) swap repositories;

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

- 1 (v) eligible contract participants with
2 respect to swaps; or
3 (vi) alternative swap execution facili-
4 ties.

5 (c) OBJECTION TO COMMISSION REGULATION.—

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

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

1 ferred to therein, and any other materials prescribed
2 by the court.

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

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

16 (d) DEFINITIONS.—In this section, the terms “Pru-
17 dential Regulators”, “swap”, “swap dealer”, “major swap
18 participant”, “swap repository”, “person associated with
19 a swap dealer or major swap participant”, “eligible con-
20 tract participant”, “alternative swap execution facility”,
21 “security-based swap”, “security-based swap dealer”,
22 “major security-based swap participant”, “security-based
23 swap repository”, and “person associated with a security-
24 based swap dealer or major security-based swap partici-
25 pant” shall have the meanings provided, respectively, in

1 the Commodity Exchange Act, including any modification
2 of the meanings under section 101(b) of this Act.

3 **SEC. 4. INTERNATIONAL HARMONIZATION.**

4 In order to promote effective and consistent global
5 regulation of contracts of sale of a commodity for future
6 delivery, swaps, and security-based swaps, the Commodity
7 Futures Trading Commission, the Securities and Ex-
8 change Commission, the Prudential Regulators (as defined
9 in section 1a(42) of the Commodity Exchange Act), [and
10 the financial stability regulator], as appropriate, shall
11 consult and coordinate with foreign regulatory authorities
12 on the establishment of consistent international standards
13 with respect to the regulation of contracts of sale of a com-
14 modity for future delivery, swaps, and security-based
15 swaps, and may agree to such information-sharing ar-
16 rangements as may be deemed to be necessary or appro-
17 priate in the public interest or for the protection of inves-
18 tors, swap counterparties, and security-based swap
19 counterparties.

20 **SEC. 5. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.**

21 (a) IN GENERAL.—No provision of this or any other
22 Act shall be construed to authorize Federal assistance to
23 support clearing operations or liquidation of a derivatives
24 clearing organization described in the Commodity Ex-
25 change Act or a clearing agency described in the Securities

1 Exchange Act of 1934, except where explicitly authorized
2 by an Act of Congress.

3 (b) DEFINITION.—For the purposes of this section,
4 the term “Federal assistance” means the use of public
5 funds for the purposes of—

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

9 (2) purchasing assets of a derivatives clearing
10 organization, a clearing agency, or a subsidiary of ei-
11 ther;

12 (3) assuming or guaranteeing the obligations of
13 a derivatives clearing organization, a clearing agen-
14 cy, or a subsidiary of either; or

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

18 **TITLE I—REGULATION OF SWAP** 19 **MARKETS**

20 **SEC. 101. DEFINITIONS.**

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

24 (1) in paragraph (12)(A)—

1 (A) in clause (vii)(III), by striking
2 “\$25,000,000” and inserting “\$50,000,000”;
3 and

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

7 (2) in paragraph (29)—

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

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

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

14 “(E) an alternative swap execution facility
15 registered under section 5h;

16 “(F) a swap repository; and”; and

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

18 “(35) SWAP.—

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

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

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

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

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

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

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

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

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

24 “(i) any contract of sale of a com-
25 modity for future delivery (or any option

1 on such a contract) or security futures
2 product traded on or subject to the rules
3 of any board of trade designated as a con-
4 tract market under section 5 or 5f;

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

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

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

23 “(v) any agreement, contract, or
24 transaction providing for the purchase or
25 sale of 1 or more securities on a fixed basis

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

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

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

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

25 “(I) based on a security; and

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

10 “(ix) any foreign exchange forward;

11 “(x) any foreign exchange swap;

12 “(xi) any agreement, contract, or
13 transaction a counterparty of which is a
14 Federal Reserve bank, the United States
15 government or an agency of the United
16 States government that is expressly backed
17 by the full faith and credit of the United
18 States; and

19 “(xii) any security-based swap.

20 “(C) RULE OF CONSTRUCTION REGARDING
21 MASTER AGREEMENTS.—The term ‘swap’ shall
22 be construed to include a master agreement
23 that provides for an agreement, contract, or
24 transaction that is a swap pursuant to subpara-
25 graph (A), together with all supplements to any

1 such master agreement, without regard to
2 whether the master agreement contains an
3 agreement, contract, or transaction that is not
4 a swap pursuant to subparagraph (A), except
5 that the master agreement shall be considered
6 to be a swap only with respect to each agree-
7 ment, contract, or transaction under the master
8 agreement that is a swap pursuant to subpara-
9 graph (A).

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

12 “(37) SECURITY-BASED SWAP.—The term ‘se-
13 curity-based swap’ has the same meaning as in sec-
14 tion 3(a)(68) of the Securities and Exchange Act of
15 1934.

16 “(38) SWAP DEALER.—The term ‘swap dealer’
17 means any person who, as a significant part of its
18 business—

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

20 “(B) makes a market in swaps;

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

1 “(D) engages in any activity causing the
2 person to be commonly known in the trade as
3 a dealer or market maker in swaps.

4 “(39) MAJOR SWAP PARTICIPANT.—

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

8 “(i) maintains a substantial net posi-
9 tion in outstanding swaps, excluding posi-
10 tions held primarily for hedging, reducing
11 or otherwise mitigating its commercial
12 risk; or

13 “(ii) whose outstanding swaps create
14 substantial net counterparty exposure that
15 could have serious adverse effects on the
16 financial stability of the United States
17 banking system or financial markets.

18 “(B) DEFINITION OF SUBSTANTIAL NET
19 POSTION.—The Commission shall define by rule
20 or regulation the term ‘substantial net position’
21 at a threshold that the Commission determines
22 prudent for the effective monitoring, manage-
23 ment and oversight of entities which are sys-
24 temically important or can significantly impact
25 the financial system.

1 “(C) A person may be designated a major
2 swap participant for 1 or more individual types
3 of swaps.

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

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

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

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

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

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

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

1 “(i) a national bank; or

2 “(ii) a federally chartered branch or
3 agency of a foreign bank; and

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

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

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

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

1 and at a fixed rate agreed at the inception of the
2 contract.

3 “(46) PERSON ASSOCIATED WITH A SECURITY-
4 BASED SWAP DEALER OR MAJOR SECURITY-BASED
5 SWAP PARTICIPANT.—The term ‘person associated
6 with a security-based swap dealer or major security-
7 based swap participant’ or ‘associated person of a
8 security-based swap dealer or major security-based
9 swap participant’ has the same meaning as in sec-
10 tion 3(a)(70) of the Securities Exchange Act of
11 1934.

12 “(47) PERSON ASSOCIATED WITH A SWAP
13 DEALER OR MAJOR SWAP PARTICIPANT.—The term
14 ‘person associated with a swap dealer or major swap
15 participant’ or ‘associated person of a swap dealer or
16 major swap participant’ means any partner, officer,
17 director, or branch manager of a swap dealer or
18 major swap participant (or any person occupying a
19 similar status or performing similar functions), any
20 person directly or indirectly controlling, controlled
21 by, or under common control with a swap dealer or
22 major swap participant, or any employee of a swap
23 dealer or major swap participant, except that any
24 person associated with a swap dealer or major swap
25 participant whose functions are solely clerical or

1 ministerial shall not be included in the meaning of
2 the term other than for purposes of section 4s(b)(6).

3 “(48) SWAP REPOSITORY.—The term ‘swap re-
4 pository’ means an entity that collects and maintains
5 the records of the terms and conditions of swaps or
6 security-based swaps entered into by third parties.

7 “(49) ALTERNATIVE SWAP EXECUTION FACIL-
8 ITY.—The term ‘alternative swap execution facility’
9 means a service that facilitates the execution or
10 trading of swaps between two persons through any
11 means of interstate commerce, but which is not a
12 designated contract market, including any electronic
13 trade execution or confirmation facility or any voice
14 brokerage facility.”.

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

21 (c) EXEMPTIONS.—Section 4(c) of the Commodity
22 Exchange Act (7 U.S.C. 4(c)) is amended by adding at
23 the end the following: “The Commission shall not have
24 the authority to grant exemptions from the provisions of
25 sections 101(a), 101(e), 104, 105, 106, 107, 109, 110,

1 113, 115, 120, and 121 of the Derivative Markets Trans-
2 parency and Accountability Act of 2009, except as ex-
3 pressly authorized under the provisions of that Act.”.

4 **SEC. 102. JURISDICTION.**

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

8 (1) by striking “(c) through (i)” and inserting
9 “(c) and (f)”;

10 (2) by inserting “swaps, or” before “contracts
11 of sale”.

12 (b) **ADDITIONS.**—Section 2(c)(2)(A) of such Act (7
13 U.S.C. 2(c)(2)(A)) is amended—

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

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

16 and

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

18 “(ii) a swap; or”.

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

20 (a) **CLEARING AND EXECUTION TRANSPARENCY RE-**
21 **QUIREMENTS.**—

22 (1) Section 2 of the Commodity Exchange Act
23 (7 U.S.C. 2) is amended by striking subsections (d),
24 (e), (g), and (h).

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

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

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

16 “(d) SWAPS.—Nothing in this Act (other than sub-
17 sections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j),
18 and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s,
19 4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2),
20 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-
21 sions of this Act as are applicable by their terms to reg-
22 istered entities and Commission registrants) governs or
23 applies to a swap.

24 “(e) LIMITATION ON PARTICIPATION.—It shall be
25 unlawful for any person, other than an eligible contract

1 participant, to enter into a swap unless the swap is en-
2 tered into on or subject to the rules of a board of trade
3 designated as a contract market under section 5.”.

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

7 “(j) CLEARING REQUIREMENT.—

8 “(1) IN GENERAL.—

9 “(A) PRESUMPTION OF CLEARING.—A
10 swap shall be submitted for clearing if a deriva-
11 tives clearing organization that is registered
12 under this Act will accept the swap for clearing,
13 and the Commission has determined under
14 paragraph (2)(A)(ii) that the swap is required
15 to be cleared.

16 “(B) OPEN ACCESS.—The rules of a de-
17 rivatives clearing organization described in sub-
18 paragraph (A) shall—

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

1 “(ii) provide for non-discriminatory
2 clearing of a swap executed bilaterally or
3 on or through the rules of an unaffiliated
4 designated contract market or alternative
5 swap execution facility.

6 “(2) COMMISSION APPROVAL.—

7 “(A) IN GENERAL.—

8 “(i) A derivatives clearing organiza-
9 tion shall submit to the Commission each
10 swap, or any group, category, type or class
11 of swaps that it plans to accept for clear-
12 ing.

13 “(ii) The Commission shall review
14 each submission made under clause (i),
15 and determine whether the swap, or group,
16 category, type, or class of swaps, described
17 in the submission is required to be cleared.

18 “(B) NOTICE.—

19 “(i) A derivatives clearing organiza-
20 tion shall provide notice to its members (in
21 a manner to be determined by the Com-
22 mission) of submissions made under sub-
23 paragraph (A).

24 “(ii) The Commission shall—

1 “(I) make available to the public
2 any submission received under sub-
3 paragraph (A); and

4 “(II) provide at least a 30-day
5 public comment period regarding its
6 determination whether the clearing re-
7 quirement under paragraph (1)(A)
8 shall apply to the submission.

9 “(C) DEADLINE.—The Commission shall
10 make its determination under subparagraph
11 (A)(ii) not later than 90 days after receiving a
12 submission made under subparagraph (A)(i),
13 unless the submitting derivatives clearing orga-
14 nization agrees to an extension for the time lim-
15 itation established under this subparagraph.

16 “(D) DETERMINATION.—

17 “(i) In reviewing a submission made
18 under subparagraph (A), the Commission
19 shall review whether the submission is con-
20 sistent with section 5b(c)(2) and take into
21 account the following factors:

22 “(I) The existence of significant
23 outstanding notional exposures, trad-
24 ing liquidity and adequate pricing
25 data.

1 “(II) The availability of rule
2 framework, capacity, operational ex-
3 pertise and resources, and credit sup-
4 port infrastructure to clear the con-
5 tract on terms that are consistent
6 with the material terms and trading
7 conventions on which the contract is
8 then traded.

9 “(III) The effect on the mitiga-
10 tion of systemic risk, taking into ac-
11 count the size of the market for such
12 contract and the resources of the de-
13 rivatives clearing organization avail-
14 able to clear the contract.

15 “(IV) The effect on competition.

16 “(V) The existence of reasonable
17 legal certainty in the event of the in-
18 solvency of the relevant derivatives
19 clearing organization or 1 or more of
20 its clearing members with regard to
21 the treatment of customer and swap
22 counterparty positions, funds, and
23 property.

24 “(ii) In making a determination under
25 subparagraph (A)(ii) that the clearing re-

1 requirement shall apply, the Commission
2 may require such terms and conditions to
3 the requirement as the Commission deter-
4 mines to be appropriate.

5 “(E) RULES.—Not later than 1 year after
6 the date of the enactment of the Derivative
7 Markets Transparency and Accountability Act
8 of 2009, the Commission shall adopt rules for
9 a derivatives clearing organization’s submission
10 for approval, pursuant to this paragraph, of a
11 swap, or a group, category, type or class of
12 swaps, that it seeks to accept for clearing.

13 “(3) STAY OF CLEARING REQUIREMENT.—

14 “(A) After an approval pursuant to para-
15 graph (2), the Commission, on application of a
16 counterparty to a swap or on its own initiative,
17 may stay the clearing requirement of paragraph
18 (1) until the Commission completes a review of
19 the terms of the swap (or the group, category,
20 type or class of swaps) and the clearing ar-
21 rangement.

22 “(B) DEADLINE.—The Commission shall
23 complete a review undertaken pursuant to sub-
24 paragraph (A) not later than 90 days after
25 issuance of the stay, unless the derivatives

1 clearing organization that clears the swap, or
2 group, category, type or class of swaps, agrees
3 to an extension of the time limitation estab-
4 lished under this subparagraph.

5 “(C) DETERMINATION.—Upon completion
6 of the review undertaken pursuant to subpara-
7 graph (A), the Commission may—

8 “(i) determine, unconditionally or sub-
9 ject to such terms and conditions as the
10 Commission determines to be appropriate,
11 that the swap, or group, category, type or
12 class of swaps, must be cleared pursuant
13 to this subsection if it finds that such
14 clearing is consistent with section 5b(c)(2);
15 or

16 “(ii) determine that the clearing re-
17 quirement of paragraph (1) shall not apply
18 to the swap, or group, category, type or
19 class of swaps.

20 “(D) RULES.—Not later than 1 year after
21 the date of the enactment of the Derivative
22 Markets Transparency and Accountability Act
23 of 2009, the Commission shall adopt rules for
24 reviewing, pursuant to this paragraph, a deriva-
25 tives clearing organization’s clearing of a swap,

1 or a group, category, type or class of swaps,
2 that it has accepted for clearing.

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

7 “(5) REQUIRED REPORTING.—

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

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

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

1 “(A) Swaps entered into before the date of
2 the enactment of this subsection shall be re-
3 ported to a registered swap repository or the
4 Commission no later than 180 days after the
5 effective date of this subsection; and

6 “(B) Swaps entered into on or after such
7 date of enactment shall be reported to a reg-
8 istered swap repository or the Commission no
9 later than the later of—

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

11 or

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

15 “(7) CLEARING TRANSITION RULES.—

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

21 “(B) Swaps entered into before becoming
22 clearable pursuant to this subsection are ex-
23 empt from the clearing requirements of this
24 subsection if reported pursuant to paragraph
25 (6)(B).

1 “(C) ENTERED INTO BEFORE TIER 1 DES-
2 IGNATION.—Swaps entered into with a
3 counterparty in reliance of the exception in
4 paragraph (8) before designation of such
5 counterparty as a [Tier 1 financial holding
6 company] are exempt from the clearing re-
7 quirements of this subsection.

8 “(8) EXCEPTIONS.—

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

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

14 “(ii) demonstrates to the Commission,
15 in a manner set forth by the Commission,
16 how it generally meets its financial obliga-
17 tions associated with entering into non-
18 cleared swaps.

19 “(B) ABUSE OF EXCEPTION.—The Com-
20 mission may prescribe rules under this sub-
21 section, or issue interpretations of the rules, as
22 necessary to prevent abuse of the exemption in
23 subparagraph (A) by swap dealers and major
24 swap participants.

25 “(k) EXECUTION TRANSPARENCY.—

1 “(1) REQUIREMENT.—A swap that is subject to
2 the clearing requirement of subsection (j) shall not
3 be traded except on or through a board of trade des-
4 ignated as a contract market under section 5, or on
5 or through an alternative swap execution facility reg-
6 istered under section 5h, that lists the swap for
7 trading.

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

12 “(3) AGRICULTURAL SWAPS.—No person shall
13 offer to enter into, enter into or confirm the execu-
14 tion of, any swap in an agricultural commodity (as
15 defined by the Commission) that is subject to para-
16 graphs (1) and (2) except pursuant to a rule or reg-
17 ulation of the Commission allowing the swap under
18 such terms and conditions as the Commission shall
19 prescribe.”.

20 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

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

24 “(a) REGISTRATION REQUIREMENT.—It shall be un-
25 lawful for any entity, unless registered with the Commis-

1 sion, directly or indirectly to make use of the mails or any
2 means or instrumentality of interstate commerce to per-
3 form the functions of a derivatives clearing organization
4 described in section 1a(10) of this Act with respect to—

5 “(1) a contract of sale of a commodity for fu-
6 ture delivery (or option on such a contract) or option
7 on a commodity, in each case unless the contract or
8 option is—

9 “(A) excluded from this Act by section
10 2(a)(1)(C)(i), 2(c), or 2(f); or

11 “(B) a security futures product cleared by
12 a clearing agency registered with the Securities
13 and Exchange Commission under the Securities
14 Exchange Act of 1934 (15 U.S.C. 78a et seq.);
15 or

16 “(2) a swap.

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

21 “(c) EXISTING BANKS AND CLEARING AGENCIES.—
22 A bank or a clearing agency registered with the Securities
23 and Exchange Commission under the Securities Exchange
24 Act of 1934 required to be registered as a derivatives
25 clearing organization under this section is deemed to be

1 registered under this section to the extent that the bank
2 cleared swaps, as defined in this Act, as a multilateral
3 clearing organization or the clearing agency cleared swaps,
4 as defined in this Act, before the enactment of this sub-
5 section. A bank to which this subsection applies may, by
6 the vote of the shareholders owning not less than 51 per-
7 cent of the voting interests of the bank, be converted into
8 a State corporation, partnership, limited liability company,
9 or other similar legal form pursuant to a plan of conver-
10 sion, if the conversion is not in contravention of applicable
11 State law.”.

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

14 “(g) RULES.—Not later than 1 year after the date
15 of the enactment of the Derivative Markets Transparency
16 and Accountability Act of 2009, the Commission shall
17 adopt rules governing persons that are registered as de-
18 rivatives clearing organizations for swaps under this sub-
19 section.

20 “(h) EXEMPTIONS.—

21 “(1) IN GENERAL.—The Commission may ex-
22 empt, conditionally or unconditionally, a derivatives
23 clearing organization from registration under this
24 section for the clearing of swaps if the Commission
25 finds that the derivatives clearing organization is

1 subject to comparable, comprehensive supervision
2 and regulation on a consolidated basis by a Pruden-
3 tial Regulator or the appropriate governmental au-
4 thorities in the organization's home country.

5 “(2) A person that is required to be registered
6 as derivatives clearing organization under this sec-
7 tion, whose principal business is clearing securities
8 and options on securities and which is a clearing
9 agency registered with the Securities Exchange
10 Commission under the Securities Exchange Act of
11 1934 (15 U.S.C. 78a et seq.), shall be uncondition-
12 ally exempt from registration under this section, un-
13 less the Commission finds that the clearing agency
14 is not subject to comparable, comprehensive super-
15 vision and regulation by the Securities and Ex-
16 change Commission.

17 “(i) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

22 “(A) shall report directly to the board or
23 to the senior officer of the derivatives clearing
24 organization; and

25 “(B) shall—

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

3 “(ii) in consultation with the board of
4 the derivatives clearing organization, a
5 body performing a function similar to that
6 of a board, or the senior officer of the de-
7 rivatives clearing organization, resolve any
8 conflicts of interest that may arise;

9 “(iii) be responsible for administering
10 the policies and procedures required to be
11 established pursuant to this section; and

12 “(iv) ensure compliance with this Act
13 and the rules and regulations issued under
14 this Act; and

15 “(C) shall establish procedures for remedi-
16 ation of non-compliance issues found during
17 compliance office reviews, lookbacks, internal or
18 external audit findings, self-reported errors, or
19 through validated complaints. The procedures
20 shall establish the handling, management re-
21 sponse, remediation, re-testing, and closing of
22 non-compliant issues.

23 “(3) ANNUAL REPORTS REQUIRED.—The com-
24 pliance officer shall annually prepare and sign a re-
25 port on the compliance of the derivatives clearing or-

1 organization with this Act and the policies and proce-
2 dures of the derivatives clearing organization, includ-
3 ing the code of ethics and conflict of interest policies
4 of the derivatives clearing organization, in accord-
5 ance with rules prescribed by the Commission. The
6 compliance report shall accompany the financial re-
7 ports of the derivatives clearing organization that
8 are required to be furnished to the Commission pur-
9 suant to this section and shall include a certification
10 that, under penalty of law, the report is accurate
11 and complete.”.

12 (3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-
13 1(c)(2)) is amended to read as follows:

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

16 “(A) IN GENERAL.—To be registered and
17 to maintain registration as a derivatives clear-
18 ing organization, a derivatives clearing organi-
19 zation shall comply with the core principles
20 specified in this paragraph and any requirement
21 that the Commission may impose by rule or
22 regulation pursuant to section 8a(5). Except
23 where the Commission determines otherwise by
24 rule or regulation, a derivatives clearing organi-
25 zation shall have reasonable discretion in estab-

1 lishing the manner in which the organization
2 complies with the core principles.

3 “(B) FINANCIAL RESOURCES.—

4 “(i) The derivatives clearing organiza-
5 tion shall have adequate financial, oper-
6 ational, and managerial resources to dis-
7 charge the responsibilities of the organiza-
8 tion.

9 “(ii) The financial resources of the de-
10 rivatives clearing organization shall at a
11 minimum exceed the total amount that
12 would—

13 “(I) enable the organization to
14 meet the financial obligations of the
15 organization to the members of, and
16 participants in, the organization, not-
17 withstanding a default by the member
18 or participant creating the largest fi-
19 nancial exposure for the organization
20 in extreme but plausible market condi-
21 tions; and

22 “(II) enable the organization to
23 cover the operating costs of the orga-
24 nization for a period of 1 year, cal-
25 culated on a rolling basis.

1 “(C) PARTICIPANT AND PRODUCT ELIGI-
2 BILITY.—

3 “(i) The derivatives clearing organiza-
4 tion shall establish—

5 “(I) appropriate admission and
6 continuing eligibility standards (in-
7 cluding sufficient financial resources
8 and operational capacity to meet obli-
9 gations arising from participation in
10 the organization) for members of and
11 participants in the organization; and

12 “(II) appropriate standards for
13 determining eligibility of agreements,
14 contracts, or transactions submitted
15 to the organization for clearing.

16 “(ii) The derivatives clearing organi-
17 zation shall have procedures in place to
18 verify that participation and membership
19 requirements are met on an ongoing basis.

20 “(iii) The participation and member-
21 ship requirements of the derivatives clear-
22 ing organization shall be objective, publicly
23 disclosed, and permit fair and open access.

24 “(D) RISK MANAGEMENT.—

1 “(i) The derivatives clearing organiza-
2 tion shall have the ability to manage the
3 risks associated with discharging the re-
4 sponsibilities of a derivatives clearing orga-
5 nization through the use of appropriate
6 tools and procedures.

7 “(ii) The derivatives clearing organi-
8 zation shall measure the credit exposures
9 of the organization to the members of, and
10 participants in, the organization at least
11 once each business day and shall monitor
12 the exposures throughout the business day.

13 “(iii) Through margin requirements
14 and other risk control mechanisms, a de-
15 rivatives clearing organization shall limit
16 the exposures of the organization to poten-
17 tial losses from defaults by the members
18 of, and participants in, the organization so
19 that the operations of the organization
20 would not be disrupted and non-defaulting
21 members or participants would not be ex-
22 posed to losses that they cannot anticipate
23 or control.

24 “(iv) Margin required from all mem-
25 bers and participants shall be sufficient to

1 cover potential exposures in normal market
2 conditions.

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

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

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

11 “(ii) employ money settlement ar-
12 rangements that eliminate or strictly limit
13 the exposure of the organization to settle-
14 ment bank risks, such as credit and liquid-
15 ity risks from the use of banks to effect
16 money settlements;

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

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

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

1 “(vi) for physical settlements, estab-
2 lish rules that clearly state the obligations
3 of the organization with respect to physical
4 deliveries, including how risks from these
5 obligations shall be identified and man-
6 aged.

7 “(F) TREATMENT OF FUNDS.—

8 “(i) The derivatives clearing organiza-
9 tion shall have standards and procedures
10 designed to protect and ensure the safety
11 of member and participant funds and as-
12 sets.

13 “(ii) The derivatives clearing organi-
14 zation shall hold member and participant
15 funds and assets in a manner whereby risk
16 of loss or of delay in the access of the or-
17 ganization to the assets and funds is mini-
18 mized.

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

23 “(G) DEFAULT RULES AND PROCE-
24 DURES.—

1 “(i) The derivatives clearing organiza-
2 tion shall have rules and procedures de-
3 signed to allow for the efficient, fair, and
4 safe management of events when members
5 or participants become insolvent or other-
6 wise default on their obligations to the or-
7 ganization.

8 “(ii) The default procedures of the de-
9 rivatives clearing organization shall be
10 clearly stated, and they shall ensure that
11 the organization can take timely action to
12 contain losses and liquidity pressures and
13 to continue meeting the obligations of the
14 organization.

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

17 “(H) RULE ENFORCEMENT.—The deriva-
18 tives clearing organization shall—

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

24 “(ii) have the authority and ability to
25 discipline, limit, suspend, or terminate the

1 activities of a member or participant for
2 violations of rules of the organization.

3 “(I) SYSTEM SAFEGUARDS.—The deriva-
4 tives clearing organization shall—

5 “(i) establish and maintain a program
6 of risk analysis and oversight to identify
7 and minimize sources of operational risk
8 through the development of appropriate
9 controls and procedures, and the develop-
10 ment of automated systems, that are reli-
11 able, secure, and have adequate scalable
12 capacity;

13 “(ii) establish and maintain emer-
14 gency procedures, backup facilities, and a
15 plan for disaster recovery that allows for
16 the timely recovery and resumption of op-
17 erations and the fulfillment of the respon-
18 sibilities and obligations of the organiza-
19 tion; and

20 “(iii) periodically conduct tests to
21 verify that backup resources are sufficient
22 to ensure continued order processing and
23 trade matching, price reporting, market
24 surveillance, and maintenance of a com-
25 prehensive and accurate audit trail.

1 “(J) REPORTING.—The derivatives clear-
2 ing organization shall provide to the Commis-
3 sion all information necessary for the Commis-
4 sion to conduct oversight of the organization.

5 “(K) RECORDKEEPING.—The derivatives
6 clearing organization shall maintain records of
7 all activities related to the business of the orga-
8 nization as a derivatives clearing organization
9 in a form and manner acceptable to the Com-
10 mission for a period of 5 years.

11 “(L) PUBLIC INFORMATION.—

12 “(i) The derivatives clearing organiza-
13 tion shall provide market participants with
14 sufficient information to identify and
15 evaluate accurately the risks and costs as-
16 sociated with using the services of the or-
17 ganization.

18 “(ii) The derivatives clearing organi-
19 zation shall make information concerning
20 the rules and operating procedures gov-
21 erning the clearing and settlement systems
22 (including default procedures) of the orga-
23 nization available to market participants.

1 “(iii) The derivatives clearing organi-
2 zation shall disclose publicly and to the
3 Commission information concerning—

4 “(I) the terms and conditions of
5 contracts, agreements, and trans-
6 actions cleared and settled by the or-
7 ganization;

8 “(II) clearing and other fees that
9 the organization charges the members
10 of, and participants in, the organiza-
11 tion;

12 “(III) the margin-setting method-
13 ology and the size and composition of
14 the financial resource package of the
15 organization;

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

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

24 “(M) INFORMATION-SHARING.—The de-
25 rivatives clearing organization shall—

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

5 “(ii) use relevant information obtained
6 from the agreements in carrying out the
7 risk management program of the organiza-
8 tion.

9 “(N) ANTITRUST CONSIDERATIONS.—Un-
10 less appropriate to achieve the purposes of this
11 Act, the derivatives clearing organization shall
12 avoid—

13 “(i) adopting any rule or taking any
14 action that results in any unreasonable re-
15 straint of trade; or

16 “(ii) imposing any material anti-
17 competitive burden.

18 “(O) GOVERNANCE FITNESS STAND-
19 ARDS.—

20 “(i) The derivatives clearing organiza-
21 tion shall establish governance arrange-
22 ments that are transparent in order to ful-
23 fill public interest requirements and to
24 support the objectives of the owners of,
25 and participants in, the organization.

1 “(ii) The derivatives clearing organi-
2 zation shall establish and enforce appro-
3 priate fitness standards for the directors,
4 members of any disciplinary committee,
5 and members of the organization, and any
6 other persons with direct access to the set-
7 tlement or clearing activities of the organi-
8 zation, including any parties affiliated with
9 any of the persons described in this sub-
10 paragraph.

11 “(P) CONFLICTS OF INTEREST.—The de-
12 rivatives clearing organization shall establish
13 and enforce rules to minimize conflicts of inter-
14 est in the decision-making process of the orga-
15 nization and establish a process for resolving
16 the conflicts of interest.

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

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

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

4 “(j) REPORTING.—

5 “(1) IN GENERAL.—A derivatives clearing orga-
6 nization that clears swaps shall provide to the Com-
7 mission all information determined by the Commis-
8 sion to be necessary to perform the responsibilities
9 of the Commission under this Act. The Commission
10 shall adopt data collection and maintenance require-
11 ments for swaps cleared by derivatives clearing orga-
12 nizations that are comparable to the corresponding
13 requirements for swaps accepted by swap reposi-
14 tories and swaps traded on alternative swap execu-
15 tion facilities. The Commission shall share the infor-
16 mation, upon request, with the Board, the Securities
17 and Exchange Commission, the appropriate Federal
18 banking agencies, the **【Financial Services Oversight**
19 **Council】**, and the Department of Justice or other
20 persons the Commission deems appropriate, includ-
21 ing foreign financial supervisors (including foreign
22 futures authorities), foreign central banks, and for-
23 eign ministries that comply with the provisions of
24 section 8.

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

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

12 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING
13 PRODUCTS.—

14 (1) REPEAL.—Sections 402(d), 404, 407,
15 408(b), and 408(c)(2) of the Legal Certainty for
16 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
17 27e, 27f(b), and 27f(c)(2)) are repealed.

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

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

22 “(a) EXCLUSION.—Except as provided in subsection
23 (b) or (c), neither the Commodity Exchange Act, nor the
24 Securities Act of 1933, nor the Securities Exchange Act
25 of 1934 shall apply to, and the Commodity Futures Trad-

1 ing Commission and the Securities and Exchange Com-
2 mission shall not exercise regulatory authority under any
3 of such statutes with respect to, an identified banking
4 product.

5 “(b) EXCEPTION.—An appropriate Federal banking
6 agency may except an identified banking product of a
7 bank under its regulatory jurisdiction from the exclusion
8 in subsection (a) if the agency determines, in consultation
9 with the Commodity Futures Trading Commission and the
10 Securities and Exchange Commission, that the product—

11 “(1) would meet the definition of swap in sec-
12 tion 1a(35) of the Commodity Exchange Act (7
13 U.S.C. 1a(35)) or security-based swap in section
14 3(a)(68) of the Securities and Exchange Act of
15 1934; and

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

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

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

4 “(2) meets the definition of swap in section
5 1a(35) of the Commodity Exchange Act or security-
6 based swap in section 3(a)(68) of the Securities and
7 Exchange Act of 1934; and

8 “(3) has become known to the trade as a swap
9 or security-based swap, or otherwise has been struc-
10 tured as an identified banking product for the pri-
11 mary purpose of evading the provisions of the Com-
12 modity Exchange Act (7 U.S.C. 1 et seq.), the Secu-
13 rities Act of 1933 (15 U.S.C. 77a et seq.), or the
14 Securities Exchange Act of 1934 (15 U.S.C. 78a et
15 seq.).”.

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

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

19 “(j) PUBLIC REPORTING OF AGGREGATE SWAP
20 DATA.—

21 “(1) IN GENERAL.—The Commission, or a per-
22 son designated by the Commission pursuant to para-
23 graph (2), shall make available to the public, in a
24 manner that does not disclose the business trans-
25 actions and market positions of any person, aggre-

1 gate data on swap trading volumes and positions
2 from the sources set forth in paragraph (3).

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

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

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

12 “(B) swap repositories pursuant to section
13 21(c)(3); and

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

16 **SEC. 105. SWAP REPOSITORIES.**

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

19 **“SEC. 21. SWAP REPOSITORIES.**

20 “(a) REGISTRATION REQUIREMENT.—

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

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

5 “(b) STANDARD SETTING.—

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

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

13 “(3) COMPARABILITY.—The standards pre-
14 scribed by the Commission under this subsection
15 shall be comparable to the data standards imposed
16 by the Commission on derivatives clearing organiza-
17 tions that clear swaps.

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

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

21 “(2) maintain the data in such form and man-
22 ner and for such period as may be required by the
23 Commission;

24 “(3) provide to the Commission, or its designee,
25 such information as is required by, and in a form

1 and at a frequency to be determined by, the Com-
2 mission, in order to comply with the public reporting
3 requirements contained in section 8(j); and

4 “(4) make available, on a confidential basis
5 pursuant to section 8, all data obtained by the swap
6 repository, including individual counterparty trade
7 and position data, to the Commission, the appro-
8 priate Federal banking agencies, the [Financial
9 Services Oversight Council], the Securities and Ex-
10 change Commission, and the Department of Justice
11 or to other persons the Commission deems appro-
12 priate, including foreign financial supervisors (in-
13 cluding foreign futures authorities), foreign central
14 banks, and foreign ministries.

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

21 “(e) EXEMPTIONS.—The Commission may exempt,
22 conditionally or unconditionally, a swap repository from
23 the requirements of this section if the Commission finds
24 that the swap repository is subject to comparable, com-
25 prehensive supervision and regulation on a consolidated

1 basis by the Securities and Exchange Commission, a Pru-
2 dential Regulator or the appropriate governmental au-
3 thorities in the organization's home country.”.

4 **SEC. 106. REPORTING AND RECORDKEEPING.**

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

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

9 “(a) IN GENERAL.—Any person who enters into a
10 swap and—

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

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

17 shall meet the requirements in subsection (b).

18 “(b) REPORTS.—Any person described in subsection
19 (a) shall—

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

24 “(2) keep books and records pertaining to the
25 swaps held by the person in such form and manner

1 and for such period as may be required by the Com-
2 mission, which books and records shall be open to
3 inspection by any representative of the Commission,
4 an appropriate Federal banking agency, the Securi-
5 ties and Exchange Commission, the **【Financial Serv-**
6 **ices Oversight Council】**, and the Department of Jus-
7 tice.

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

13 **SEC. 107. REGISTRATION AND REGULATION OF SWAP DEAL-**
14 **ERS AND MAJOR SWAP PARTICIPANTS.**

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

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

20 “(a) REGISTRATION.—

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

24 “(2) It shall be unlawful for any person to act
25 as a major swap participant unless the person is

1 registered as a major swap participant with the
2 Commission.

3 “(b) REQUIREMENTS.—

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

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

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

20 “(4) RULES.—Except as provided in sub-
21 sections (c), (d) and (e), the Commission may pre-
22 scribe rules applicable to swap dealers and major
23 swap participants, including rules that limit the ac-
24 tivities of swap dealers and major swap participants.
25 Except with regard to subsection (d)(1)(A), the

1 Commission may provide conditional or uncondi-
2 tional exemptions from rules prescribed under this
3 section for swap dealers and major swap partici-
4 pants.

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

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

21 “(c) RULES.—

22 “(1) IN GENERAL.—Not later than 1 year after
23 the date of the enactment of this section, the Com-
24 mission shall adopt rules for persons that are reg-

1 istered as swap dealers or major swap participants
2 under this section.

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

11 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

12 “(1) IN GENERAL.—

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

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

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

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

12 “(i) help ensure the safety and sound-
13 ness of the swap dealer or major swap par-
14 ticipant; and

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

18 “(2) RULES.—

19 “(A) BANK SWAP DEALERS AND MAJOR
20 SWAP PARTICIPANTS.—No later than 1 year
21 after the date of the enactment of the Deriva-
22 tive Markets Transparency and Accountability
23 Act of 2009, the Prudential Regulators, in con-
24 sultation with the Commission, shall jointly
25 adopt rules imposing capital and margin re-

1 requirements under this subsection for swap deal-
2 ers and major swap participants, with respect
3 to their activities as a swap dealer or major
4 swap participant for which there is a Prudential
5 Regulator

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

15 “(3) SET-ASIDE REQUIREMENTS.—A person
16 shall not initially be registered as a swap dealer, or
17 continue to be so registered, unless the person, at all
18 times—

19 “(A) sets aside, in accordance with such
20 rules, regulations, or orders as the Commission
21 may promulgate, the following amounts or
22 property for each swap to which the person is
23 a party and that is not cleared—

24 “(i) an amount equal to the minimum
25 margin requirement for the swap that the

1 Commission may prescribe, by rule, regula-
2 tion, or order with respect to the person,
3 pursuant to subparagraph (A); plus

4 “(ii) any additional amount that the
5 person and the counterparty agree shall be
6 set aside from the person’s own funds or
7 property in order to margin, guarantee, or
8 secure the swap; plus

9 “(iii) any amount that the person re-
10 ceives from its counterparty in order to
11 margin, guarantee, or secure the swap;
12 plus

13 “(iv) the greater of—

14 “(I) any accrued but unpaid
15 losses the person has incurred in con-
16 nection with the swap, less any ac-
17 crued but unpaid gains the person has
18 earned in connection with the swap,
19 or

20 “(II) zero; less

21 “(v) any amount that the person posts
22 with its counterparty in order to margin,
23 guarantee, or secure the swap.

24 “(B) treats, deals with, and limits its in-
25 vestments of any amount that the person is re-

1 required to set aside, pursuant to subparagraph
2 (A)(i), in accordance with any rule, regulation,
3 or order that the Commission may promulgate.

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

9 “(e) REPORTING AND RECORDKEEPING.—

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

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

16 “(B) for which—

17 “(i) there is a Prudential Regulator,
18 shall keep books and records of all activi-
19 ties related to its business as a swap dealer
20 or major swap participant in such form
21 and manner and for such period as may be
22 prescribed by the Commission by rule or
23 regulation;

24 “(ii) there is no Prudential Regulator,
25 shall keep books and records in such form

1 and manner and for such period as may be
2 prescribed by the Commission by rule or
3 regulation; and

4 “(C) shall keep the books and records open
5 to inspection and examination by any represent-
6 ative of the Commission.

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

13 “(f) DAILY TRADING RECORDS.—

14 “(1) IN GENERAL.—Each registered swap deal-
15 er and major swap participant shall maintain daily
16 trading records of its swaps and all related records
17 (including related cash or forward transactions) and
18 recorded communications including but not limited
19 to electronic mail, instant messages, and recordings
20 of telephone calls, for such period as may be pre-
21 scribed by the Commission by rule or regulation.

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

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

6 “(4) AUDIT TRAIL.—Each registered swap deal-
7 er and major swap participant shall maintain a com-
8 plete audit trail for conducting comprehensive and
9 accurate trade reconstructions.

10 “(5) RULES.—No later than 1 year after the
11 date of the enactment of the Derivative Markets
12 Transparency and Accountability Act of 2009, the
13 Commission shall adopt rules governing daily trad-
14 ing records for swap dealers and major swap partici-
15 pants.

16 “(g) BUSINESS CONDUCT STANDARDS.—

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

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

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

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

3 “(D) such other matters as the Commis-
4 sion shall determine to be necessary or appro-
5 priate.

6 “(2) BUSINESS CONDUCT REQUIREMENTS.—
7 Business conduct requirements adopted by the Com-
8 mission shall—

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

13 “(B) require disclosure by the swap dealer
14 or major swap participant to any counterparty
15 to the transaction (other than a swap dealer or
16 major swap participant) of—

17 “(i) information about the material
18 risks and characteristics of the swap;

19 “(ii) for cleared swaps, upon the re-
20 quest of the counterparty, the daily mark
21 from the appropriate derivatives clearing
22 organization, and for non-cleared swaps,
23 upon request of the counterparty, the daily
24 mark of the swap dealer or major swap
25 participant; and

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

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

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

16 “(h) DOCUMENTATION AND BACK OFFICE STAND-
17 ARDS.—

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

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

1 Transparency and Accountability Act of 2009, the
2 Commission shall adopt rules governing documenta-
3 tion and back office standards for swap dealers and
4 major swap participants.

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

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

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

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

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

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

22 “(D) other information relevant to its trad-
23 ing in swaps.

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

1 “(A) establish and enforce internal systems
2 and procedures to obtain any necessary infor-
3 mation to perform any of the functions de-
4 scribed in this section; and

5 “(B) provide the information to the Com-
6 mission or to the Prudential Regulator for the
7 swap dealer or major swap participant, as ap-
8 plicable, upon request.

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

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

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

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

1 this Act, the swap dealer or major swap participant
2 shall avoid—

3 “(A) adopting any processes or taking any
4 actions that result in any unreasonable re-
5 straints of trade; or

6 “(B) imposing any material anticompeti-
7 tive burden on trading.”.

8 **SEC. 108. CONFLICTS OF INTEREST.**

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

11 (1) redesignating subsection (c) as subsection
12 (d); and

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

14 “(c) CONFLICTS OF INTEREST.—The Commission
15 shall require that futures commission merchants and in-
16 troducing brokers implement conflict-of-interest systems
17 and procedures that—

18 “(1) establish structural and institutional safe-
19 guards to assure that the activities of any person
20 within the firm relating to research or analysis of
21 the price or market for any commodity are separated
22 by appropriate informational partitions within the
23 firm from the review, pressure, or oversight of those
24 whose involvement in trading or clearing activities

1 might potentially bias their judgment or supervision;
2 and

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

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

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

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

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

14 “(b) REQUIREMENTS FOR TRADING.—

15 “(1) An alternative swap execution facility that
16 is registered under subsection (a) may list for trad-
17 ing any swap.

18 “(2) RULES FOR TRADING THROUGH THE FA-
19 CILITY.—Not later than 1 year after the date of the
20 enactment of the Derivative Markets Transparency
21 and Accountability Act of 2009, the Commission
22 shall adopt rules to allow a swap to be traded
23 through the facilities of a designated contract mar-
24 ket or an alternative swap execution facility. Such
25 rules shall permit an intermediary, acting as prin-

1 ciproal or agent, to enter into or execute a swap, not-
2 withstanding section 2(k), if the swap is reported,
3 recorded, or confirmed in accordance with the rules
4 of the designated contract market or alternative
5 swap execution facility.

6 “(3) AGRICULTURAL SWAPS.—An alternative
7 swap execution facility may not list for trading or
8 confirm the execution of any swap in an agricultural
9 commodity (as defined by the Commission) except
10 pursuant to a rule or regulation of the Commission
11 allowing the swap under such terms and conditions
12 as the Commission shall prescribe.

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

21 “(d) CORE PRINCIPLES FOR ALTERNATIVE SWAP
22 EXECUTION FACILITIES.—

23 “(1) IN GENERAL.—To be registered as, and to
24 maintain its registration as, an alternative swap exe-
25 cution facility, the facility shall comply with the core

1 principles specified in this subsection and any re-
2 quirement that the Commission may impose by rule
3 or regulation pursuant to section 8a(5). Except
4 where the Commission determines otherwise by rule
5 or regulation, the facility shall have reasonable dis-
6 cretion in establishing the manner in which it com-
7 plies with these core principles.

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

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

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

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

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

24 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
25 NIPULATION.—The alternative swap execution facil-

1 ity shall permit trading only in swaps that are not
2 readily susceptible to manipulation.

3 “(4) MONITORING OF TRADING.—The alter-
4 native swap execution facility shall—

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

10 “(B) monitor trading in swaps to prevent
11 manipulation, price distortion, and disruptions
12 of the delivery or cash settlement process
13 through surveillance, compliance, and discipli-
14 nary practices and procedures, including meth-
15 ods for conducting real-time monitoring of trad-
16 ing and comprehensive and accurate trade re-
17 constructions.

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

20 “(A) establish and enforce rules that will
21 allow the facility to obtain any necessary infor-
22 mation to perform any of the functions de-
23 scribed in this section;

24 “(B) provide the information to the Com-
25 mission upon request; and

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

4 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

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

14 “(B) For any contract that is subject to a
15 position limitation established by the Commis-
16 sion pursuant to section 4a(a), the alternative
17 swap execution facility shall set its position lim-
18 itation at a level no higher than the Commis-
19 sion limitation.

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

1 “(8) EMERGENCY AUTHORITY.—The alternative
2 swap execution facility shall adopt rules to provide
3 for the exercise of emergency authority, in consulta-
4 tion or cooperation with the Commission, where nec-
5 essary and appropriate, including the authority to
6 liquidate or transfer open positions in any swap or
7 to suspend or curtail trading in a swap.

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

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

1 for derivatives clearing organizations and swap re-
2 positories.

3 “(11) ANTITRUST CONSIDERATIONS.—Unless
4 necessary or appropriate to achieve the purposes of
5 this Act, the alternative swap execution facility shall
6 avoid—

7 “(A) adopting any rules or taking any ac-
8 tions that result in any unreasonable restraints
9 of trade; or

10 “(B) imposing any material anticompeti-
11 tive burden on trading on the swap execution
12 facility.

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

15 “(A) establish and enforce rules to mini-
16 mize conflicts of interest in its decision-making
17 process; and

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

20 “(13) FINANCIAL RESOURCES.—

21 “(A) The alternative swap execution facil-
22 ity shall have adequate financial, operational,
23 and managerial resources to discharge its re-
24 sponsibilities.

1 “(B) The financial resources of the alter-
2 native swap execution facility shall be consid-
3 ered adequate if their value exceeds the total
4 amount that would enable the facility to cover
5 its operating costs for a period of 1 year, cal-
6 culated on a rolling basis.

7 “(14) SYSTEM SAFEGUARDS.—The alternative
8 swap execution facility shall—

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

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

22 “(C) periodically conduct tests to verify
23 that backup resources are sufficient to ensure
24 continued order processing and trade matching,
25 price reporting, market surveillance, and main-

1 tenance of a comprehensive and accurate audit
2 trail.

3 “(15) DESIGNATION OF COMPLIANCE OFFI-
4 CER.—

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

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

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

11 “(ii) shall—

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

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

20 “(III) be responsible for admin-
21 istering the policies and procedures
22 required to be established pursuant to
23 this section; and

24 “(IV) ensure compliance with
25 this Act and the rules and regulations

1 issued under this Act, including rules
2 prescribed by the Commission pursu-
3 ant to this section; and

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

13 “(C) ANNUAL REPORTS REQUIRED.—The
14 compliance officer shall annually prepare and
15 sign a report on the compliance of the facility
16 with this Act and its policies and procedures,
17 including its code of ethics and conflict of inter-
18 est policies, in accordance with rules prescribed
19 by the Commission. The compliance report shall
20 accompany the financial reports of the facility
21 that are required to be furnished to the Com-
22 mission pursuant to this section and shall in-
23 clude a certification that, under penalty of law,
24 the report is accurate and complete.

1 “(e) EXEMPTIONS.—The Commission may exempt,
2 conditionally or unconditionally, an alternative swap exe-
3 cution facility from registration under this section if the
4 Commission finds that the facility is subject to com-
5 parable, comprehensive supervision and regulation on a
6 consolidated basis by the Securities and Exchange Com-
7 mission, a Prudential Regulator or the appropriate gov-
8 ernmental authorities in the organization’s home country.

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

14 **SEC. 110. DERIVATIVES TRANSACTION EXECUTION FACILI-**
15 **TIES AND EXEMPT BOARDS OF TRADE.**

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

18 (b)(1) Prior to the final effective dates in this Act,
19 a person may petition the Commodity Futures Trading
20 Commission to remain subject to the provisions of section
21 5d of the Commodity Exchange Act.

22 (2) The Commodity Futures Trading Commission
23 shall consider any petition submitted under paragraph (1)
24 in a prompt manner and may allow a person to continue
25 operating subject to the provisions of section 5d of the

1 Commodity Exchange Act for up to one year after the ef-
2 fective date of this Act.

3 **SEC. 111. DESIGNATED CONTRACT MARKETS.**

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

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

17 “(2) COMPLIANCE WITH RULES.—

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

24 “(B) The board of trade shall have the ca-
25 pacity to detect, investigate, and apply appro-

1 pripate sanctions to, any person or entity that
2 violates the rules.

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

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

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

22 “(5) POSITION LIMITATIONS OR ACCOUNT-
23 ABILITY.—

24 “(A) To reduce the potential threat of
25 market manipulation or congestion, especially

1 during trading in the delivery month, and to
2 eliminate or prevent excessive speculation as de-
3 scribed in section 4a(a), the board of trade shall
4 adopt for each of its contracts, where necessary
5 and appropriate, position limitations or position
6 accountability for speculators.

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

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

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

20 “(A) the terms and conditions of the con-
21 tracts of the contract market; and

22 “(B) the rules, regulations and mecha-
23 nisms for executing transactions on or through
24 the facilities of the contract market, and the
25 rules and specifications describing the operation

1 of the board of trade's electronic matching plat-
2 form or other trade execution facility.”.

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

6 “(9) EXECUTION OF TRANSACTIONS.—

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

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

14 “(i) transfer trades or office trades;

15 “(ii) an exchange of—

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

18 “(II) futures for cash commod-
19 ities; or

20 “(III) futures for swaps; or

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

1 corded, or cleared in accordance with the
2 rules of the contract market or a deriva-
3 tives clearing organization.”.

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

6 “(19) FINANCIAL RESOURCES.—The board of
7 trade shall have adequate financial, operational, and
8 managerial resources to discharge the responsibil-
9 ities of a contract market. For the financial re-
10 sources of a board of trade to be considered ade-
11 quate, their value shall exceed the total amount that
12 would enable the contract market to cover its oper-
13 ating costs for a period of 1 year, calculated on a
14 rolling basis.

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

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

24 “(B) establish and maintain emergency
25 procedures, backup facilities, and a plan for dis-

1 aster recovery that allow for the timely recovery
2 and resumption of operations and the fulfill-
3 ment of the board of trade’s responsibilities and
4 obligations; and

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

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

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

1 tions, including delegation of the functions to third
2 parties.”.

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

5 **SEC. 112. MARGIN.**

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

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

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

15 “(i) be limited to protecting the finan-
16 cial integrity of the derivatives clearing or-
17 ganization;

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

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

23 **SEC. 113. POSITION LIMITS.**

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

1 (1) inserting “(1)” after “(a)”;

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

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

10 (4) striking “on an electronic trading facility
11 with respect to a significant price discovery con-
12 tract,” in the second sentence and inserting “swaps
13 that perform or affect a significant price discovery
14 function with respect to registered entities,”; and

15 (5) inserting at the end the following:

16 “(2)(A) In accordance with the standards set
17 forth in paragraph (1) of this subsection and con-
18 sistent with the good faith exception cited in sub-
19 section (b)(2), with respect to physical commodities
20 other than excluded commodities as defined by the
21 Commission, the Commission shall by rule, regula-
22 tion, or order establish limits on the amount of posi-
23 tions, as appropriate, other than bona fide hedge po-
24 sitions, that may be held by any person with respect
25 to contracts of sale for future delivery or with re-

1 spect to options on the contracts or commodities
2 traded on or subject to the rules of a designated
3 contract market.

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

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

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

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

18 “(B) to the maximum extent practicable,
19 in its discretion—

20 “(i) to diminish, eliminate, or prevent
21 excessive speculation as described under
22 this section;

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

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

3 “(iv) to ensure that the price dis-
4 covery function of the underlying market is
5 not disrupted.

6 “(4)(A) Not later than 150 days after the es-
7 tablishment of position limits pursuant to paragraph
8 (2), and biannually thereafter, the Commission shall
9 hold 2 public hearings, 1 for agriculture commodities
10 and 1 for energy commodities as such terms are de-
11 fined by the Commission, in order to receive rec-
12 ommendations regarding the position limits to be es-
13 tablished in paragraph (2).

14 “(B) Each public hearing held pursuant to sub-
15 paragraph (A) shall, at a minimum providing there
16 is sufficient interest, receive recommendations
17 from—

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

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

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

4 “(iv) each designated contract market
5 upon which a contract in the commodity for fu-
6 ture delivery is traded.

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

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

17 “(A) PRICE LINKAGE.—The extent to
18 which the swap uses or otherwise relies on a
19 daily or final settlement price, or other major
20 price parameter, of another contract traded on
21 a regulated market based upon the same under-
22 lying commodity, to value a position, transfer or
23 convert a position, financially settle a position,
24 or close out a position;

1 “(B) ARBITRAGE.—The extent to which
2 the price for the swap is sufficiently related to
3 the price of another contract traded on a regu-
4 lated market based upon the same underlying
5 commodity so as to permit market participants
6 to effectively arbitrage between the markets by
7 simultaneously maintaining positions or exe-
8 cuting trades in the swaps on a frequent and
9 recurring basis;

10 “(C) MATERIAL PRICE REFERENCE.—The
11 extent to which, on a frequent and recurring
12 basis, bids, offers, or transactions in a contract
13 traded on a regulated market are directly based
14 on, or are determined by referencing, the price
15 generated by the swap;

16 “(D) MATERIAL LIQUIDITY.—The extent
17 to which the volume of swaps being traded in
18 the commodity is sufficient to have a material
19 effect on another contract traded on a regulated
20 market; and

21 “(E) OTHER MATERIAL FACTORS.—Such
22 other material factors as the Commission speci-
23 fies by rule or regulation as relevant to deter-
24 mine whether a swap serves a significant price

1 discovery function with respect to a regulated
2 market.

3 “(6) ECONOMICALLY EQUIVALENT CON-
4 TRACTS.—

5 “(A) Notwithstanding any other provision
6 of this section, the Commission shall establish
7 limits on the amount of positions, as appro-
8 priate, other than bona fide hedge positions,
9 that may be held by any person with respect to
10 swaps described in paragraph (7) that are eco-
11 nomically equivalent to contracts of sale for fu-
12 ture delivery or to options on the contracts or
13 commodities traded on or subject to the rules of
14 a designated contract market subject to para-
15 graph (2).

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

18 “(i) develop the limits concurrently
19 with limits established under paragraph
20 (2), and the limits shall have similar re-
21 quirements as under paragraph (3)(B);
22 and

23 “(ii) establish the limits simulta-
24 neously with limits established under para-
25 graph (2).

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

9 “(A) contracts listed by designated con-
10 tract markets;

11 “(B) with respect to an agreement con-
12 tract, or transaction that settles against any
13 price (including the daily or final settlement
14 price) of 1 or more contracts listed for trading
15 on a registered entity, contracts traded on a
16 foreign board of trade that provides members or
17 other participants located in the United States
18 with direct access to its electronic trading and
19 order matching system; and

20 “(C) swap contracts that perform or affect
21 a significant price discovery function with re-
22 spect to regulated entities.

23 “(8) EXEMPTIONS.—The Commission, by rule,
24 regulation, or order, may exempt, conditionally or
25 unconditionally, any person or class of persons, any

1 swap or class of swaps, or any transaction or class
2 of transactions from any requirement it may estab-
3 lish under this section with respect to position lim-
4 its.”.

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

7 (1) in paragraph (1), by striking “or derivatives
8 transaction execution facility or facilities or elec-
9 tronic trading facility” and inserting “or alternative
10 swap execution facility or facilities”; and

11 (2) in paragraph (2), by striking “or derivatives
12 transaction execution facility or facilities or elec-
13 tronic trading facility” and inserting “or alternative
14 swap execution facility”.

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

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

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

19 “(2) For the purposes of implementation of
20 subsection (a)(2) for contracts of sale for future de-
21 livery or options on the contracts or commodities,
22 the Commission shall define what constitutes a bona
23 fide hedging transaction or position as a transaction
24 or position that—

1 “(A)(i) represents a substitute for trans-
2 actions made or to be made or positions taken
3 or to be taken at a later time in a physical mar-
4 keting channel;

5 “(ii) is economically appropriate to the re-
6 duction of risks in the conduct and manage-
7 ment of a commercial enterprise; and

8 “(iii) arises from the potential change in
9 the value of—

10 “(I) assets that a person owns, pro-
11 duces, manufactures, processes, or mer-
12 chandises or anticipates owning, producing,
13 manufacturing, processing, or merchan-
14 dising;

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

17 “(III) services that a person provides,
18 purchases, or anticipates providing or pur-
19 chasing; or

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

22 “(i) was executed opposite a
23 counterparty for which the transaction
24 would qualify as a bona fide hedging trans-
25 action pursuant to subparagraph (A); or

1 “(ii) meets the requirements of sub-
2 paragraph (A).”

3 **SEC. 114. ENHANCED AUTHORITY OVER REGISTERED ENTI-**
4 **TIES.**

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

7 (1) in paragraph (1), by striking “5a(d) and
8 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

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

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

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

14 and

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

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

1 that require additional time to analyze, an inad-
2 equate explanation by the submitting registered enti-
3 ty, or a potential inconsistency with this Act (includ-
4 ing regulations under this Act).

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

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

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

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

17 “(e) FOREIGN BOARDS OF TRADE.—

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

1 ment price) of 1 or more contracts listed for trading
2 on a registered entity, unless the Commission deter-
3 mines that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **SEC. 117. FDICIA AMENDMENTS.**

12 Sections 408 and 409 of the Federal Deposit Insur-
13 ance Corporation Improvement Act of 1991 (12 U.S.C.
14 4421 and 4422) are repealed.

15 **SEC. 118. ENFORCEMENT AUTHORITY.**

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

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

19 “(a) CFTC.—Except as provided in subsection (b),
20 the Commission shall have exclusive authority to enforce
21 the provisions of title I of the Derivative Markets Trans-
22 parency and Accountability Act of 2009 with respect to
23 any person.

24 “(b) PRUDENTIAL REGULATORS.—The Prudential
25 Regulators shall have exclusive authority to enforce the

1 provisions of section 4s(d) and other prudential require-
2 ments of this Act with respect to banks, and branches or
3 agencies of foreign banks that are swap dealers or major
4 swap participants.

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

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

1 **SEC. 119. ENFORCEMENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(II) any security;

25 “(III) a contract of sale that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 123. ANTITRUST.**

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

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

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

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

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

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

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

4 **SEC. 127. STUDY ON EFFECTS OF POSITION LIMITS ON**
5 **TRADING ON EXCHANGES IN THE UNITED**
6 **STATES.**

7 (a) STUDY.—The Commodity Futures Trading Com-
8 mission, in consultation with each entity that is a des-
9 ignated contract market under the Commodity Exchange
10 Act, shall conduct a study of the effects (if any) of the
11 position limits imposed pursuant to the other provisions
12 of this Act on excessive speculation and on the movement
13 of transactions from exchanges in the United States to
14 trading venues outside the United States.

15 (b) REPORT TO THE CONGRESS.—Within 12 months
16 after the imposition of position limits pursuant to the
17 other provisions of this Act, the Commodity Futures Trad-
18 ing Commission, in consultation with each entity that is
19 a designated contract market under the Commodity Ex-
20 change Act, shall submit to the Congress a report on the
21 matters described in subsection (a).

22 (c) Within 30 legislative days after the submission to
23 the Congress of the report described in subsection (b), the
24 Committee on Agriculture of the House of Representatives
25 shall hold a hearing examining the findings of the report.

1 (d) In addition to the study required in subsection
2 (a), the Chairman of the Commodity Futures Trading
3 Commission shall prepare and submit to the Congress bi-
4 ennial reports on the growth or decline of the derivatives
5 markets in the United States and abroad, which shall in-
6 clude assessments of the causes of any such growth or de-
7 cline, the effectiveness of regulatory regimes in managing
8 systemic risk, a comparison of the costs of compliance at
9 the time of the report for market participants subject to
10 regulation by the United States with the costs of compli-
11 ance in December 2008 for the market participants, and
12 the quality of the available data. In preparing the report,
13 the Chairman shall solicit the views of, consult with, and
14 address the concerns raised by, market participants, regu-
15 lators, legislators, and other interested parties.

16 **TITLE J—REGULATION OF SECU-**
17 **RITY-BASED SWAP MARKETS**

18 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**
19 **CHANGE ACT OF 1934.**

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

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

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

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

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

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

19 (5) in paragraph (39)—

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

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

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

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

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

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

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

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

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

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

9 “(ii) whose outstanding security-based
10 swaps create substantial net counterparty
11 exposure that could have serious adverse
12 effects on the financial stability of the
13 United States banking system or financial
14 markets.

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

23 “(C) A person may be designated a major
24 security-based swap participant for 1 or more
25 individual types of security-based swaps.

1 “(68) SECURITY-BASED SWAP.—

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

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

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

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

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

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

14 “(C) EXCLUSION.—The term ‘security-
15 based swap’ does not include any agreement,
16 contract, or transaction that meets the defini-
17 tion of a security-based swap only because it
18 references, is based upon, or settles through the
19 transfer, delivery, or receipt of an exempted se-
20 curity under section 3(a)(12) of the Securities
21 Exchange Act of 1934 as in effect on the date
22 of enactment of the Futures Trading Act of
23 1982 (other than any municipal security as de-
24 fined in section 3(a)(29) as in effect on the date
25 of enactment of the Futures Trading Act of

1 1982), unless such agreement, contract, or
2 transaction is of the character of, or is com-
3 monly known in the trade as, a put, call, or
4 other option.

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

8 “(70) PERSON ASSOCIATED WITH A SECURITY-
9 BASED SWAP DEALER OR MAJOR SECURITY-BASED
10 SWAP PARTICIPANT.—The term ‘person associated
11 with a security-based swap dealer or major security-
12 based swap participant’ or ‘associated person of a
13 security-based swap dealer or major security-based
14 swap participant’ means any partner, officer, direc-
15 tor, or branch manager of such security-based swap
16 dealer or major security-based swap participant (or
17 any person occupying a similar status or performing
18 similar functions), any person directly or indirectly
19 controlling, controlled by, or under common control
20 with such security-based swap dealer or major secu-
21 rity-based swap participant, or any employee of such
22 security-based swap dealer or major security-based
23 swap participant, except that any person associated
24 with a security-based swap dealer or major security-
25 based swap participant whose functions are solely

1 clerical or ministerial shall not be included in the
2 meaning of such term other than for purposes of
3 section 15F(e)(2).

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

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

9 “(B) makes a market in security-based
10 swaps;

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

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

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

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

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

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

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

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

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

13 “(i) a national bank; or

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

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

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

1 “(76) BROAD-BASED SECURITY INDEX SWAP.—

2 The term ‘broad-based security index swap’ means a
3 swap that is based upon an index that is not a nar-
4 row-based security index, including any interest
5 therein or based on the value thereof.

6 “(77) SECURITY-BASED SWAP REPOSITORY.—

7 The term ‘security-based swap repository’ means any
8 person that collects, calculates, prepares or main-
9 tains information or records with respect to trans-
10 actions or positions in, or the terms and conditions
11 of, security-based swaps entered into by third par-
12 ties.”.

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

22 **SEC. 202. REPEAL OF PROHIBITION ON REGULATION OF SE-**
23 **CURITY-BASED SWAPS.**

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

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

3 (1) Section 2A(b) is amended by striking “secu-
4 rity-based swap agreement (as defined in section
5 206B of the Gramm-Leach-Bliley Act)” each place
6 that such term appears and inserting “broad-based
7 security index swap”.

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

10 (A) in subsection (a)—

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

13 (ii) by striking “security-based swap
14 agreement (as defined in section 206B of
15 the Gramm-Leach-Bliley Act)” and insert-
16 ing “broad-based security index swap as
17 defined in section 3(a)(76) of the Securi-
18 ties Exchange Act of 1934”; and

19 (B) in subsection (d), by striking “secu-
20 rity-based swap agreements (as defined in Sec-
21 tion 206B of the Gramm-Leach-Bliley Act)”
22 and inserting “broad-based security index
23 swaps as defined in Section 3(a)(76) of the Se-
24 curities Exchange Act of 1934”.

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

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

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

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

20 “(3) If a dealer, broker, security-based swap
21 dealer, major security-based swap participant or
22 other person selling or offering for sale or pur-
23 chasing or offering to purchase the security to in-
24 duce the purchase or sale of any security registered
25 on a national securities exchange or any security-

1 based swap with respect to such security by the cir-
2 culation or dissemination in the ordinary course of
3 business of information to the effect that the price
4 of any such security will or is likely to rise or fall
5 because of market operations of any one or more
6 persons conducted for the purpose of raising or de-
7 pressing the price of such security.

8 “(4) If a dealer, broker, security-based swap
9 dealer, major security-based swap participant or
10 other person selling or offering for sale or pur-
11 chasing or offering to purchase the security, to
12 make, regarding any security registered on a na-
13 tional securities exchange or any security-based swap
14 with respect to such security, for the purpose of in-
15 ducing the purchase or sale of such security or such
16 security-based swap, any statement which was at the
17 time and in the light of the circumstances under
18 which it was made, false or misleading with respect
19 to any material fact, and which he knew or had rea-
20 sonable ground to believe was so false or misleading.

21 “(5) For a consideration, received directly or
22 indirectly from a dealer, broker, security-based swap
23 dealer, major security-based swap participant or
24 other person selling or offering for sale or pur-
25 chasing or offering to purchase the security, to in-

1 duce the purchase of any security registered on a
2 national securities exchange or any security-based
3 swap with respect to such security by the circulation
4 or dissemination of information to the effect that the
5 price of any such security will or is likely to rise or
6 fall because of the market operations of any one or
7 more persons conducted for the purpose of raising or
8 depressing the price of such security.”.

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

10 (A) by striking “securities-based swap
11 agreement (as defined in section 206B of the
12 Gramm-Leach-Bliley Act)” each place that the
13 term appears and inserting “broad-based secu-
14 rity index swap”; and

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

20 (4) Section 15(c)(1) is amended—

21 (A) in subparagraph (A), by striking “, or
22 any security-based swap agreement (as defined
23 in section 206B of the Gramm-Leach-Bliley
24 Act),” and inserting “broad-based security
25 index swap”; and

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

5 (5) Section 15(i) (15 U.S.C. 78o(i), as added
6 by section 303(f) of the Commodity Futures Mod-
7 ernization Act of 2000 (Public Law 106–554; 114
8 Stat. 2763A–455) is amended by striking “security-
9 based swap agreements (as defined in section 206B
10 of the Gramm-Leach-Bliley Act)” and inserting
11 “broad-based security index swaps”.

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

13 (A) in subsection (a)(2)(C), by striking
14 “security-based swap agreement (as defined in
15 section 206(b) of the Gramm-Leach-Bliley
16 Act)” and inserting “broad-based security index
17 swap”;

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

23 (C) in subsection (g), by striking “security-
24 based swap agreement (as defined in section

1 206B of the Gramm-Leach-Bliley Act)” and in-
2 serting “broad-based security index swap”.

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

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

9 (B) in subsection (f), by striking “security-
10 based swap agreement (as defined in section
11 206B of the Gramm-Leach-Bliley Act)” and in-
12 serting “broad-based security index swap”.

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

15 (A) in subsection (a)(1), by “striking secu-
16 rity-based swap agreement (as defined in sec-
17 tion 206B of the Gramm-Leach-Bliley Act)”
18 and inserting “broad-based security index
19 swap,”; and

20 (B) in subsection (g), by striking “secu-
21 rity-based swap agreement (as defined in sec-
22 tion 206B of the Gramm-Leach-Bliley Act)”
23 and inserting “broad-based security index
24 swap”.

1 **SEC. 203. AMENDMENTS TO THE SECURITIES EXCHANGE**
2 **ACT OF 1934.**

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

7 **“SEC. 3B. CLEARING AND EXECUTION TRANSPARENCY FOR**
8 **SECURITY-BASED SWAPS.**

9 “(a) CLEARING REQUIREMENT.—

10 “(1) IN GENERAL.—

11 “(A) PRESUMPTION OF CLEARING.—A se-
12 curity-based swap shall be submitted for clear-
13 ing if a clearing agency that is registered under
14 this Act will accept the security-based swap for
15 clearing, and the Commission has determined
16 under paragraph (2)(A)(ii) that the swap is re-
17 quired to be cleared.

18 “(B) OPEN ACCESS.—The rules of a clear-
19 ing agency described in subparagraph (A)
20 shall—

21 “(i) prescribe that all security-based
22 swaps submitted to the clearing agency
23 with the same terms and conditions, prop-
24 erly submitted and accepted by the clear-
25 ing agency, are economically equivalent

1 and may be offset with each other within
2 the clearing agency; and

3 “(ii) provide for non-discriminatory
4 clearing of a security-based swap executed
5 on or through the rules of an unaffiliated
6 exchange or alternative swap execution fa-
7 cility.

8 “(2) COMMISSION APPROVAL.—

9 “(A) IN GENERAL.—

10 “(i) A clearing agency shall submit to
11 the Commission each security-based swap,
12 or any group, category, type or class of se-
13 curity-based swaps that it plans to accept
14 for clearing.

15 “(ii) The Commission shall review
16 each submission made under clause (i),
17 and determine whether the security-based
18 swap, or group, category, type, or class of
19 security-based swaps, described in the sub-
20 mission is required to be cleared.

21 “(B) NOTICE.—

22 “(i) A clearing agency shall provide
23 notice to its members (in a manner to be
24 determined by the Commission) of submis-
25 sions made under subparagraph (A).

1 “(ii) The Commission shall—

2 “(I) make available to the public
3 any submission received under sub-
4 paragraph (A); and

5 “(II) provide at least a 30-day
6 public comment period regarding its
7 determination whether the clearing re-
8 quirement under paragraph (1)(A)
9 shall apply to the submission.

10 “(C) DEADLINE.—The Commission shall
11 make its determination under subparagraph
12 (A)(ii) not later than 90 days after receiving a
13 submission made under subparagraph (A)(i),
14 unless the submitting clearing agency agrees to
15 an extension for the time limitation established
16 under this subparagraph.

17 “(D) DETERMINATION.—

18 “(i) In reviewing a submission made
19 under paragraph (A), the Commission shall
20 review whether the submission is consistent
21 with the securities laws and take into ac-
22 count the following factors:

23 “(I) The existence of significant
24 outstanding notional exposures, trad-

1 ing liquidity and adequate pricing
2 data.

3 “(II) The availability of rule
4 framework, capacity, operational ex-
5 pertise and resources, and credit sup-
6 port infrastructure to clear the con-
7 tract on terms that are consistent
8 with the material terms and trading
9 conventions on which the contract is
10 then traded.

11 “(III) The impact on the mitiga-
12 tion of systemic risk, taking into ac-
13 count the size of the market for such
14 contract and the resources of the
15 clearing agency available to clear the
16 contract.

17 “(IV) The impact on competition.

18 “(V) The existence of reasonable
19 legal certainty in the event of the in-
20 solvency of the relevant clearing agen-
21 cy or one or more of its clearing mem-
22 bers with regard to the treatment of
23 customer and swap counterparty posi-
24 tions, funds, and property.

1 “(ii) In making a determination under
2 subparagraph (A)(ii) that the clearing re-
3 quirement shall apply, the Commission
4 may require such terms and conditions to
5 the requirement as the Commission deter-
6 mines to be appropriate.

7 “(E) PRIOR CLEARING OF SWAPS.—Swaps
8 that are accepted for clearing by a clearing
9 agency prior to the effective date of the Deriva-
10 tive Markets Transparency and Accountability
11 Act of 2009 are deemed approved for purposes
12 of this section.

13 “(F) RULES.—Not later than 1 year after
14 the date of the enactment of the Derivative
15 Markets Transparency and Accountability Act
16 of 2009, the Commission shall adopt rules for
17 a clearing agency’s submission for approval,
18 pursuant to this paragraph, of a security-based
19 swap, or a group, category, type or class of se-
20 curity-based swap, that it seeks to accept for
21 clearing.

22 “(3) STAY OF CLEARING REQUIREMENT.—

23 “(A) AUTHORITY.—At any time after
24 issuance of an approval pursuant to paragraph
25 (2), the Commission, on application of a

1 counterparty to a security-based swap or on its
2 own initiative, may stay the clearing require-
3 ment of paragraph (1) until the Commission
4 completes a review of the terms of the security-
5 based swap (or the group, category, type or
6 class of security-based swap) and the clearing
7 arrangement.

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

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

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

1 subsection if it finds that such clearing is
2 consistent with the securities laws; or

3 “(ii) determine that the clearing re-
4 quirement of paragraph (1) shall not apply
5 to the security-based swap, or group, cat-
6 egory, type or class of security-based swap.

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

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

19 “(5) REQUIRED REPORTING.—

20 “(A) IN GENERAL.—All security-based
21 swaps that are not accepted for clearing by any
22 clearing agency shall be reported either to a se-
23 curity-based swap repository described in sub-
24 section 13(n) or, if there is no security-based
25 swap repository that would accept the security-

1 based swap, to the Commission pursuant to sec-
2 tion 13A within such time period as the Com-
3 mission may by rule or regulation prescribe.
4 Counterparties to a security-based swap may
5 agree which counterparty will report the secu-
6 rity-based swap as required by this paragraph.

7 “(B) SECURITY-BASED SWAP DEALER DES-
8 IGNATION.—With regard to security-based
9 swaps where only one counterparty is a secu-
10 rity-based swap dealer, the security-based swap
11 dealer shall report the security-based swap as
12 required by this paragraph

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

16 “(A) Security-based swaps that were en-
17 tered into before the date of enactment of the
18 Derivative Markets Transparency and Account-
19 ability Act of 2009 shall be reported to a reg-
20 istered security-based swap repository or the
21 Commission no later than 180 days after the
22 effective date of such Act.

23 “(B) Security-based swaps that were en-
24 tered into on or after the date of enactment of
25 such Act shall be reported to a registered secu-

1 rity-based swap repository or the Commission
2 no later than the later of:

3 “(i) 90 days after the effective date of
4 such Act; or

5 “(ii) such other time after entering
6 into the security-based swap as the Com-
7 mission may prescribe by rule or regula-
8 tion.

9 “(7) CLEARING TRANSITION RULES.—

10 “(A) ENTERED INTO BEFORE DATE OF
11 ENACTMENT.—Security-based swaps that were
12 entered into before the date of enactment of the
13 Derivative Markets Transparency and Account-
14 ability Act of 2009 are exempt from the clear-
15 ing requirements of this subsection provided
16 such security-based swaps are reported pursu-
17 ant to paragraph (6)(A).

18 “(B) ENTERED INTO BEFORE BECOMING
19 CLEARABLE.—Security-based swaps that were
20 entered into before becoming clearable pursuant
21 to this subsection are exempt from the clearing
22 requirements of this subsection provided such
23 security-based swaps are reported pursuant to
24 paragraph (6)(B).

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

8 “(8) EXCEPTION.—

9 “(A) IN GENERAL.—The requirements of
10 paragraph (1) do not apply to a security-based
11 swap if one of the counterparties to the secu-
12 rity-based swap—

13 “(i) is not a swap dealer or major se-
14 curity-based swap participant; and

15 “(ii) demonstrates to the Commission,
16 in a manner set forth by the Commission,
17 how it generally meets its financial obliga-
18 tions associated with entering into non-
19 cleared security-based swaps.

20 “(B) ABUSE OF EXCEPTION.—The Com-
21 mission may prescribe rules under this sub-
22 section, or issue interpretations of such rules,
23 as necessary to prevent abuse of the exemption
24 described under subparagraph (A) by security-

1 based swap dealers and major security-based
2 swap participants.

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

8 “(10) EXISTING BANKS AND DERIVATIVES
9 CLEARING ORGANIZATIONS.—A bank or a derivatives
10 clearing organization registered with the Commodity
11 Futures Trading Commission under the Commodity
12 Exchange Act required to be registered as a clearing
13 agency under this section is deemed to be registered
14 under this section to the extent that the bank
15 cleared security-based swaps, as defined in this Act,
16 as a multilateral clearing organization or the deriva-
17 tives clearing organization cleared security-based
18 swaps, as defined in this Act, before the enactment
19 of this section. A bank to which this section applies
20 may, by the vote of the shareholders owning not less
21 than 51 percent of the voting interests of such bank,
22 be converted into a State corporation, partnership,
23 limited liability company, or other similar legal form
24 pursuant to a plan of conversion, if the conversion
25 is not in contravention of applicable State law.

1 “(b) EXECUTION TRANSPARENCY.—

2 “(1) REQUIREMENT.—A security-based swap
3 that is subject to the clearing requirement of sub-
4 section (a) shall be traded on or through an ex-
5 change, or on or through an alternative swap execu-
6 tion facility registered under section 3C, that lists
7 the security-based swap for trading.

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

12 “(c) REPORTING.—

13 “(1) IN GENERAL.—A clearing agency that
14 clears security-based swaps shall provide to the
15 Commission all information determined by the Com-
16 mission to be necessary to perform its responsibil-
17 ities under this Act. The Commission shall adopt
18 data collection and maintenance requirements for se-
19 curity-based swaps cleared by clearing agencies that
20 are comparable to the corresponding requirements
21 for security-based swaps accepted by security-based
22 swap repositories and security-based swaps traded
23 on alternative swap execution facilities. Subject to
24 section 24, the Commission shall share such infor-
25 mation, upon request, with the Board, the Com-

1 modity Futures Trading Commission, the appro-
2 priate Federal banking agencies, the **【Financial**
3 **Services Oversight Council】**, and the Department of
4 Justice or to other persons the Commission deems
5 appropriate, including foreign financial supervisors
6 (including foreign futures authorities), foreign cen-
7 tral banks, and foreign ministries.

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

15 “(d) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

22 “(B) in consultation with the board of the
23 clearing agency, a body performing a function
24 similar to that of a board, or the senior officer

1 of the clearing agency, resolve any conflicts of
2 interest that may arise;

3 “(C) be responsible for administering the
4 policies and procedures required to be estab-
5 lished pursuant to this section;

6 “(D) ensure compliance with securities
7 laws and the rules and regulations issued there-
8 under, including rules prescribed by the Com-
9 mission pursuant to this section; and

10 “(E) establish procedures for remediation
11 of non-compliance issues found during compli-
12 ance office reviews, lookbacks, internal or exter-
13 nal audit findings, self-reported errors, or
14 through validated complaints. Procedures will
15 establish the handling, management response,
16 remediation, re-testing, and closing of non-com-
17 pliant issues.

18 “(3) ANNUAL REPORTS REQUIRED.—The com-
19 pliance officer shall annually prepare and sign a re-
20 port on the compliance of the clearing agency with
21 the securities laws and its policies and procedures,
22 including its code of ethics and conflict of interest
23 policies, in accordance with rules prescribed by the
24 Commission. Such compliance report shall accom-
25 pany the financial reports of the clearing agency

1 that are required to be furnished to the Commission
2 pursuant to this section and shall include a certifi-
3 cation that, under penalty of law, the report is accu-
4 rate and complete.

5 “(e) RULES.—Not later than 1 year after the date
6 of the enactment of the Derivative Markets Transparency
7 and Accountability Act of 2009, the Commission shall
8 adopt rules governing persons that are registered as clear-
9 ing agencies for security-based swaps under this Act.

10 “(f) EXEMPTIONS.—

11 “(1) IN GENERAL.—The Commission may ex-
12 empt, conditionally or unconditionally, a clearing
13 agency from registration under this section for the
14 clearing of security-based swaps if the Commission
15 finds that such clearing agency is subject to com-
16 parable, comprehensive supervision and regulation
17 on a consolidated basis by the Commodity Futures
18 Trading Commission, a Prudential Regulator, or the
19 appropriate governmental authorities in the organi-
20 zation’s home country.

21 “(2) A person that is required to be registered
22 as clearing agency under this section, whose prin-
23 cipal business is clearing commodity futures and op-
24 tions on commodity futures transactions and which
25 is a derivatives clearing organization registered with

1 the Commodity Futures Trading Commission under
2 the Commodity Exchange Act (7 U.S.C. 1, et seq.),
3 shall be unconditionally exempt from registration
4 under this section, unless the Commission finds that
5 such derivatives clearing organization is not subject
6 to comparable, comprehensive supervision and regu-
7 lation by the Commodity Futures Trading Commis-
8 sion.

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

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

20 “(2) FINANCIAL RESOURCES.—

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

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

1 “(i) enable the clearing agency to
2 meet its financial obligations to its mem-
3 bers and participants notwithstanding a
4 default by the member or participant cre-
5 ating the largest financial exposure for
6 that clearing agency in extreme but plau-
7 sible market conditions; and

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

11 “(3) PARTICIPANT AND PRODUCT ELIGI-
12 BILITY.—

13 “(A) The clearing agency shall establish—

14 “(i) appropriate admission and con-
15 tinuing eligibility standards (including suf-
16 ficient financial resources and operational
17 capacity to meet obligations arising from
18 participation in the clearing agency) for
19 members of and participants in the organi-
20 zation; and

21 “(ii) appropriate standards for deter-
22 mining eligibility of agreements, contracts,
23 or transactions submitted to the clearing
24 agency for clearing.

1 “(B) The clearing agency shall have proce-
2 dures in place to verify that participation and
3 membership requirements are met on an ongo-
4 ing basis.

5 “(C) The clearing agency’s participation
6 and membership requirements shall be objec-
7 tive, publicly disclosed, and permit fair and
8 open access.

9 “(D) The rules of the clearing agency shall
10 provide for acceptance of a standardized secu-
11 rity-based swap regardless of the system on
12 which the transaction was executed.

13 “(4) RISK MANAGEMENT.—

14 “(A) The clearing agency shall have the
15 ability to manage the risks associated with dis-
16 charging the responsibilities of a clearing agen-
17 cy through the use of appropriate tools and pro-
18 cedures.

19 “(B) The clearing agency shall measure its
20 credit exposures to its members and partici-
21 pants at least once each business day and shall
22 monitor such exposures throughout the business
23 day.

24 “(C) Through margin requirements and
25 other risk control mechanisms, a clearing agen-

1 cy shall limit its exposures to potential losses
2 from defaults by its members and participants
3 so that the operations of the clearing agency
4 would not be disrupted and nondefaulting mem-
5 bers or participants would not be exposed to
6 losses that they cannot anticipate or control.

7 “(D) Margin required from all members
8 and participants shall be sufficient to cover po-
9 tential exposures in normal market conditions.

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

13 “(5) SETTLEMENT PROCEDURES.—The clearing
14 agency shall—

15 “(A) complete money settlements on a
16 timely basis, and not less than once each busi-
17 ness day;

18 “(B) employ money settlement arrange-
19 ments that eliminate or strictly limit the clear-
20 ing agency’s exposure to settlement bank risks,
21 such as credit and liquidity risks from the use
22 of banks to effect money settlements;

23 “(C) ensure money settlements are final
24 when effected;

1 “(D) maintain an accurate record of the
2 flow of funds associated with each money settle-
3 ment;

4 “(E) have the ability to comply with the
5 terms and conditions of any permitted netting
6 or offset arrangements with other clearing orga-
7 nizations; and

8 “(F) for physical settlements, establish
9 rules that clearly state the clearing agency’s ob-
10 ligations with respect to physical deliveries. The
11 risks from these obligations shall be identified
12 and managed.

13 “(6) TREATMENT OF FUNDS.—

14 “(A) The clearing agency shall have stand-
15 ards and procedures designed to protect and en-
16 sure the safety of member and participant
17 funds and assets.

18 “(B) The clearing agency shall hold mem-
19 ber and participant funds and assets in a man-
20 ner whereby risk of loss or of delay in the clear-
21 ing agency’s access to the assets and funds is
22 minimized.

23 “(C) Assets and funds invested by the
24 clearing agency shall be held in instruments
25 with minimal credit, market, and liquidity risks.

1 “(7) DEFAULT RULES AND PROCEDURES.—

2 “(A) The clearing agency shall have rules
3 and procedures designed to allow for the effi-
4 cient, fair, and safe management of events
5 when members or participants become insolvent
6 or otherwise default on their obligations to the
7 clearing agency.

8 “(B) The clearing agency’s default proce-
9 dures shall be clearly stated, and they shall en-
10 sure that the clearing agency can take timely
11 action to contain losses and liquidity pressures
12 and to continue meeting its obligations.

13 “(C) The default procedures shall be pub-
14 licly available.

15 “(8) RULE ENFORCEMENT.—The clearing agen-
16 cy shall—

17 “(A) maintain adequate arrangements and
18 resources for the effective monitoring and en-
19 forcement of compliance with rules of the clear-
20 ing agency and for resolution of disputes; and

21 “(B) have the authority and ability to dis-
22 cipline, limit, suspend, or terminate a member’s
23 or participant’s activities for violations of rules
24 of the clearing agency.

1 “(9) SYSTEM SAFEGUARDS.—The clearing
2 agency shall—

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

10 “(B) establish and maintain emergency
11 procedures, backup facilities, and a plan for dis-
12 aster recovery that allows for the timely recov-
13 ery and resumption of operations and the ful-
14 fillment of the clearing agency’s responsibilities
15 and obligations; and

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

22 “(10) REPORTING.—The clearing agency shall
23 provide to the Commission all information necessary
24 for the Commission to conduct oversight of the
25 clearing agency.

1 “(11) RECORDKEEPING.—The clearing agency
2 shall maintain records of all activities related to the
3 business of the clearing agency as a clearing agency
4 in a form and manner acceptable to the Commission
5 for a period of 5 years.

6 “(12) PUBLIC INFORMATION.—

7 “(A) The clearing agency shall provide
8 market participants with sufficient information
9 to identify and evaluate accurately the risks and
10 costs associated with using the clearing agen-
11 cy’s services.

12 “(B) The clearing agency shall make infor-
13 mation concerning the rules and operating pro-
14 cedures governing its clearing and settlement
15 systems (including default procedures) available
16 to market participants.

17 “(C) The clearing agency shall disclose
18 publicly and to the Commission information
19 concerning—

20 “(i) the terms and conditions of con-
21 tracts, agreements, and transactions
22 cleared and settled by the clearing agency;

23 “(ii) clearing and other fees that the
24 clearing agency charges its members and
25 participants;

1 “(iii) the margin-setting methodology
2 and the size and composition of the finan-
3 cial resource package of the clearing agen-
4 cy;

5 “(iv) other information relevant to
6 participation in the settlement and clearing
7 activities of the clearing agency; and

8 “(v) daily settlement prices, volume,
9 and open interest for all contracts settled
10 or cleared by it.

11 “(13) INFORMATION-SHARING.—The clearing
12 agency shall—

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

17 “(B) use relevant information obtained
18 from the agreements in carrying out the clear-
19 ing organization’s risk management program.

20 “(14) ANTITRUST CONSIDERATIONS.—Unless
21 appropriate to achieve the purposes of this chapter,
22 the clearing agency shall avoid—

23 “(A) adopting any rule or taking any ac-
24 tion that results in any unreasonable restraint
25 of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden.

3 “(15) GOVERNANCE FITNESS STANDARDS.—

4 “(A) The clearing agency shall establish
5 governance arrangements that are transparent
6 in order to fulfill public interest requirements
7 and to support the objectives of owners and
8 participants.

9 “(B) The clearing agency shall establish
10 and enforce appropriate fitness standards for
11 directors, members of any disciplinary com-
12 mittee, and members of the clearing agency,
13 and any other persons with direct access to the
14 settlement or clearing activities of the clearing
15 agency, including any parties affiliated with any
16 of the persons described in this subparagraph.

17 “(16) CONFLICTS OF INTEREST.—The clearing
18 agency shall establish and enforce rules to minimize
19 conflicts of interest in the decisionmaking process of
20 the clearing agency and establish a process for re-
21 solving such conflicts of interest.

22 “(17) COMPOSITION OF THE BOARDS.—The
23 clearing agency shall ensure that the composition of
24 the governing board or committee includes market
25 participants.

1 “(18) **LEGAL RISK.**—The clearing agency shall
2 have a well-founded, transparent, and enforceable
3 legal framework for each aspect of its activities.”.

4 **(b) ALTERNATIVE SWAP EXECUTION FACILITIES.**—
5 The Securities Exchange Act of 1934 (15 U.S.C. 78a, et
6 seq.) is amended by adding after section 3B (as added
7 by subsection (a)) the following:

8 **“SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.**

9 “(a) **REGISTRATION.**—No person may operate a facil-
10 ity for the trading of security-based swaps unless the facil-
11 ity is registered as an alternative swap execution facility
12 under this section.

13 “(b) **REQUIREMENTS FOR TRADING.**—

14 “(1) **IN GENERAL.**—An alternative swap execu-
15 tion facility that is registered under subsection (a)
16 may list for trading any security-based swap.

17 “(2) **RULES FOR TRADING THROUGH THE FA-**
18 **CILITY.**—Not later than 1 year after the date of the
19 enactment of the Derivative Markets Transparency
20 and Accountability Act of 2009, the Commission
21 shall adopt rules to allow a security-based swap to
22 be traded through the facilities of an exchange or an
23 alternative swap execution facility. Such rules shall
24 permit an intermediary, acting as principal or agent,
25 to enter into or execute a security-based swap, not-

1 withstanding section 3B(b), if the security-based
2 swap is reported, recorded, or confirmed in accord-
3 ance with the rules of the exchange or alternative
4 swap execution facility.

5 “(c) TRADING BY EXCHANGES.—An exchange shall,
6 to the extent that the exchange also operates an alter-
7 native swap execution facility and uses the same electronic
8 trade execution system for trading on the exchange and
9 the alternative swap execution facility, identify whether
10 the electronic trading is taking place on the exchange or
11 the alternative swap execution facility.

12 “(d) CORE PRINCIPLES FOR ALTERNATIVE SWAP
13 EXECUTION FACILITIES.—

14 “(1) IN GENERAL.—To be registered as, and to
15 maintain its registration as, an alternative swap exe-
16 cution facility, the facility shall comply with the core
17 principles specified in this subsection and any re-
18 quirement that the Commission may impose by rule
19 or regulation pursuant to section 8a(5). Except
20 where the Commission determines otherwise by rule
21 or regulation, the facility shall have reasonable dis-
22 cretion in establishing the manner in which it com-
23 plies with these core principles.

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

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

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

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

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

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

20 “(4) MONITORING OF TRADING.—The alter-
21 native swap execution facility shall—

22 “(A) establish and enforce rules or terms
23 and conditions defining, or specifications detail-
24 ing, trading procedures to be used in entering

1 and executing orders traded on or through its
2 facilities; and

3 “(B) monitor trading in swaps to prevent
4 manipulation, price distortion, and disruptions
5 of the delivery or cash settlement process
6 through surveillance, compliance, and discipli-
7 nary practices and procedures, including meth-
8 ods for conducting real-time monitoring of trad-
9 ing and comprehensive and accurate trade re-
10 constructions.

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

13 “(A) establish and enforce rules that will
14 allow the facility to obtain any necessary infor-
15 mation to perform any of the functions de-
16 scribed in this section;

17 “(B) provide the information to the Com-
18 mission upon request; and

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

22 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

23 “(A) To reduce the potential threat of
24 market manipulation or congestion, the alter-
25 native swap execution facility shall adopt for

1 each of its contracts, where necessary and ap-
2 propriate, position limitations or position ac-
3 countability.

4 “(B) For any contract that is subject to a
5 position limitation established by the Commis-
6 sion pursuant to section 10B, the alternative
7 swap execution facility shall set its position lim-
8 itation at a level no higher than the Commis-
9 sion limitation.

10 “(7) FINANCIAL INTEGRITY OF TRANS-
11 ACTIONS.—The alternative swap execution facility
12 shall establish and enforce rules and procedures for
13 ensuring the financial integrity of security-based
14 swaps entered on or through its facilities, including
15 the clearance and settlement of the security-based
16 swaps pursuant to section 3B.

17 “(8) EMERGENCY AUTHORITY.—The alternative
18 swap execution facility shall adopt rules to provide
19 for the exercise of emergency authority, in consulta-
20 tion or cooperation with the Commission, where nec-
21 essary and appropriate, including the authority to
22 suspend or curtail trading in a security-based swap.

23 “(9) TIMELY PUBLICATION OF TRADING INFOR-
24 MATION.—The alternative swap execution facility
25 shall make public timely information on price, trad-

1 ing volume, and other trading data to the extent
2 prescribed by the Commission.

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

18 “(11) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this Act, the alternative swap execution facility shall
21 avoid—

22 “(A) adopting any rules or taking any ac-
23 tions that result in any unreasonable restraints
24 of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading on the alternative swap
3 execution facility.

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

6 “(A) establish and enforce rules to mini-
7 mize conflicts of interest in its decision-making
8 process; and

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

11 “(13) FINANCIAL RESOURCES.—The alternative
12 swap execution facility shall have adequate financial,
13 operational, and managerial resources to discharge
14 its responsibilities. Such financial resources shall be
15 considered adequate if their value exceeds the total
16 amount that would enable the facility to cover its op-
17 erating costs for a period of one year, calculated on
18 a rolling basis.

19 “(14) SYSTEM SAFEGUARDS.—The alternative
20 swap execution facility shall—

21 “(A) establish and maintain a program of
22 risk analysis and oversight to identify and mini-
23 mize sources of operational risk, through the
24 development of appropriate controls and proce-
25 dures, and the development of automated sys-

1 tems, that are reliable, secure, and have ade-
2 quate scalable capacity;

3 “(B) establish and maintain emergency
4 procedures, backup facilities, and a plan for dis-
5 aster recovery that allow for the timely recovery
6 and resumption of operations and the fulfill-
7 ment of the alternative swap execution facility’s
8 responsibilities and obligation; and

9 “(C) periodically conduct tests to verify
10 that backup resources are sufficient to ensure
11 continued order processing and trade matching,
12 price reporting, market surveillance, and main-
13 tenance of a comprehensive and accurate audit
14 trail.

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

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

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

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

23 “(ii) shall—

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

1 “(II) in consultation with the
2 board of the facility, a body per-
3 forming a function similar to that of
4 a board, or the senior officer of the
5 facility, resolve any conflicts of inter-
6 est that may arise;

7 “(III) be responsible for admin-
8 istering the policies and procedures
9 required to be established pursuant to
10 this section; and

11 “(IV) ensure compliance with se-
12 curities laws and the rules and regula-
13 tions issued thereunder, including
14 rules prescribed by the Commission
15 pursuant to this section; and

16 “(iii) shall establish procedures for re-
17 mediation of non-compliance issues found
18 during compliance office reviews,
19 lookbacks, internal or external audit find-
20 ings, self-reported errors, or through vali-
21 dated complaints and to establish the han-
22 dling, management response, remediation,
23 re-testing, and closing of non-compliant
24 issues.

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

13 “(e) EXEMPTIONS.—The Commission may exempt,
14 conditionally or unconditionally, an alternative swap exe-
15 cution facility from registration under this section if the
16 Commission finds that such organization is subject to
17 comparable, comprehensive supervision and regulation on
18 a consolidated basis by the Commodity Futures Trading
19 Commission, a Prudential Regulator or the appropriate
20 governmental authorities in the organization’s home coun-
21 try.

22 “(f) RULES.—Not later than 1 year after the date
23 of the enactment of the Derivative Markets Transparency
24 and Accountability Act of 2009, the Commission shall pre-

1 scribe rules governing the regulation of alternative swap
2 execution facilities under this section.”.

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

8 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
9 **IN SWAP TRANSACTIONS.**

10 “(a) CLEARED SWAPS.—A security-based swap deal-
11 er or clearing agency by or through which funds or other
12 property are held as margin or collateral to secure the obli-
13 gations of a counterparty under a security-based swap to
14 be cleared by or through a derivatives clearing agency
15 shall segregate, maintain, and use the funds or other prop-
16 erty for the benefit of the counterparty, in accordance with
17 such rules and regulations as the Commission or Pruden-
18 tial Regulator shall prescribe. Any such funds or other
19 property shall be treated as customer property under this
20 Act.

21 “(b) OVER-THE-COUNTER SWAPS.—At the request of
22 a counterparty to a security-based swap who provides
23 funds or other property to a swap dealer as margin or
24 collateral to secure the obligations of the counterparty
25 under a security-based swap between the counterparty and

1 the swap dealer that is not submitted for clearing to a
2 derivatives clearing agency, the swap dealer shall seg-
3 regate the funds or other property for the benefit of the
4 counterparty, and maintain the funds or other property
5 in an account which is carried by a third-party custodian
6 and designated as a segregated account for the
7 counterparty, in accordance with such rules and regula-
8 tions as the Commission or Prudential Regulator may pre-
9 scribe. This subsection shall not be interpreted to preclude
10 commercial arrangements regarding the investment of the
11 segregated funds or other property and the related alloca-
12 tion of gains and losses resulting from any such invest-
13 ment.”.

14 (d) TRADING IN SECURITY-BASED SWAPS.—Section
15 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
16 is amended by adding at the end the following:

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

22 (e) REGISTRATION AND REGULATION OF SWAP
23 DEALERS AND MAJOR SWAP PARTICIPANTS.—The Secu-
24 rities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is

1 amended by inserting after section 15E (15 U.S.C. 78o–
2 7) the following:

3 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-
4 BASED SWAP DEALERS AND MAJOR SECUR-
5 RITY-BASED SWAP PARTICIPANTS.**

6 “(a) REGISTRATION.—

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

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

15 “(b) REQUIREMENTS.—

16 “(1) IN GENERAL.—A person shall register as
17 a security-based swap dealer or major security-based
18 swap participant by filing a registration application
19 with the Commission.

20 “(2) CONTENTS.—The application shall be
21 made in such form and manner as prescribed by the
22 Commission, giving any information and facts as the
23 Commission may deem necessary concerning the
24 business in which the applicant is or will be engaged.
25 Such person, when registered as a security-based

1 swap dealer or major security-based swap partici-
2 pant, shall continue to report and furnish to the
3 Commission such information pertaining to such
4 person's business as the Commission may require.

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

8 “(4) RULES.—Except as provided in sub-
9 sections (c) and (d), the Commission may prescribe
10 rules applicable to security-based swap dealers and
11 major security-based swap participants, including
12 rules that limit the activities of security-based swap
13 dealers and major security-based swap participants.
14 Except as provided in [subsection (d)], the Commis-
15 sion may provide conditional or unconditional ex-
16 emptions from rules prescribed under this section for
17 security-based swap dealers and major security-
18 based swap participants that are subject to substan-
19 tially similar requirements as brokers or dealers.

20 “(5) TRANSITION.—Rules adopted under this
21 section shall provide for the registration of security-
22 based swap dealers and major security-based swap
23 participants no later than 1 year after the effective
24 date of the Derivative Markets Transparency and
25 Accountability Act of 2009.

1 “(c) RULES.—

2 “(1) IN GENERAL.—Not later than 1 year after
3 the date of the enactment of the Derivative Markets
4 Transparency and Accountability Act of 2009, the
5 Commission shall adopt rules for persons that are
6 registered as security-based swap dealers or major
7 security-based swap participants under this Act.

8 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
9 MENTS.—The Commission shall not prescribe rules
10 imposing prudential requirements (including activity
11 restrictions) on security-based swap dealers or major
12 security-based swap participants for which there is a
13 Prudential Regulator. This provision shall not be
14 construed as limiting the authority of the Commis-
15 sion to prescribe appropriate business conduct, re-
16 porting, and recordkeeping requirements to protect
17 investors.

18 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

19 “(1) IN GENERAL.—

20 “(A) BANK SECURITY-BASED SWAP DEAL-
21 ERS AND MAJOR SECURITY-BASED SWAP PAR-
22 TICIPANTS.—Each registered security-based
23 swap dealer and major security-based swap par-
24 ticipant for which there is a Prudential Regu-
25 lator shall meet such minimum capital require-

1 ments and minimum initial and variation mar-
2 gin requirements as the Prudential Regulators
3 shall by rule or regulation jointly prescribe
4 that—

5 “(i) help ensure the safety and sound-
6 ness of the security-based swap dealer or
7 major security-based swap participant; and

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

11 “(B) NON-BANK SECURITY-BASED SWAP
12 DEALERS AND MAJOR SECURITY-BASED SWAP
13 PARTICIPANTS.—Each registered security-based
14 swap dealer and major security-based swap par-
15 ticipant for which there is not a Prudential
16 Regulator shall meet such minimum capital re-
17 quirements and minimum initial and variation
18 margin requirements as the Commission shall
19 by rule or regulation prescribe that—

20 “(i) help ensure the safety and sound-
21 ness of the security-based swap dealer or
22 major security-based swap participant; and

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

1 “(2) RULES.—

2 “(A) BANK SECURITY-BASED SWAP DEAL-
3 ERS AND MAJOR SECURITY-BASED SWAP PAR-
4 TICIPANTS.—Not later than 1 year after the
5 date of the enactment of the Derivative Markets
6 Transparency and Accountability Act of 2009,
7 the Prudential Regulators, in consultation with
8 the Commission, shall jointly adopt rules impos-
9 ing capital and margin requirements under this
10 subsection for security-based swap dealers and
11 major security-based swap participants, with re-
12 spect to their activities as a security-based swap
13 dealer or major security-based swap participant
14 for which there is a Prudential Regulator.

15 “(B) NON-BANK SECURITY-BASED SWAP
16 DEALERS AND MAJOR SECURITY-BASED SWAP
17 PARTICIPANTS.—Not later than 1 year after the
18 date of the enactment of the Derivative Markets
19 Transparency and Accountability Act of 2009,
20 the Commission shall adopt rules imposing cap-
21 ital and margin requirements under this sub-
22 section for security-based swap dealers and
23 major security-based swap participants for
24 which there is no Prudential Regulator.

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

5 “(e) REPORTING AND RECORDKEEPING.—

6 “(1) IN GENERAL.—Each registered security-
7 based swap dealer and major security-based swap
8 participant—

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

13 “(B) for which—

14 “(i) there is a Prudential Regulator
15 shall keep books and records of all activi-
16 ties related to its business as a security-
17 based swap dealer or major security-based
18 swap participant in such form and manner
19 and for such period as may be prescribed
20 by the Commission by rule or regulation;

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

1 “(C) shall keep such books and records
2 open to inspection and examination by any rep-
3 resentative of the Commission.

4 “(2) RULES.—Not later than 1 year after the
5 date of enactment of the Derivative Markets Trans-
6 parency and Accountability Act of 2009, the Com-
7 mission shall adopt rules governing reporting and
8 recordkeeping for security-based swap dealers and
9 major security-based swap participants.

10 “(f) DAILY TRADING RECORDS.—

11 “(1) IN GENERAL.—Each registered security-
12 based swap dealer and major security-based swap
13 participant shall maintain daily trading records of
14 its security-based swaps and all related records (in-
15 cluding related transactions) and recorded commu-
16 nications including but not limited to electronic mail,
17 instant messages, and recordings of telephone calls,
18 for such period as may be prescribed by the Com-
19 mission by rule or regulation.

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

23 “(3) CUSTOMER RECORDS.—Each registered se-
24 curity-based swap dealer or major security-based
25 swap participant shall maintain daily trading records

1 for each customer or counterparty in such manner
2 and form as to be identifiable with each security-
3 based swap transaction.

4 “(4) AUDIT TRAIL.—Each registered security-
5 based swap dealer or major security-based swap par-
6 ticipant shall maintain a complete audit trail for
7 conducting comprehensive and accurate trade recon-
8 structions.

9 “(5) RULES.—Not later than 1 year after the
10 date of the enactment of the Derivative Markets
11 Transparency and Accountability Act of 2009, the
12 Commission shall adopt rules governing daily trad-
13 ing records for security-based swap dealers and
14 major security-based swap participants.

15 “(g) BUSINESS CONDUCT STANDARDS.—

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

21 “(A) fraud, manipulation, and other abu-
22 sive practices involving security-based swaps
23 (including security-based swaps that are offered
24 but not entered into);

1 “(B) diligent supervision of its business as
2 a security-based swap dealer;

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

5 “(D) such other matters as the Commis-
6 sion shall determine to be necessary or appro-
7 priate.

8 “(2) BUSINESS CONDUCT REQUIREMENTS.—
9 Business conduct requirements adopted by the Com-
10 mission shall—

11 “(A) establish the standard of care for a
12 security-based swap dealer or major security-
13 based swap participant to verify that any secu-
14 rity-based swap counterparty meets the eligi-
15 bility standards for an eligible contract partici-
16 pant;

17 “(B) require disclosure by the security-
18 based swap dealer or major security-based swap
19 participant to any counterparty to the security-
20 based swap (other than a security-based swap
21 dealer or major security-based swap partici-
22 pant) of:

23 “(i) information about the material
24 risks and characteristics of the security-
25 based swap;

1 “(ii) for cleared security-based swaps,
2 upon the request of the counterparty, the
3 daily mark from the appropriate clearing
4 agency, and for non-cleared security-based
5 swaps, upon request of the counterparty,
6 the daily mark of the security-based swap
7 dealer or major security-based swap partic-
8 ipant; and

9 “(iii) any other material incentives or
10 conflicts of interest that the security-based
11 swap dealer or major security-based swap
12 participant may have in connection with
13 the security-based swap; and

14 “(C) establish such other standards and
15 requirements as the Commission may determine
16 are necessary or appropriate in the public inter-
17 est, for the protection of investors, or otherwise
18 in furtherance of the purposes of this title.

19 “(3) RULES.—The Commission shall prescribe
20 rules under this subsection governing business con-
21 duct standards for security-based swap dealers and
22 major security-based swap participants not later
23 than 1 year after the date of enactment of the De-
24 rivative Markets Transparency and Accountability
25 Act of 2009.

1 “(h) DOCUMENTATION AND BACK OFFICE STAND-
2 ARDS.—

3 “(1) IN GENERAL.—Each registered security-
4 based swap dealer and major security-based swap
5 participant shall conform with standards, as may be
6 prescribed by the Commission by rule or regulation,
7 addressing timely and accurate confirmation, proc-
8 essing, netting, documentation, and valuation of all
9 security-based swaps.

10 “(2) RULES.—Not later than 1 year after the
11 date of enactment of the Derivative Markets Trans-
12 parency and Accountability Act of 2009, the Com-
13 mission and the appropriate Federal banking agen-
14 cies, shall adopt rules governing documentation and
15 back office standards for security-based swap dealers
16 and major security-based swap participants.

17 “(i) DEALER RESPONSIBILITIES.—Each registered
18 security-based swap dealer and major security-based swap
19 participant at all times shall comply with the following re-
20 quirements:

21 “(1) MONITORING OF TRADING.—The security-
22 based swap dealer or major security-based swap par-
23 ticipant shall monitor its trading in security-based
24 swaps to prevent violations of applicable position
25 limits.

1 “(2) DISCLOSURE OF GENERAL INFORMA-
2 TION.—The security-based swap dealer or major se-
3 curity-based swap participant shall disclose to the
4 Commission or to the Prudential Regulator for such
5 security-based swap dealer or major security-based
6 swap participant, as applicable, information con-
7 cerning—

8 “(A) terms and conditions of its security-
9 based swaps;

10 “(B) security-based swap trading oper-
11 ations, mechanisms, and practices;

12 “(C) financial integrity protections relating
13 to security-based swaps; and

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

16 “(3) ABILITY TO OBTAIN INFORMATION.—The
17 security-based swap dealer or major swap security-
18 based participant shall—

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

23 “(B) provide the information to the Com-
24 mission or to the Prudential Regulator for such
25 security-based swap dealer or major security-

1 based swap participant, as applicable, upon re-
2 quest.

3 “(4) CONFLICTS OF INTEREST.—The security-
4 based swap dealer and major security-based swap
5 participant shall implement conflict-of-interest sys-
6 tems and procedures that—

7 “(A) establish structural and institutional
8 safeguards to assure that the activities of any
9 person within the firm relating to research or
10 analysis of the price or market for any security
11 are separated by appropriate informational par-
12 titions within the firm from the review, pres-
13 sure, or oversight of those whose involvement in
14 trading or clearing activities might potentially
15 bias their judgment or supervision; and

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

18 “(5) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this Act, the security-based swap dealer or major se-
21 curity-based swap participant shall avoid—

22 “(A) adopting any processes or taking any
23 actions that result in any unreasonable re-
24 straints of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading.

3 “(j) STATUTORY DISQUALIFICATION.—Except to the
4 extent otherwise specifically provided by rule, regulation,
5 or order of the Commission, it shall be unlawful for a secu-
6 rity-based swap dealer or a major security-based swap par-
7 ticipant to permit any person associated with a security-
8 based swap dealer or a major security-based swap partici-
9 pant who is subject to a statutory disqualification to effect
10 or be involved in effecting security-based swaps on behalf
11 of such security-based swap dealer or major security-based
12 swap participant, if such security-based swap dealer or
13 major security-based swap participant knew, or in the ex-
14 ercise of reasonable care should have known, of such stat-
15 utory disqualification.

16 “(k) ENFORCEMENT AND ADMINISTRATIVE PRO-
17 CEEDING AUTHORITY.—

18 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

19 “(A) SEC.—Except as provided in sub-
20 paragraph (B), the Commission shall have ex-
21 clusive authority to enforce the amendments
22 made by title II of the Derivative Markets
23 Transparency and Accountability Act of 2009
24 with respect to any person.

1 “(B) PRUDENTIAL REGULATORS.—The
2 Prudential Regulators shall have exclusive au-
3 thority to enforce the provisions of section
4 15F(d) and other prudential requirements of
5 this Act with respect to banks, and branches or
6 agencies of foreign banks that are security-
7 based swap dealers or major security-based
8 swap participants.

9 “(C) REFERRAL.—

10 “(i) VIOLATIONS OF NONPRUDENTIAL
11 REQUIREMENTS.—If the Prudential Regu-
12 lator for a security-based swap dealer or
13 major security-based swap participant has
14 cause to believe that such security-based
15 swap dealer or major security-based swap
16 participant may have engaged in conduct
17 that constitutes a violation of the non-
18 prudential requirements of section 15F or
19 rules adopted by the Commission there-
20 under, that Prudential Regulator may rec-
21 ommend in writing to the Commission that
22 the Commission initiate an enforcement
23 proceeding as authorized under this Act.
24 The recommendation shall be accompanied

1 by a written explanation of the concerns
2 giving rise to the recommendation.

3 “(ii) VIOLATIONS OF PRUDENTIAL RE-
4 QUIREMENTS.—If the Commission has
5 cause to believe that a securities-based
6 swap dealer or major securities-based swap
7 participant that has a Prudential Regu-
8 lator may have engaged in conduct that
9 constitute a violation of the prudential re-
10 quirements of section 15F(e) or rules
11 adopted thereunder, the Commission may
12 recommend in writing to the Prudential
13 Regulator that the Prudential Regulator
14 initiate an enforcement proceeding as au-
15 thorized under this Act. The recommenda-
16 tion shall be accompanied by a written ex-
17 planation of the concerns giving rise to the
18 recommendation.

19 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
20 AND HEARING.—The Commission, by order, shall
21 censure, place limitations on the activities, functions,
22 or operations of, or revoke the registration of any se-
23 curity-based swap dealer or major security-based
24 swap participant that has registered with the Com-
25 mission pursuant to subsection (b) if it finds, on the

1 record after notice and opportunity for hearing, that
2 such censure, placing of limitations, or revocation is
3 in the public interest and that such security-based
4 swap dealer or major security-based swap partici-
5 pant, or any person associated with such security-
6 based swap dealer or major security-based swap par-
7 ticipant effecting or involved in effecting trans-
8 actions in security-based swaps on behalf of such se-
9 curity-based swap dealer or major security-based
10 swap participant, whether prior or subsequent to be-
11 coming so associated—

12 “(A) has committed or omitted any act, or
13 is subject to an order or finding, enumerated in
14 subparagraph (A), (D), or (E) of paragraph (4)
15 of section 15(b);

16 “(B) has been convicted of any offense
17 specified in subparagraph (B) of such para-
18 graph (4) within 10 years of the commencement
19 of the proceedings under this subsection;

20 “(C) is enjoined from any action, conduct,
21 or practice specified in subparagraph (C) of
22 such paragraph (4);

23 “(D) is subject to an order or a final order
24 specified in subparagraph (F) or (H), respec-
25 tively, of such paragraph (4); or

1 “(E) has been found by a foreign financial
2 regulatory authority to have committed or omit-
3 ted any act, or violated any foreign statute or
4 regulation, enumerated in subparagraph (G) of
5 such paragraph (4).

6 “(3) ASSOCIATED PERSONS.—With respect to
7 any person who is associated, who is seeking to be-
8 come associated, or, at the time of the alleged mis-
9 conduct, who was associated or was seeking to be-
10 come associated with a security-based swap dealer or
11 major security-based swap participant for the pur-
12 pose of effecting or being involved in effecting secu-
13 rity-based swaps on behalf of such security-based
14 swap dealer or major security-based swap partici-
15 pant, the Commission, by order, shall censure, place
16 limitations on the activities or functions of such per-
17 son, or suspend for a period not exceeding 12
18 months, or bar such person from being associated
19 with a security-based swap dealer or major security-
20 based swap participant, if the Commission finds, on
21 the record after notice and opportunity for a hear-
22 ing, that such censure, placing of limitations, sus-
23 pension, or bar is in the public interest and that
24 such person—

1 “(A) has committed or omitted any act, or
2 is subject to an order or finding, enumerated in
3 subparagraph (A), (D), or (E) of paragraph (4)
4 of section 15(b);

5 “(B) has been convicted of any offense
6 specified in subparagraph (B) of such para-
7 graph (4) within 10 years of the commencement
8 of the proceedings under this subsection;

9 “(C) is enjoined from any action, conduct,
10 or practice specified in subparagraph (C) of
11 such paragraph (4);

12 “(D) is subject to an order or a final order
13 specified in subparagraph (F) or (H), respec-
14 tively, of such paragraph (4); or

15 “(E) has been found by a foreign financial
16 regulatory authority to have committed or omit-
17 ted any act, or violated any foreign statute or
18 regulation, enumerated in subparagraph (G) of
19 such paragraph (4).

20 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
21 ful—

22 “(A) for any person as to whom an order
23 under paragraph (3) is in effect, without the
24 consent of the Commission, willfully to become,
25 or to be, associated with a security-based swap

1 dealer or major security-based swap participant
2 in contravention of such order; or

3 “(B) for any security-based swap dealer or
4 major security-based swap participant to permit
5 such a person, without the consent of the Com-
6 mission, to become or remain a person associ-
7 ated with the security-based swap dealer or
8 major security-based swap participant in con-
9 travention of such order, if such security-based
10 swap dealer or major security-based swap par-
11 ticipant knew, or in the exercise of reasonable
12 care should have known, of such order.”.

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

18 “(1) any transaction in connection with any se-
19 curity whereby any party to such transaction ac-
20 quires (A) any put, call, straddle, or other option or
21 privilege of buying the security from or selling the
22 security to another without being bound to do so;
23 (B) any security futures product on the security; or
24 (C) any security-based swap involving the security or
25 the issuer of the security; or

1 “(2) any transaction in connection with any se-
2 curity with relation to which he has, directly or indi-
3 rectly, any interest in any (A) such put, call, strad-
4 dle, option, or privilege; (B) such security futures
5 product; or (C) such security-based swap; or

6 “(3) any transaction in any security for the ac-
7 count of any person who he has reason to believe
8 has, and who actually has, directly or indirectly, any
9 interest in any (A) such put, call, straddle, option,
10 or privilege; (B) such security futures product with
11 relation to such security; or (C) any security-based
12 swap involving such security or the issuer of such se-
13 curity.”.

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

19 “(i) It shall be unlawful for any person, directly or
20 indirectly, by the use of any means or instrumentality of
21 interstate commerce or of the mails, or of any facility of
22 any national securities exchange, to effect any transaction
23 in, or to induce or attempt to induce the purchase or sale
24 of, any security-based swap, in connection with which such
25 person engages in any fraudulent, deceptive, or manipula-

1 tive act or practice, makes any fictitious quotation, or en-
2 gages in any transaction, practice, or course of business
3 which operates as a fraud or deceit upon any person. The
4 Commission shall, for the purposes of this paragraph, by
5 rules and regulations define, and prescribe means reason-
6 ably designed to prevent, such transactions, acts, prac-
7 tices, and courses of business as are fraudulent, deceptive,
8 or manipulative, and such quotations as are fictitious.”.

9 (h) POSITION LIMITS AND POSITION ACCOUNT-
10 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
11 Exchange Act of 1934 is amended by inserting after sec-
12 tion 10A (15 U.S.C. 78j–1) the following new section:

13 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
14 **ABILITY FOR SECURITY-BASED SWAPS AND**
15 **LARGE TRADER REPORTING.**

16 “(a) POSITION LIMITS.—As a means reasonably de-
17 signed to prevent fraud and manipulation, the Commission
18 may, by rule or regulation, as necessary or appropriate
19 in the public interest or for the protection of investors,
20 establish limits (including related hedge exemption provi-
21 sions) on the size of positions in any security-based swap
22 that may be held by any person. In establishing such lim-
23 its, the Commission may require any person to aggregate
24 positions in—

1 “(1) any security-based swap and any security
2 or loan or group or index of securities or loans on
3 which such security-based swap is based, which such
4 security-based swap references, or to which such se-
5 curity-based swap is related as described in section
6 3(a)(68), and any other instrument relating to such
7 security or loan or group or index of securities or
8 loans; or

9 “(2) any security-based swap and (A) any secu-
10 rity or group or index of securities, the price, yield,
11 value, or volatility of which, or of which any interest
12 therein, is the basis for a material term of such se-
13 curity-based swap as described in section 3(a)(76)
14 and (B) any security-based swap and any other in-
15 strument relating to the same security or group or
16 index of securities.

17 “(b) EXEMPTIONS.—The Commission, by rule, regu-
18 lation, or order, may conditionally or unconditionally ex-
19 empt any person or class of persons, any security-based
20 swap or class of security-based swaps, or any transaction
21 or class of transactions from any requirement it may es-
22 tablish under this section with respect to position limits.

23 “(c) SRO RULES.—

24 “(1) IN GENERAL.—As a means reasonably de-
25 signed to prevent fraud or manipulation, the Com-

1 mission, by rule, regulation, or order, as necessary
2 or appropriate in the public interest, for the protec-
3 tion of investors, or otherwise in furtherance of the
4 purposes of this title, may direct a self-regulatory
5 organization—

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

9 “(i) any member of such self-regu-
10 latory organization; or

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

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

18 “(2) REQUIREMENT TO AGGREGATE POSI-
19 TIONS.—In establishing such limits, the self-regu-
20 latory organization may require such member or per-
21 son to aggregate positions in—

22 “(A) any security-based swap and any se-
23 curity or loan or group or index of securities or
24 loans on which such security-based swap is
25 based, which such security-based swap ref-

1 erences, or to which such security-based swap is
2 related as described in section 3(a)(68), and
3 any other instrument relating to such security
4 or loan or group or index of securities or loans;
5 or

6 “(B)(i) any security-based swap; and

7 “(ii) any security-based swap and any
8 other instrument relating to the same security
9 or group or index of securities.

10 “(d) LARGE TRADER REPORTING.—The Commis-
11 sion, by rule or regulation, may require any person that
12 effects transactions for such person’s own account or the
13 account of others in any securities-based swap and any
14 security or loan or group or index of securities or loans
15 as set forth in paragraphs (1) and (2) of subsection (a)
16 under this section to report such information as the Com-
17 mission may prescribe regarding any position or positions
18 in any security-based swap and any security or loan or
19 group or index of securities or loans and any other instru-
20 ment relating to such security or loan or group or index
21 of securities or loans as set forth in paragraphs (1) and
22 (2) of subsection (a) under this section.”.

23 (i) PUBLIC REPORTING AND REPOSITORIES FOR SE-
24 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78m) is amended by add-
2 ing at the end the following:

3 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
4 BASED SWAP DATA.—

5 “(1) IN GENERAL.—The Commission, or a per-
6 son designated by the Commission pursuant to para-
7 graph (2), shall make available to the public, in a
8 manner that does not disclose the business trans-
9 actions and market positions of any person, aggre-
10 gate data on security-based swap trading volumes
11 and positions from the sources set forth in para-
12 graph (3).

13 “(2) DESIGNEE OF THE COMMISSION.—The
14 Commission may designate a clearing agency or a
15 security-based swap repository to carry out the pub-
16 lic reporting described in paragraph (1).

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

20 “(A) clearing agencies pursuant to section
21 3A;

22 “(B) security-based swap repositories pur-
23 suant to subsection (n); and

24 “(C) reports received by the Commission
25 pursuant to section 13A.

1 “(n) SECURITY-BASED SWAP REPOSITORIES.—

2 “(1) REGISTRATION REQUIREMENT.—

3 “(A) IN GENERAL.—It shall be unlawful
4 for a security-based swap repository, unless reg-
5 istered with the Commission, directly or indi-
6 rectly to make use of the mails or any means
7 or instrumentality of interstate commerce to
8 perform the functions of a security-based swap
9 repository.

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

14 “(2) STANDARD SETTING.—

15 “(A) DATA IDENTIFICATION.—The Com-
16 mission shall prescribe standards that specify
17 the data elements for each security-based swap
18 that shall be collected and maintained by each
19 security-based swap repository.

20 “(B) DATA COLLECTION AND MAINTEN-
21 NANCE.—The Commission shall prescribe data
22 collection and data maintenance standards for
23 security-based swap repositories.

24 “(C) COMPARABILITY.—The standards
25 prescribed by the Commission under this sub-

1 section shall be comparable to the data stand-
2 ards imposed by the Commission on clearing
3 agencies that clear security-based swaps.

4 “(3) DUTIES.—A security-based swap reposi-
5 tory shall—

6 “(A) accept data prescribed by the Com-
7 mission for each security-based swap under this
8 paragraph (2);

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

12 “(C) provide to the Commission, or its des-
13 ignee, such information as is required by, and
14 in a form and at a frequency to be determined
15 by, the Commission, in order to comply with the
16 public reporting requirements contained in sub-
17 section (m); and

18 “(D) make available, on a confidential
19 basis, all data obtained by the security-based
20 swap repository, including individual
21 counterparty trade and position data, to the
22 Commission, the appropriate Federal banking
23 agencies, the Commodity Futures Trading
24 Commission, [the Financial Services Oversight
25 Council], and the Department of Justice or to

1 other persons the Commission deems appro-
2 priate, including foreign financial supervisors
3 (including foreign futures authorities), foreign
4 central banks, and foreign ministries.

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

12 “(5) EXEMPTIONS.—The Commission may ex-
13 empt, conditionally or unconditionally, a security-
14 based swap repository from the requirements of this
15 section if the Commission finds that such security-
16 based swap repository is subject to comparable, com-
17 prehensive supervision or regulation on a consoli-
18 dated basis by the Commodity Futures Trading
19 Commission, a Prudential Regulator or the appro-
20 priate governmental authorities in the organization’s
21 home country.”.

22 **SEC. 204. REPORTING AND RECORDKEEPING.**

23 (a) The Securities Exchange Act of 1934 (15 U.S.C.
24 78a, et seq.) is amended by inserting after section 13 the
25 following section:

1 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
2 **TAIN SECURITY-BASED SWAPS.**

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

5 “(1) did not clear the security-based swap in
6 accordance with section 3A; and

7 “(2) did not have data regarding the security-
8 based swap accepted by a security-based swap repos-
9 itory in accordance with rules adopted by the Com-
10 mission under section 13(n),
11 shall meet the requirements in subsection (b).

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

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

18 “(2) keep books and records pertaining to the
19 security-based swaps held by the person in such
20 form and manner and for such period as may be re-
21 quired by the Commission, which books and records
22 shall be open to inspection by any representative of
23 the Commission, an appropriate Federal banking
24 agency, the Commodity Futures Trading Commis-
25 sion, the **【Financial Services Oversight Council】**,
26 and the Department of Justice.

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

6 (b) BENEFICIAL OWNERSHIP REPORTING.—

7 (1) Section 13(d)(1) of the Securities Exchange
8 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
9 inserting “or otherwise becomes or is deemed to be-
10 come a beneficial owner of any of the foregoing upon
11 the purchase or sale of a security-based swap or
12 other derivative instrument that the Commission
13 may define by rule, and” after “Alaska Native
14 Claims Settlement Act,”; and

15 (2) Section 13(g)(1) of the Securities Exchange
16 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by
17 inserting “or otherwise becomes or is deemed to be-
18 come a beneficial owner of any security of a class de-
19 scribed in subsection (d)(1) upon the purchase or
20 sale of a security-based swap or other derivative in-
21 strument that the Commission may define by rule”
22 after “subsection (d)(1) of this section”.

23 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
24 AGERS.—Section 13(f)(1) of the Securities Exchange Act
25 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting

1 “or otherwise becomes or is deemed to become a beneficial
2 owner of any security of a class described in subsection
3 (d)(1) upon the purchase or sale of a security-based swap
4 or other derivative instrument that the Commission may
5 define by rule,” after “subsection (d)(1) of this section”.

6 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
7 Section 15(b)(4) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o(b)(4)) is amended—

9 (1) in subparagraph (C), by adding “security-
10 based swap dealer, major security-based swap partic-
11 ipant,” after “government securities dealer,”; and

12 (2) in subparagraph (F), by adding “, or secu-
13 rity-based swap dealer, or a major security-based
14 swap participant” after “or dealer”.

15 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Sec-
16 tion 16(f) of the Securities Exchange Act of 1934 (15
17 U.S.C. 78p) is amended by inserting “or security-based
18 swaps” after “security futures products”.

19 **SEC. 205. STATE GAMING AND BUCKET SHOP LAWS.**

20 Section 28(a) of the Securities Exchange Act of 1934
21 (15 U.S.C. 78bb(a)) is amended to read as follows:

22 “(a) Except as provided in subsection (f), the rights
23 and remedies provided by this title shall be in addition
24 to any and all other rights and remedies that may exist
25 at law or in equity; but no person permitted to maintain

1 a suit for damages under the provisions of this title shall
2 recover, through satisfaction of judgment in one or more
3 actions, a total amount in excess of his actual damages
4 on account of the act complained of. Except as otherwise
5 specifically provided in this title, nothing in this title shall
6 affect the jurisdiction of the securities commission (or any
7 agency or officer performing like functions) of any State
8 over any security or any person insofar as it does not con-
9 flict with the provisions of this title or the rules and regu-
10 lations thereunder. No State law which prohibits or regu-
11 lates the making or promoting of wagering or gaming con-
12 tracts, or the operation of 'bucket shops' or other similar
13 or related activities, shall invalidate (1) any put, call,
14 straddle, option, privilege, or other security subject to this
15 title (except any security that has a pari-mutuel payout
16 or otherwise is determined by the Commission, acting by
17 rule, regulation, or order, to be appropriately subject to
18 such laws), or apply to any activity which is incidental or
19 related to the offer, purchase, sale, exercise, settlement,
20 or closeout of any such security, (2) any security-based
21 swap between eligible contract participants, or (3) any se-
22 curity-based swap effected on a national securities ex-
23 change registered pursuant to section 6(b). No provision
24 of State law regarding the offer, sale, or distribution of
25 securities shall apply to any transaction in a security-

1 based swap or a security futures product, except that this
2 sentence shall not be construed as limiting any State anti-
3 fraud law of general applicability.”.

4 **SEC. 206. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

5 **TREATMENT OF SECURITY-BASED SWAPS.**

6 (a) DEFINITIONS.—Section 2(a) of the Securities Act
7 of 1933 (15 U.S.C. 77b(a)) is amended—

8 (1) in paragraph (1), by inserting “security-
9 based swap,” after “security future,”;

10 (2) in paragraph (3) by adding at the end the
11 following: “Any offer or sale of a security-based
12 swap by or on behalf of the issuer of the securities
13 upon which such security-based swap is based or is
14 referenced, an affiliate of the issuer, or an under-
15 writer, shall constitute a contract for sale of, sale of,
16 offer for sale, or offer to sell such securities.”; and

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

18 “(17) The terms ‘swap’ and ‘security-based
19 swap’ have the same meanings as provided in sec-
20 tions 1a(35) of the Commodity Exchange Act (7
21 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-
22 ties Exchange Act of 1934.

23 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
24 rity-based swap shall be deemed to mean the execu-
25 tion, termination (prior to its scheduled maturity

1 date), assignment, exchange, or similar transfer or
2 conveyance of, or extinguishing of rights or obliga-
3 tions under, a security-based swap, as the context
4 may require.”.

5 (b) **REGISTRATION OF SECURITY-BASED SWAPS.**—
6 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
7 is amended by adding at the end the following:

8 “(d) Notwithstanding the provisions of section 3 or
9 section 4, unless a registration statement meeting the re-
10 quirements of subsection (a) of section 10 is in effect as
11 to a security-based swap, it shall be unlawful for any per-
12 son, directly or indirectly, to make use of any means or
13 instruments of transportation or communication in inter-
14 state commerce or of the mails to offer to sell, offer to
15 buy or purchase or sell a security-based swap to any per-
16 son who is not an eligible contract participant as defined
17 in section 1a(12) of the Commodity Exchange Act (7
18 U.S.C. 1a(12)).”.

19 **SEC. 207. OTHER AUTHORITY.**

20 Unless otherwise provided by its terms, this title does
21 not divest any appropriate Federal banking agency, the
22 Commission, the Commodity Futures Trading Commis-
23 sion, or other Federal or State agency, of any authority
24 derived from any other applicable law.

1 **SEC. 208. JURISDICTION.**

2 Section 36 of the Securities Exchange Act of 1934
3 (15 U.S.C. 78mm) is amended by adding at the end the
4 following new subsection:

5 “(c) DERIVATIVES.—The Commission shall not grant
6 exemptions from the security-based swap provisions of the
7 Derivative Markets Transparency and Accountability Act
8 of 2009, except as expressly authorized under the provi-
9 sions of that Act.”.

10 **SEC. 209. EFFECTIVE DATE.**

11 This title is effective 180 days after the date of enact-
12 ment.

13 **TITLE K—IMPROVED FINANCIAL**
14 **AND COMMODITY MARKETS**
15 **OVERSIGHT AND ACCOUNT-**
16 **ABILITY**

17 **SEC. 301. ELEVATION OF CERTAIN INSPECTORS GENERAL**
18 **TO APPOINTMENT PURSUANT TO SECTION 3**
19 **OF THE INSPECTOR GENERAL ACT OF 1978.**

20 (a) INCLUSION IN CERTAIN DEFINITIONS.—Section
21 12 of the Inspector General Act of 1978 (5 U.S.C. App.)
22 is amended—

23 (1) in paragraph (1), by striking “or the Fed-
24 eral Cochairpersons of the Commissions established
25 under section 15301 of title 40, United States
26 Code;” and inserting “the Federal Cochairpersons of

1 the Commissions established under section 15301 of
2 title 40, United States Code; the Chairman of the
3 Board of Governors of the Federal Reserve System;
4 the Chairman of the Commodity Futures Trading
5 Commission; the Chairman of the National Credit
6 Union Administration; the Director of the Pension
7 Benefit Guaranty Corporation; or the Chairman of
8 the Securities and Exchange Commission;”; and

9 (2) in paragraph (2), by striking “or the Com-
10 missions established under section 15301 of title 40,
11 United States Code,” and inserting “the Commis-
12 sions established under section 15301 of title 40,
13 United States Code, the Board of Governors of the
14 Federal Reserve System, the Commodity Futures
15 Trading Commission, the National Credit Union Ad-
16 ministration, the Pension Benefit Guaranty Corpora-
17 tion, or the Securities and Exchange Commission,”.

18 (b) EXCLUSION FROM DEFINITION OF DESIGNATED
19 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector
20 General Act of 1978 (5 U.S.C. App.) is amended—

21 (1) by striking “the Board of Governors of the
22 Federal Reserve System,”;

23 (2) by striking “the Commodity Futures Trad-
24 ing Commission,”;

1 (3) by striking “the National Credit Union Ad-
2 ministration,”; and

3 (4) by striking “the Pension Benefit Guaranty
4 Corporation, the Securities and Exchange Commis-
5 sion,”.

6 **SEC. 302. CONTINUATION OF PROVISIONS RELATING TO**
7 **PERSONNEL.**

8 (a) IN GENERAL.—The Inspector General Act of
9 1978 (5 U.S.C. App.) is amended by inserting after sec-
10 tion 8L the following:

11 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
12 **TABLISHMENTS.**

13 “(a) DEFINITION.—For purposes of this section, the
14 term ‘covered establishment’ means the Board of Gov-
15 ernors of the Federal Reserve System, the Commodity Fu-
16 tures Trading Commission, the National Credit Union Ad-
17 ministration, the Pension Benefit Guaranty Corporation,
18 and the Securities and Exchange Commission.

19 “(b) PROVISIONS RELATING TO ALL COVERED ES-
20 TABLISHMENTS.—

21 “(1) PROVISIONS RELATING TO INSPECTORS
22 GENERAL.—In the case of the Inspector General of
23 a covered establishment, subsections (b) and (c) of
24 section 4 of the Inspector General Reform Act of
25 2008 (Public Law 110–409) shall apply in the same

1 manner as if such covered establishment were a des-
2 ignated Federal entity under section 8G. An Inspec-
3 tor General who is subject to the preceding sentence
4 shall not be subject to section 3(e).

5 “(2) PROVISIONS RELATING TO OTHER PER-
6 SONNEL.—Notwithstanding paragraphs (7) and (8)
7 of section 6(a), the Inspector General of a covered
8 establishment may select, appoint, and employ such
9 officers and employees as may be necessary for car-
10 rying out the functions, powers, and duties of the
11 Office of Inspector General of such establishment
12 and to obtain the temporary or intermittent services
13 of experts or consultants or an organization of ex-
14 perts or consultants, subject to the applicable laws
15 and regulations that govern such selections, appoint-
16 ments, and employment, and the obtaining of such
17 services, within such establishment.

18 “(c) PROVISION RELATING TO THE BOARD OF GOV-
19 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-
20 visions of subsection (a) of section 8D (other than the pro-
21 visions of subparagraphs (A), (B), (C), and (E) of para-
22 graph (1) of such subsection (a)) shall apply to the Inspec-
23 tor General of the Board of Governors of the Federal Re-
24 serve System and the Chairman of the Board of Governors
25 of the Federal Reserve System in the same manner as

1 such provisions apply to the Inspector General of the De-
2 partment of the Treasury and the Secretary of the Treas-
3 ury, respectively.”.

4 (b) CONFORMING AMENDMENT.—Paragraph (3) of
5 section 8G(g) of the Inspector General Act of 1978 (5
6 U.S.C. App.) is repealed.

7 **SEC. 303. SUBPOENA AUTHORITY OF CERTAIN INSPECTORS**
8 **GENERAL.**

9 The Inspector General of the Board of Governors of
10 the Federal Reserve System, the Commodity Futures
11 Trading Commission, the National Credit Union Adminis-
12 tration, the Pension Benefit Guaranty Corporation, or the
13 Securities and Exchange Commission, in carrying out the
14 provisions of the Inspector General Act of 1978 (5 U.S.C.
15 App.), is authorized to require by subpoena, from any offi-
16 cer or employee of a contractor or grantee of the establish-
17 ment, any officer or employee of a subcontractor or sub-
18 grantee of such a contractor or grantee, or any person
19 or entity regulated by the establishment, any records and
20 testimony necessary in the performance of functions as-
21 signed to the Inspector General under such Act. Any such
22 subpoena, in the case of contumacy or refusal to obey,
23 shall be enforceable by order of any appropriate United
24 States district court.

1 **SEC. 304. CORRECTIVE RESPONSES BY HEADS OF CERTAIN**
2 **ESTABLISHMENTS TO DEFICIENCIES IDENTI-**
3 **FIED BY INSPECTORS GENERAL.**

4 The Chairman of the Board of Governors of the Fed-
5 eral Reserve System, the Chairman of the Commodity Fu-
6 tures Trading Commission, the Chairman of the National
7 Credit Union Administration, the Director of the Pension
8 Benefit Guaranty Corporation, and the Chairman of the
9 Securities and Exchange Commission shall each—

10 (1) take action to address deficiencies identified
11 by a report or investigation of the Inspector General
12 of the establishment concerned; or

13 (2) certify to both Houses of Congress that no
14 action is necessary or appropriate in connection with
15 a deficiency described in paragraph (1).

16 **SEC. 305. EFFECTIVE DATE; TRANSITION RULE.**

17 (a) **EFFECTIVE DATE.**—This title and the amend-
18 ments made by this title shall take effect 30 days after
19 the date of the enactment of this title.

20 (b) **TRANSITION RULE.**—An individual serving as In-
21 spector General of the Board of Governors of the Federal
22 Reserve System, the Commodity Futures Trading Com-
23 mission, the National Credit Union Administration, the
24 Pension Benefit Guaranty Corporation, or the Securities
25 and Exchange Commission on the effective date of this

1 title pursuant to an appointment made under section 8G
2 of the Inspector General Act of 1978 (5 U.S.C. App.)—

3 (1) may continue so serving until the President
4 makes an appointment under section 3(a) of such
5 Act with respect to the Board of Governors of the
6 Federal Reserve System, the Commodity Futures
7 Trading Commission, the National Credit Union Ad-
8 ministration, the Pension Benefit Guaranty Corpora-
9 tion, or the Securities and Exchange Commission, as
10 the case may be, consistent with the amendments
11 made by section 301; and

12 (2) shall, while serving under paragraph (1), re-
13 main subject to the provisions of section 8G of such
14 Act which, immediately before the effective date of
15 this title, applied with respect to the Inspector Gen-
16 eral of the Board of Governors of the Federal Re-
17 serve System, the Commodity Futures Trading Com-
18 mission, the National Credit Union Administration,
19 the Pension Benefit Guaranty Corporation, or the
20 Securities and Exchange Commission, as the case
21 may be, and suffer no reduction in pay.